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Wednesday
March 20, 1996

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV95–982–2FIR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1995–96 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced filberts/hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW. Third Ave., Room 369, Portland, OR 97204; telephone: (503) 326–2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1995–96 marketing year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers and handlers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. The interim final rule was issued on January 22, 1996, and published in the Federal Register (61 FR 2665, January 29, 1996), with an effective date of January 29, 1996. That rule established the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the finalization of interim and final free and restricted percentages will continue to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns. That rule provided a 30-day comment period which ended February 28, 1996. No comments were received.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80

percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three ''normal'' years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout. Desirable carryout is used for early season shipments until the new crop is available for market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut supply subject to regulation which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1995–96 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 1995, meeting, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,478 tons of filberts/hazelnuts from the 1995 supply for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 15, 1995, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 12 percent free and 88 percent restricted, and final free and restricted percentages were recommended at 14 percent and 86 percent, respectively. The Board also recommended that the final percentages be effective on June 1, 1996, which is 30 days prior to the end of the season. The interim final percentages made an additional 870 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and released 4,348 tons to the domestic inshell market from the 1995 supply subject to regulation. The final marketing percentages release an additional 637 tons from the 1995 crop for domestic use. Thus, a total of 4,985 tons of inshell filberts/hazelnuts will be available from the 1995 supply subject to regulation for domestic use when the final percentages are established. The National Agricultural Statistics Service (NASS) estimated filbert/hazelnut production at 38,000 tons for the Oregon and Washington area. The Board unanimously voted to accept the NASS estimate.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1995–96 marketing year:

	Tons
Inshell Supply:	
(1) Total production (NASS estimate)	38,000
(2) Less substandard, farm use (disappearance)	2,466
(3) Merchantable production (the Board's adjusted crop estimate)	35,534
(4) Plus undeclared carryin as of July 1, 1995, subject to regulation	11
(5) Supply subject to regulation (Item 3 plus Item 4)	35,545
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years	4,247
(7) Increase to encourage increased sales (15 percent of Item 6)	637
(8) Less declared carryin as of July 1, 1995, not subject to regulation	536
(9) Adjusted Inshell Trade Demand	4,348
(10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6)	637
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)	4,985

	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5) × 100	12	88
(13) Final percentages (Item 11 divided by Item 5) × 100	14	86

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market

expansion while retaining the mechanism for dealing with oversupply situations. At its August 28, 1995, meeting, the Board recommended that an increase of 15 percent (637 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 637 tons for desirable carryout. The total free supply will be the final trade demand of 4,985 tons plus the declared carryin of 536 tons or 5,521 tons. This is 130 percent of prior years' sales and exceeds the goal of the Guidelines.

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

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 2665, January 29, 1996), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982, which was published at 61 FR 2665 on January 29, 1996, is adopted as a final rule without change.

Dated: March 13, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–6694 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[FV95–985–5FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, thus helping to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 1996 through May 31, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Tershirra T. Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1996–97 marketing year, which begins on June 1, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed no later than 20 days after date of the entry of the ruling.

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

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

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts

for approximately 75 percent of the annual U.S. production of spearmint oil.

A proposed rule was issued on January 17, 1996, and published in the Federal Register (61 FR 1855, January 24, 1996). That rule provided a 30-day comment period which ended February 23, 1996. No comments were received.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the marketing order, the Committee recommended the salable quantities and allotment percentages for the 1996–97 marketing year at its September 26, 1995, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil in a vote of six in favor and one opposed. The member voting in opposition favored the establishment of a higher salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil in a vote of seven in favor and none opposed. The Chairman abstained from voting on both actions.

This final rule establishes a salable quantity of 989,303 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,074,902 pounds and an allotment percentage of 54 percent for Native spearmint oil. This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1996–97 marketing year, which begins on June 1, 1996. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The Committee revised its procedure for calculating the salable quantity and allotment percentage for Scotch spearmint oil this season by using a formula based on that portion of the entire North American market share targeted by the Far West. The Committee chose to use a targeted percentage of the North American market share in its deliberations due to the increased production of Scotch spearmint oil in Canada and certain domestic areas outside of the Far West production area. The Far West spearmint oil industry maintained approximately 72 percent of the North American Scotch spearmint oil market share during 1980, the marketing order's first year of operation. By 1994, this had gradually diminished to the point where the Far West had sales of Scotch spearmint oil representing approximately 52 percent of the North American market. Reestablishing the Far West with a majority of the North American market share is a priority of the Committee, while at the same time maintaining market stability. Although desiring to regain the market share level realized in 1980, the Committee plans to work at achieving this goal over a period of several years.

The method of calculating the Native spearmint oil salable quantity and allotment percentage remains unchanged, with the primary consideration being price and available supply as affected by the estimated trade demand for Far West spearmint oil. United States production of Native spearmint oil is centered in the Far West which produces approximately 90 percent of the total supply.

The salable quantity and allotment percentage for each class of spearmint oil for the 1996–97 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June l, 1996—196,384 pounds. This number is derived by subtracting the estimated 1995–96 marketing year trade demand of 862,784 pounds from the revised 1995–96 marketing year total available supply of 1,059,168 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1996–97 marketing year—1,549,316 pounds. This number is an estimate based on Committee information provided by producers and buyers.

(C) Percentage of North American market targeted—64.67 percent. This number is an average of the recommended target percentages made at each of the six regional producer meetings held throughout the Far West production area during the month of September, 1995.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,001,891 pounds. This number is the product of the estimated 1996–97 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—191,667 pounds. This number is an average of those amounts recommended by producers at the six regional producer meetings, and reflects the Committee's commitment in regaining market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,193,558 pounds. This number is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—997,174 pounds. This represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 196,384 pounds from the total supply required of 1,193,558 pounds.

(H) Total allotment base for the 1996–97 marketing year—1,798,732 pounds.

(I) Computed allotment percentage—55 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent.

(K) The Committee's recommended salable quantity—989,303 pounds.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1996—44,959 pounds. This number is derived by subtracting the estimated 1995–96 marketing year trade demand of 1,084,436 pounds from the revised 1995–96 marketing year total available supply of 1,129,395 pounds.

(B) Estimated trade demand (domestic and export) for the 1996–97 marketing year—1,084,436 pounds. This number is an estimate based on the average of total annual sales made between 1988 and 1994, handler estimates, and Committee information provided by producers and buyers.

(C) Salable quantity required from 1996 production—1,039,477 pounds. This number is the difference between the estimated 1996–97 marketing year trade demand and the estimated carry-in on June 1, 1996.

(D) Total allotment base for the 1996–97 marketing year—1,990,559 pounds.

(E) Computed allotment percentage—52.2 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—54 percent. The Committee recommended a percentage slightly higher than that computed so as to maintain an ample supply of Native spearmint oil available for the market.

(G) The Committee's recommended salable quantity—1,074,902 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent for Scotch and Native spearmint oils, respectively, are based on anticipated 1996–97 marketing year supply and trade demand. The

relatively higher recommended salable quantities and allotment percentages for both Scotch and Native spearmint oils for the 1996–97 marketing year, when compared to those initially recommended for the 1995–96 marketing year, are demonstrative of the Committee's concern with the increasing production of spearmint oil, both inside and outside the marketing order production area, and the industry's desire to maintain a significant share of the North American market while maintaining the overall stability of the market.

The recommended salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1996–97 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this final action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this final rule also provides spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 985.215 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.215 Salable quantities and allotment percentages—1996–97 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1996, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 989,303 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,074,902 pounds and an allotment percentage of 54 percent.

Dated: March 13, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–6696 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1002

[DA–95–23B]

Milk in the New York–New Jersey Marketing Area; Final Rule: Termination of Certain Order Provisions and Removal of Certain Regulations of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes certain sections of the New York–New Jersey Federal milk marketing order (Order 2). Specifically, this document removes the requirements that certain changes to the market administrator's rules and regulations be published in the Federal Register. Additionally, this rule removes from the Annual Code of Federal Regulations the publication of two Order 2 sections containing the market administrator's rules and regulations concerning cooperative payments. This action is taken to reduce printing costs and to comply with the President's regulatory reform initiative.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)690–1366.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Interim Rule; Issued November 27, 1995; published December 4, 1995 (60 FR 62018).

This regulatory action is being taken as part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

The Department is issuing this rule in conformance with Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action reduces the cost involved with publishing in the Federal Register and the annual Code of Federal Regulations rules and regulations that are printed and made available to interested parties by the market administrator.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This rule is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New York–New Jersey marketing area. It is hereby found and determined that the following provisions of the order no longer effectuate the declared policy of the Act:

1. In § 1002.77(i)(1), the words: ''published in the Federal Register and''.

2. In § 1002.77(i)(3), the words: ''approval, and shall be published in the Federal Register following such''.

In addition, the following provisions of the rules and regulations issued under the order do not need to be published in the annual Code of Federal Regulations:

3. Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments (§§ 1002.300 through 1002.353).

4. Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment (§§ 1002.400 through 1002.444).

Findings and Determinations

This action terminates the provisions which require that in two particular situations the rules and regulations issued by the market administrator of the New York-New Jersey order (Order 2) be published in the Federal Register. Additionally, the two Order 2 subparts which contain the market administrator's rules and regulations related to cooperative payments will no longer be published in the annual Code of Federal Regulations.

The market administrator will continue to issue any specific rules and regulations that are needed to effectuate the provisions of the order regulating the handling of milk in the Order 2 marketing area. These rules and regulations are, and will continue to be, issued to facilitate the administration of the order and are updated as necessary, published, and made available to interested parties. Industry representatives may request a copy of the rules and regulations, which must be approved by the Secretary, from the market administrator at any time.

This action will not change the rules and regulations previously issued by the Order 2 market administrator and in effect now to carry out the regulatory provisions of the order. Order 2 establishes specific procedures that must be followed by the market administrator in revising the rules and regulations. It also sets forth methods whereby interested parties are informed about proposals to change the rules and regulations and how they may participate in the rulemaking process.

The printing and procedural functions involving the implementation or revision of the rules and regulations concerning cooperative payments for Order 2 are accomplished by the market administrator in the performance of his duties. These matters are being adequately performed by the Order 2 market administrator. Thus, it is not necessary to replicate the market administrator's efforts by requiring that they be published in the Federal Register or that the Order 2 subparts containing the rules and regulations be published in the Code of Federal Regulations each year. Furthermore, this action is consistent with the President's regulatory reform initiative.

Accordingly, with regard to the termination of the aforesaid provisions of the order as hereinafter set forth, it is hereby found in accordance with the Act that these provisions no longer tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is hereby found and determined that it is unnecessary to postpone the effective date of this action until 30 days after the publication of this document in the Federal Register because this action was previously taken on an interim basis in a document that was published in the Federal Register on December 4, 1995 (60 FR 62018). Interested parties had until January 3, 1996, to file their written comments to the interim action and no comments were received. This document concludes the proceeding.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1002 is amended as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Accordingly, the interim final rule amending 7 CFR part 1002 which was published at 60 FR 62018 on December 4, 1995, is adopted as a final rule without change.

Dated: March 13, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–6695 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 96–06]

RIN 1557–AB48

Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules governing real estate lending as part of its Regulation Review Program. Consistent with the goals of the Program, the final rule modernizes and clarifies the rules, reduces unnecessary regulatory burdens, and applies regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the OCC.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Laura Goldman, Attorney, Bank Activities and Structure (202) 874–5300; Thomas Watson, National Bank Examiner, Credit & Management Policy (202) 874–5170; Frank R. Carbone, National Bank Examiner, Credit & Management Policy (202) 874–5170; Roland G. Ullrich, National Bank Examiner, Consumer and Fiduciary Compliance (202) 874–4866; or Mark Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090, 250 E Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC has reviewed 12 CFR part 34 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply. Consistent with these goals, the OCC intends for this final rule to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities.

The Proposal

On July 7, 1995, the OCC published a notice of proposed rulemaking (NPRM or proposal) (60 FR 35353) to revise subparts A (General), B (Adjustable-Rate Mortgages) (ARMs), and E (Other Real Estate Owned) (OREO) of 12 CFR part 34.[1] In the NPRM, the OCC proposed to

[1] As explained in the preamble to the NPRM, the OCC did not propose to amend subparts C (Appraisals) or D (Real Estate Lending Standards) because the OCC recently adopted these subparts on an interagency basis and the OCC wishes to gather additional information on their effectiveness before deciding whether to recommend an interagency effort to revise them.

permit the suspension of the disposition period for leases that are treated as OREO if a bank, acting in good faith, has entered into a non-coterminous sublease (i.e., a sublease that has a term shorter than the remainder of the master lease's term).[2] Following termination of a non-coterminous sublease, a bank would have the same amount of time in which to dispose of the property that the bank had when it entered into the sublease. The proposal also summarized the OCC's general approach to questions of Federal preemption of State laws governing real estate lending while emphasizing that this clarification did not expand the scope of State law preemption beyond what appeared in the former rule. Finally, the proposal removed redundant or otherwise unnecessary provisions from the former rule and made several other changes intended to improve the rule's clarity.

The Final Rule and Comments Received

The OCC received 12 comments. Most commenters supported the proposed changes. Comments were received from seven national banks, two bank holding companies that control national banks, two trade groups, and one law firm. Several commenters, while supporting the proposal, suggested that the OCC make additional changes, as discussed later in this preamble.

Three commenters raised issues concerning appraisals (subpart C of part 34) while two offered suggestions concerning the real estate lending standards (subpart D). The OCC will take these comments into consideration when reviewing those subparts at a later date.

One commenter suggested that section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act (12 U.S.C. 43) (Riegle-Neal Act) requires the OCC to resubmit for public comment proposed §§ 34.4, 34.5, 34.21, and 34.23, which contain statements of preemption of various State laws. Section 114 requires, *inter alia,* that the OCC publish notice of requests for the OCC to issue opinions on whether Federal law preempts certain types of State laws, or when the OCC, on its own initiative, proposes to issue such an opinion.

The OCC does not believe that section 114 applies to this rulemaking. First, no prior notice under section 114 is required for preemption issues that are essentially identical to those on which the agency previously has opined. As was explained in the NPRM, each of the sections at issue in the proposal is substantively identical to those found in the existing rule.[3] Second, the OCC has followed formal rulemaking procedures in adopting and amending part 34, giving the public ample opportunity to comment on each section. Third, the OCC is adopting a rule, not issuing a preemption opinion or interpretation. Thus, the section 114 procedures do not apply.

The following discussion summarizes the amendments to part 34 and the remaining comments.

Subpart A—General

Purpose and Scope (§ 34.1)

A national bank may make real estate loans pursuant to 12 U.S.C. 371 and 12 U.S.C. 24 (Seventh). Part 34 formerly identified (in § 34.3) loans that are not considered ''real estate loans'' for purposes of 12 U.S.C. 371 but which national banks nevertheless may make pursuant to 12 U.S.C. 24 (Seventh). The proposal removed the list in § 34.3, and eliminated cross-references in § 34.1 to that list. However, since former paragraphs (f) and (g) of § 34.3 contained an exception to the regulation's scope, the proposal incorporated the substance of those provisions into the proposed ''Scope'' section of the revised regulation. The proposal also relocated the text authorizing national banks to engage in real estate-related transactions from § 34.1(a) to proposed § 34.3. This change was proposed to conform the order of subpart A of part 34 to that of other OCC rules. Finally, the proposal set forth a statement of the purpose of part 34.

The OCC received no comments on this section, which is adopted as proposed with stylistic changes and one clarification. The final rule adds a statement clarifying that part 34 applies to national banks and their operating subsidiaries, except where otherwise noted (*see, e.g.,* 12 CFR 34.21(b)).

Definitions (§ 34.2)

The proposal placed definitions used in subpart A in one location. The definition of ''due-on-sale clause'' was moved from former § 34.4 to proposed § 34.2 without any change to the definition's substance. The proposal added definitions of ''State'' and ''State law limitations'' to avoid restating of the full scope of preemption in every section that refers to preemption.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

General Rule (§ 34.3)

The proposal set forth the general rule authorizing national banks to engage in real estate lending and related transactions, and relocated this general rule to a new section to conform the order of subpart A of part 34 to that followed in other OCC regulations.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Loans Not Constituting Real Estate Loans (former § 34.3—Removed)

Former § 34.3 listed several types of loans that are not considered real estate loans for purposes of part 34, but are permissible for national banks under 12 U.S.C. 24 (Seventh). The former provision was confusing and unnecessary. Therefore, the proposal removed § 34.3 in its entirety.

The OCC received no comments on this proposed removal, and accordingly adopts the proposed change.

Applicability of Law (§ 34.4)

The proposal retained a statement of specific areas where Federal law preempts State law in order to provide continued guidance in this area. The proposal removed the vague reminder, found at former § 34.2(b), that national banks must comply with applicable laws, but added, in § 34.4(b), a general statement of the OCC's position with respect to preemption in order to clarify that the list of areas where State law is preempted, carried over from the former rule, is not necessarily exhaustive. The proposed rule clarified that the OCC will apply traditional principles of Federal preemption when determining whether a State law affecting real estate lending is preempted. Under these principles, State laws apply to national banks unless the State law expressly or impliedly conflicts with Federal law, the State law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law, or Federal law is so comprehensive as to evidence a Congressional intent to occupy a given field.[4]

[2] Under both the former rule and the NPRM, a coterminous sublease is deemed to be an effective disposition of a lease that has been transferred to OREO.

[3] *See* 60 FR at 35354, 35355, and 35356.

[4] The Supreme Court's most recent discussion of the principles of Federal preemption may be found in *Gade* v. *National Solid Wastes Management Ass'n,* 120 L. Ed. 2d 73 (1992), in which the Court stated:

As both the majority and dissent acknowledge, we have identified three circumstances in which a federal statute pre-empts state law: First, Congress can adopt express language defining the existence and scope of pre-emption. Second, state law is pre-empted where Congress creates a scheme of federal regulation so pervasive as to leave no room for supplementary state regulation. And third, ''state law is pre-empted to the extent that it actually conflicts with federal law.'' This third form of pre-

Continued

Other than the comment summarized earlier concerning the application of section 114 of the Riegle-Neal Act (*see* text following ''The Final Rule and Comments Received,'' above), the OCC received no comments on this provision, which is adopted as proposed with minor stylistic edits.

Due-On-Sale Clauses (§ 34.5)

The proposal modified this section to improve clarity and to remove unnecessary restatements of statutory provisions. No change was proposed to the substance of those descriptions.

Other than the comment summarized above concerning the application of section 114 of the Riegle-Neal Act (*see* text following ''The Final Rule and Comments Received,'' above), the OCC received no comments on this provision. The final rule makes minor stylistic edits to the provision as proposed and removes the definition of the term ''lender,'' given that this term is not used in the final rule.

Subpart B—ARMs

Definitions (§ 34.20)

The proposal amended the definition of ''ARM loan'' by deleting the provisions, found in former § 34.5(a)(2), that exempt fixed-rate extensions of credit that are payable either on demand or without any interim amortization. The proposal made stylistic changes to the definition of ''ARM loan,'' and removed the definition of ''consumer credit'' because other changes to the rule make that definition unnecessary. In order to consolidate all definitions used in subpart B, the proposal relocated to § 34.20 the definitions of ''affiliate'' and ''subsidiary'' formerly found in § 34.6(b). Finally, the proposal used the term ''renewal'' instead of ''refinance'' as that term was used in former § 34.5(a)(2) in order to avoid creating the impression that the OCC rule applies to refinancings as that term is narrowly defined in Regulation Z (Reg. Z, 12 CFR part 226) of the Board of Governors of the Federal Reserve System (Federal Reserve).

In addition, the proposal sought comment on whether it remains necessary or appropriate to continue to exempt from the definition of ''ARM loan'' fixed-rate loans that are payable at the end of a term that, when added to all terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule. This exemption is similar, but not identical, to the treatment of variable-rate transactions in Reg. Z. Specifically, the OCC sought comment on (1) whether the difference between part 34 and Reg. Z poses an unnecessary burden, and (2) whether commenters favor amending part 34 to eliminate the difference, notwithstanding that such approach would result in more loans being subject to the requirement that a bank use an index beyond its control.

The OCC received three comments in response to the proposed changes and the request for comments. Those commenters responding to the issues raised by the exemption from the definition of ''ARM loan'' requested that the OCC retain the exemption in the final rule. One commenter noted that the highlighted difference between Reg. Z and part 34 does not pose an unnecessary burden and that the bank already has systems in place to deal with the difference. Another commenter noted that removing the exemption would add a new layer of confusion to the affected loans and would have the result of requiring banks to tie the loans to an independent index. For the reasons advanced by the commenters, and in light of the absence of any expression of problems experienced by national banks, the OCC is retaining the exemption.

Another commenter suggested that the OCC should expand the definition of ''ARM loan'' to be consistent with the definition of ''alternative mortgage transaction'' found in the Alternative Mortgage Transaction Parity Act (Parity Act) (12 U.S.C. 3801 *et seq.*).[5] The suggested change would apply the general rule stated in § 34.21 (which permits national banks to make, sell, purchase, participate in, or otherwise deal in ARM loans without regard to State law limitations on those activities) to a broader variety of loans, including home equity loans. The commenter advocating this change suggested that the former rule created a competitive disadvantage for national banks by authorizing fewer types of ARM loans than may be made by other types of lenders. No other commenter suggested that the definition of ''ARM loan'' presents a problem.

The OCC has determined not to make the suggested change to the definition of ''ARM loan.'' Historically, the OCC has confined the scope of its ARM lending rule to home-purchase loans.[6] While the OCC's ARM lending rule does not authorize home equity lending, such lending clearly is permissible under 12 U.S.C. 371, which permits any national banking association to ''make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate. * * *'' *Id.* at 371(a). Thus, national banks may make the types of loans that would be covered by the proposed expanded definition of ARM loan. If a national bank encounters a provision of State law that it believes is inappropriately restrictive, the bank may seek the OCC's opinion concerning whether Federal law preempts the provision of State law in question according to recognized principles of Federal preemption.

The final rule adopts the changes to § 34.20 as proposed in the NPRM, except that it relocates the definitions of ''affiliate'' and ''subsidiary'' from § 34.20 to § 34.21(b). This change from the proposal clarifies that only the provision concerning the purchase of loans not in compliance with part 34 (§ 34.21(b)) applies to a bank's affiliates and subsidiaries as these terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c). Generally speaking, part 34 applies to national banks and their operating subsidiaries, unless the OCC determines otherwise.

General Rule (§ 34.21)

The proposal made only minor changes to simplify the general rule, which provides that national banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in ARM loans, notwithstanding any State law to the contrary that applies to these activities. The proposal intended no change in the former rule governing preemption of State law limitations on ARM lending. A national bank may

emption, so-called actual conflict pre-emption, occurs either ''where it is impossible for a private party to comply with both state and federal requirements * * * or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' ''

120 L. Ed. 2d at 91 (Kennedy, J., concurring; citations omitted). The plurality and dissenting opinions in Gade contain essentially the same formulation. *See id.* at 84 and 95, respectively.

[5] The Parity Act defines ''alternative mortgage transaction'' as:

[A] loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home * * * (A) in which the interest rate or finance charge may be adjusted or renegotiated; (B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or (C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation; described and defined by applicable regulation.

12 U.S.C. 3802(1).

[6] *See, e.g.*, 46 FR 18932, 18935 (March 27, 1981) (''The intent of the regulation is to improve the availability of mortgage funds for purchasing residential property and to provide protection to home purchases. The intent is not to regulate adjustable rate loans made for other purposes.'').

purchase or participate in ARM loans that were not made in accordance with the OCC's regulations, except that, as already noted, loans purchased from an affiliate or subsidiary must comply with part 34.

As noted earlier, the final rule relocates the definitions of ''affiliate'' and ''subsidiary'' to § 34.21(b) to clarify that these broadly encompassing definitions apply only in the limited circumstances specified in that section. The final rule otherwise adopts the proposal as published.

Index (§ 34.22)

Former § 34.7 required ARM loans that are subject to 12 CFR 226.19(b) to specify an index to which changes in the interest rate shall be linked. Under that section, the index is to be readily available to, and verifiable by, the borrower and beyond the control of the lending bank. Proposed § 34.22 made no changes to the substance of the former rule.

One commenter requested that the OCC drop the requirement of an independent index altogether, and suggested that the secondary market and competitive pressures will protect the consumer. The OCC has decided to keep the independent index, because the agency believes that the requirement provides a significant protection to the consumer and that it creates only limited burden on national banks.

Another commenter expressed concern that the former and proposed rules could be construed to prohibit rate changes based on such criteria as termination of employment, discontinuance of payment by a particular method, default, or termination of certain banking relationships by the customer. The commenter suggested that the OCC clarify that a national bank may decrease the interest rate at any time and increase the rate pursuant to a formula or schedule set forth in the relevant loan documents specifying the amount of the increase and the times at which, or circumstances under which, the increase may be made. The OCC agrees with the commenter that this clarification is appropriate, and has made the suggested change along with minor stylistic edits in the final rule.

Rate Changes (Former § 34.8—Removed)

Former § 34.8 set forth the limitation found in section 1204 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. 100–86, 100 Stat. 552 (12 U.S.C. 3806(a)), which requires a consumer credit ARM loan to include a limitation on the maximum rate of interest that may apply during the term of the loan. The proposal removed § 34.8 because it is an unnecessary and potentially confusing restatement of the statute. Moreover, CEBA vests rulemaking authority with the Federal Reserve, which has implemented section 1204 of CEBA at 12 CFR 226.30.

The OCC received no comments on the proposed change, and the section is removed as proposed.

Prepayment Fees (§ 34.23)

The proposal made no substantive change to this section (former § 34.9), which provides that national banks may impose fees for prepayments of ARM loans, notwithstanding any State law to the contrary.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Disclosure (Former § 34.10—Removed)

This section requires a national bank that offers consumer ARM loans to provide the disclosures required by the Truth-in-Lending Act (15 U.S.C. 1601, et seq.), as implemented by the Federal Reserve in Reg. Z (12 CFR part 226). The OCC believes that the reminder to comply with Reg. Z disclosures when making a consumer ARM loan was appropriate when the OCC-imposed disclosure requirements were removed, but now is unnecessary. Accordingly, the proposal removed this section in its entirety. The proposal also removed the term ''consumer credit'' from the definition section (former § 34.5(b)) since it was used only in former § 34.10.

One person commented on this proposed change, requesting that the final rule retain the reference to Reg. Z in order to remind national banks that the Federal Reserve has promulgated rules governing disclosure requirements related to ARM lending. The OCC remains of the view that a general reminder that Reg. Z applies is unnecessary, and that the presence of a reminder about the applicability of a separate regulation in one portion of an OCC rule, but not in others, is potentially confusing. Therefore, this section is removed from the final rule.

Nonfederally Chartered Commercial Banks (§ 34.24)

Section 807(b) of the Garn-St Germain Act (Pub. L. 97–320, 96 Stat. 1545 (12 U.S.C. 3801 note)) requires the OCC to identify those provisions of its ARM regulation that are inappropriate for nonfederally chartered banks. In implementing section 807(b), the OCC determined that all of the provisions of subpart B were appropriate, and so stated in former § 34.11. Proposed § 34.25 retained this statement in order to comply with the statute, and removed certain unnecessary citations to statutory authority.

The OCC received no comments on this section, which is adopted as proposed with stylistic edits.

Transition Rule (§ 34.25)

The former rule (§ 34.12) provided that national banks were authorized to make or administer loans during a ''window period'' beginning on the date the former rule was adopted (March 11, 1988) and ending October 1, 1988, if the loans complied with the OCC rules in effect before the March 11, 1988 amendment. Following October 1, 1988, all ARM loans have been required to comply with part 34, as revised. The proposal retained most of the former rule but removed what are now unnecessary references to the window period.

The OCC received no comments on this section, which is adopted as proposed with stylistic edits.

Subpart C—Appraisals

The OCC did not propose any changes to the rules governing the use of appraisals. Accordingly, subpart C is not amended.

Subpart D—Real Estate Lending Standards

The OCC did not propose any changes to the real estate lending standards. Accordingly, subpart D is not amended.

Subpart E—OREO

Definitions (§ 34.81)

Former § 34.81 contained the definitions used in subpart E. The proposal made several changes to these definitions in addition to stylistic edits. First, proposed § 34.81 defined OREO to include only ''debts previously contracted'' (DPC) real estate and former banking premises, and removed the term ''covered transactions real estate'' from the definition of OREO (thereby rendering the definition of covered transactions real estate unnecessary). The proposal also removed the term ''transaction value'' and corresponding definition.

The OCC received no comments on these proposed changes, which are adopted as proposed with stylistic edits. However, one commenter suggested that the OCC make an additional change that was not proposed in the NPRM, namely, to exempt leases from the definition of OREO. This commenter noted that the proposal, which required a bank to dispose of OREO leases after the expiration of a non-coterminous sublease, would require the bank to track properties for an extended period

of time in order to insure that the bank ultimately complied with the disposition requirements. The commenter also raised a number of questions prompted by the NPRM, such as whether the existence of a sublease is sufficient despite the fact that a subtenant is delinquent and whether the sublease must be at market rates.

The OCC believes that long-term leases of real property can present many of the same risks that are presented by ownership of a fee simple interest and, therefore, that safety and soundness reasons dictate that leases be covered by the rules governing disposition of OREO. The commenter is correct in concluding that a bank that has entered into a non-coterminous sublease must dispose of the lease within the time remaining under the OREO disposition rules once the sublease expires. However, the OCC believes that the tracking burden associated with this disposition requirement is minimal and reasonable in light of the safety and soundness benefits derived by continuing to treat leases as OREO. Questions regarding the adequacy of a particular sublease will be addressed on a case-by-case basis. However, national banks are to exercise good faith in entering into non-coterminous subleases.

Holding Period (§ 34.82)

The proposal clarified, in § 34.82(b)(2), that the holding period begins on the date that a national bank ceases to use former banking premises without relocating the business formerly conducted there to another site. The proposed rule also made changes to improve clarity and to remove provisions that are redundant in light of 12 U.S.C. 29. The proposal relocated the requirement that a national bank dispose of OREO when prudent judgment dictates from § 34.83 (which addresses the *method* of disposition) to § 34.82 (which addresses *timing* of disposition). Finally, proposed § 34.82 retained a statement regarding a bank's obligation to dispose of OREO. This statement clarified that OREO, as defined in the regulation, is subject to the divestiture provisions.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Disposition of Real Estate (§ 34.83)

Formerly, § 34.83(a)(5) permitted disposition of leases only through assignment or a ''coterminous sublease'' (*i.e.*, a lease with the same duration as the remainder of the master lease). Many national banks hold long-term leases and are unable either to assign them or to find a coterminous sublessee, notwithstanding the bank's best efforts to do so. As industry consolidation and technological advances further reduce the utilization of branches and back-office space, this problem likely will become more severe.

To address this problem, proposed § 34.83(a)(3) permitted the divestiture period to be suspended for the duration of a non-coterminous sublease. The proposal also made numerous stylistic changes to § 34.83 that simplify the former regulation and eliminate unnecessary repetition. The proposal modified § 34.83(b) to clarify that disposition efforts must be ongoing throughout the disposition period. Finally, as previously noted, the proposal relocated the provision in former § 34.83 (requiring disposition when prudent judgment dictates) to proposed § 34.82.

The OCC received six comments on the proposed change affecting non-coterminous subleases, and all six favored the change. In light of these comments and for the reasons stated in the preamble to the NPRM, the OCC adopts the proposed changes to this section, with the additional changes noted as follows.

Two commenters requested that the OCC permit a national bank to exercise options to extend a lease if the extension is necessary to attract prospective sublessees. These commenters noted that a third party will not enter into a sublease if the duration of the sublease is insufficient to justify making whatever expenditures are required to conform the property to the third party's business. The OCC agrees that a national bank should have the flexibility to extend a lease if the extension enables the bank to sublease the property and certain safeguards are satisfied, and has modified § 34.83(a)(3) accordingly.

Historically, the OCC has required national banks to divest of OREO as soon as possible. *See, e.g.,* OCC Interpretive Letter No. 491 (1989–1990 Transfer Binder) Fed. Banking L. Rep. (CCH) ❚ 83,074 at p. 71,184 (Sept. 6, 1989) (''It should be recognized that the Bank's paramount obligation is to dispose of its interest in the lease [that has become OREO] at the earliest possible date, consistent with 12 U.S.C. § 29 * * *''). The OCC continues to require divestiture of OREO as soon as possible but in any event within the divestiture period prescribed by statute. The change proposed by the commenters is consistent with this requirement. Under the changes proposed in the NPRM and by the commenters, national banks remain obligated to take appropriate steps before the disposition period expires either to dispose of a lease outright (by assigning the lease or entering into a coterminous sublease) or to enter into a non-coterminous sublease that will suspend the running of the disposition period. The change proposed by the commenters will facilitate a bank's compliance with this obligation.

While the OCC agrees that the change proposed by the commenters is appropriate and consistent with applicable law, a national bank may not enter into an extension of a master lease for the purpose of speculating in real estate. For this reason, the final rule clarifies that the OCC reserves the right to require a national bank to take immediate steps to dispose of an extended lease if the OCC finds that the bank entered into the extension for the purpose of real estate speculation.[7] The final rule also prohibits a national bank from entering into an extension unless (1) the bank, prior to entering into an extension of the master lease, has a firm commitment from a third party to sublease the property and (2) the duration of the extension is reasonable and does not materially exceed the duration of the sublease.

The OCC also has amended § 34.83(a)(3) to clarify that the agency retains the authority to require a national bank to take appropriate steps to dispose of a lease (or extension thereof) if the OCC finds that the bank has not acted in good faith in entering into a sublease. Thus, for instance, if a bank subleases property to a related third party for a nominal amount so that the bank may retain possession of the lease and speculate on the property's future value, the bank will not have acted in good faith and the OCC will require the bank to take immediate steps to dispose of the master lease.

Future Bank Expansion (§ 34.84)

Proposed § 34.84 created a new section for the OCC's rule on future bank expansion that formerly appeared in § 34.83(c) in order to make the future bank expansion rule easier to locate.

The OCC received no comments on this section, which is adopted as proposed.

Appraisal Requirements (§ 34.85)

The proposal made no substantive change to the existing rule set forth in former § 34.84. This rule provides that a national bank should obtain either an appraisal or evaluation, as appropriate

[7] The NPRM stated that the OCC reserves this right in connection with leases in general but was silent on the question of extensions of lease.

under 12 CFR part 34, subpart C, when real estate is transferred to OREO or when OREO is sold. The former rule provided an exception to this requirement if a national bank already has a valid appraisal or evaluation for the property in question. Banks are to monitor the value of each parcel of OREO in a manner consistent with prudent banking practices.

One commenter suggested that the OCC not require appraisals every time property formerly used (or intended to be used) as bank premises is transferred to OREO. The OCC will consider this comment when the agency reviews subpart C of part 34, which sets forth the rules governing when and what type of an appraisal is required. The OCC received no other comments on this section. The final rule makes stylistic edits to the proposal and removes an unnecessary reminder in § 34.85(b) that a bank is to follow its real estate collateral evaluation policy.

Additional Expenditures and Notification (§ 34.86)

The proposal rearranged § 34.86 (former § 34.85) to improve clarity, and modified other parts of this section to simplify the procedures for informing banks of the OCC's decision regarding proposed additional expenditures. The OCC specifically sought comment on whether the standard regarding completion of OREO development or improvement projects provides sufficient guidance.

The OCC received one comment on this section. The commenter stated that the existing guidance on the development of OREO is sufficient. In light of this comment and the absence of comments requesting further guidance, the OCC adopts this section as proposed with minor stylistic edits.

Accounting Treatment (§ 34.87)

The proposal retained the former rule, which specified that OREO reporting should conform to instructions in the Consolidated Report of Condition and Income.

The OCC received one comment on the accounting treatment that should be applied to OREO. The commenter suggested that, since the leased property during the term of a non-coterminous sublease will not be an asset to be disposed of, the OCC should require national banks to account for the lease as ''premises'' and not ''held for sale.'' However, since a bank no longer uses OREO property as premises, the OCC believes that OREO property that has been subleased by a bank is appropriately accounted for as ''held for sale.'' The OCC received no other comments on this section, which is adopted as proposed with minor stylistic edits.

Application (Former § 34.87)

Former § 34.87 provided that subpart E is applicable to all OREO held by a national bank, including OREO in existence since September 17, 1993. The proposal removed this provision since it is unnecessary and potentially confusing.

The OCC received no comment on this proposed removal. Accordingly, the OCC has removed former § 34.87.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements to the first day of the first calendar quarter following publication of the final rule. The OCC believes that section 302 is not applicable to this final rule, because the effect of the regulation is to reduce burdens on national banks. The final regulation does not impose any additional reporting or other requirements not already contained in the current version of the OCC's real estate lending regulations. The effective date of this final rule is April 19, 1996.

Derivation Table

The following derivation table directs readers to the provision(s) of the former regulation, if any, upon which the final provision is based, and identifies generally the action taken.

DERIVATION TABLE

Revised section	Original section	Comments
34.1(a)		Added.
34.1(b)	34.1(b)	Modified.
34.2(a)	34.4(a)	Modified.
34.2(b)		Added.
34.2(c)		Added.
34.3	34.1(a)	Modified.
34.4(a)	34.2(a)	Modified.
34.4(b)		Added.
	34.2(b)	Removed.
	34.3	Removed.
34.5	34.4(a)	Modified.
34.5	34.4(b)	Modified.
34.20	34.5(a)	Modified.
	34.5(b)	Removed.
34.21(a)	34.6(a)	Modified.
34.21(b)	34.6(b)	Modified.
34.22	34.7	Modified.
	34.8	Removed.
34.23	34.9	Modified.
	34.10	Removed.
34.24	34.11	Modified.
34.25	34.12	Modified.
34.81(a)		Added.
	34.81(b)	Removed.
34.81(b)	34.81(c)	No change.
34.81(c)	34.81(d)	No change.
34.81(d)	34.81(e)	No change.
34.81(e)	34.81(a)	Modified.

DERIVATION TABLE—Continued

Revised section	Original section	Comments
34.81(f)	34.81(f)	No change.
	34.81(g)	Removed.
34.82(a)	34.82(a)	Modified.
34.82(b)	34.82(b)	Modified.
34.82(c)	34.82(c)	Modified.
34.82(a)	34.83(a)	Modified.
34.83(a)(1)(i)	34.83(a)(1)	Modified.
34.83(a)(1)(ii)	34.83(a)(2)	Modified.
34.83(a)(1)(iii)	34.83(a)(3)	Modified.
34.83(a)(2)	34.83(a)(4)	Modified.
34.83(a)(3)	34.83(a)(5)	Modified.
34.83(a)(4)	34.83(a)(6)	Modified.
34.83(b)	34.83(b)	Modified.
34.84	34.83(c)	No change.
34.85(a)	34.84(a)	Modified.
34.85(b)	34.84(b)	Modified.
34.85(c)	34.84(c)	Modified.
34.86(a)(1)	34.85(a)(2)(i)	No change.
34.86(a)(2)	34.85(a)(2)(ii)	No change.
34.86(a)(3)		Added.
34.86(b)	34.85(b)	Modified.
34.86(b)(1)	34.85(a)(1)	Modified.
34.87	34.86	No change.
	34.87	Removed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying former regulatory requirements.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating an NPRM likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the final rule will reduce unnecessary burdens on national banks seeking to engage in real estate lending.

List of Subjects in 12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

2. Part 34 is amended by revising subparts A, B, and E to read as follows:

Subpart A—General

Sec.
34.1 Purpose and scope.
34.2 Definitions.
34.3 General rule.
34.4 Applicability of State law.
34.5 Due-on-sale clauses.

Subpart B—Adjustable-Rate Mortgages

34.20 Definitions.
34.21 General rule.
34.22 Index.
34.23 Prepayment fees.
34.24 Nonfederally chartered commercial banks.
34.25 Transition rule.

Subpart C—Appraisals

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Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

34.81 Definitions.
34.82 Holding period.
34.83 Disposition of real estate.
34.84 Future bank expansion.
34.85 Appraisal requirements.
34.86 Additional expenditures and notification.
34.87 Accounting treatment.

Subpart A—General

§ 34.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth standards for real estate-related lending and associated activities by national banks.

(b) *Scope.* This part applies to national banks and their operating subsidiaries as provided in 12 CFR 5.34. For the purposes of 12 U.S.C. 371 and subparts A and B of this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, land sales contracts, and construction project loans. Construction project loans are not subject to subparts A and B of this part, however, if they have a maturity not exceeding 60 months and are made to finance the construction of either:

(1) A building where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the

bank's loan upon completion of the building; or

(2) A residential or farm building.

§ 34.2 Definitions.

(a) *Due-on-sale clause* means any clause that gives the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise.

(b) *State* means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam.

(c) *State law limitations* means any State statute, regulation, or order of any State agency, or judicial decision interpreting State law.

§ 34.3 General rule.

A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by regulation or order.

§ 34.4 Applicability of State law.

(a) *Specific preemption.* A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations concerning:

(1) The amount of a loan in relation to the appraised value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) *General standards.* The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other aspects of real estate lending by national banks.

§ 34.5 Due-on-sale clauses.

A national bank may make or acquire a loan or interest therein, secured by a lien on real property, that includes a due-on-sale clause. Except as set forth in 12 U.S.C. 1701j–3(d) (which contains a list of transactions in which due-on-sale clauses may not be enforced), due-on-sale clauses in loans, whenever originated, will be valid and enforceable, notwithstanding any State law limitations to the contrary. For the purposes of this section, the term real property includes residential dwellings such as condominium units, cooperative housing units, and residential manufactured homes.

Subpart B—Adjustable-Rate Mortgages

§ 34.20 Definitions.

Adjustable-rate mortgage (ARM) loan means an extension of credit made to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or residential manufactured home, where the lender, pursuant to an agreement with the borrower, may adjust the rate of interest from time to time. An ARM loan does not include fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.

§ 34.21 General rule.

(a) *Authorization.* A national bank and its subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any State law limitations on those activities.

(b) *Purchase of loans not in compliance.* A national bank may purchase or participate in ARM loans that were not made in accordance with this part, except that loans purchased, in whole or in part, from an affiliate or subsidiary must comply with this part. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

§ 34.22 Index.

If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (*i.e.*, the annual percentage rate of a loan may increase after consummation, the term exceeds one year, and the consumer's principal dwelling secures the indebtedness), the loan documents must specify an index to which changes in the interest rate will be linked. This index must be readily available to, and verifiable by, the borrower and beyond the control of the bank. A national bank may use as an index any measure of rates of interest that meets these requirements. The index may be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period. A national bank also may increase the interest rate in accordance with applicable loan documents specifying the amount of the increase and the times at which, or circumstances under which, it may be made. A national bank may decrease the interest rate at any time.

§ 34.23 Prepayment fees.

A national bank offering or purchasing ARM loans may impose fees for prepayments notwithstanding any State law limitations to the contrary. For purposes of this section, prepayments do not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments, in excess of those necessary to retire the outstanding debt over the remaining loan term at the then-current interest rate, that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.24 Nonfederally chartered commercial banks.

Pursuant to 12 U.S.C. 3803(a), a State chartered commercial bank may make ARM loans in accordance with the provisions of this subpart. For purposes of this section, the term ''State'' shall have the same meaning as set forth in § 34.2(b).

§ 34.25 Transition rule.

If, on October 1, 1988, a national bank had made a loan or binding commitment to lend under an ARM loan program that complied with the requirements of 12 CFR part 29 in effect prior to October 1, 1988 (see 12 CFR Parts 1 to 199, revised as of January 1, 1988) but would have violated any of the provisions of this subpart, the national bank may continue to administer the loan or binding commitment to lend in accordance with that loan program. All ARM loans or binding commitments to make ARM loans that a national bank entered into after October 1, 1988, must comply with all provisions of this subpart.

Subpart C—Appraisals

* * * * *

Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

§ 34.81 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital as calculated under the OCC's risk-based capital standards set out in appendix A to part 3 of this chapter based upon the bank's Consolidated

Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(b) *Debts previously contracted (DPC) real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt previously contracted.

(c) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use no longer is contemplated. This includes real estate originally acquired for future expansion that no longer will be used for expansion or other banking purposes.

(d) *Market value* means the value determined in accordance with subpart C of this part.

(e) *Other real estate owned (OREO)* means:

(1) DPC real estate; and

(2) Former banking premises.

(f) *Recorded investment amount* means:

(1) For loans, the recorded loan balance, as determined by generally accepted accounting principles; and

(2) For former banking premises, the net book value.

§ 34.82 Holding period.

(a) *Holding period for OREO.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank;

(2) A bank completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating; or

(3) A bank decides not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period.* For DPC real estate that is subject to a redemption period imposed under State law, the holding period begins at the expiration of that redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposition.* A national bank may comply with its obligation to dispose of real estate under 12 U.S.C. 29 in the following ways:

(1) With respect to OREO in general:

(i) By entering into a transaction that is a sale under generally accepted accounting principles;

(ii) By entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a Federally-sponsored instrumentality that purchases loans; or

(iii) By selling the property pursuant to a land contract or a contract for deed;

(2) With respect to DPC real estate, by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate;

(3) With respect to a capitalized or operating lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in § 34.82 if the extension meets the following criteria:

(A) The extension is necessary in order to sublease the master lease;

(B) The national bank, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

(C) The term of the extension is reasonable and does not materially exceed the term of the sublease;

(ii) Should the OCC determine that a bank has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation in violation of 12 U.S.C. 29 and this part, the OCC will take appropriate measures to address the violation, which may include requiring the bank to take immediate steps to divest the lease or sublease; and

(4) With respect to a transaction that does not qualify as a disposition under paragraphs (a)(1) through (3) of this section, by receiving or accumulating from the purchaser an amount in a down payment, principal and interest payments, and private mortgage insurance totalling at least 10 percent of the sales price, as measured in accordance with generally accepted accounting principles.

(b) *Disposition efforts and documentation.* A national bank shall make diligent and ongoing efforts to dispose of each parcel of OREO, and shall maintain documentation adequate to reflect those efforts.

§ 34.84 Future bank expansion.

A national bank normally should use real estate acquired for future bank expansion within five years. After holding such real estate for one year, the bank shall state, by resolution of the board of directors or an appropriately authorized bank official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by national bank examiners.

§ 34.85 Appraisal requirements.

(a) *General.* (1) Upon transfer to OREO, a national bank shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the recorded investment amount is equal to or less than the threshold amount in subpart C of this part.

(2) A national bank shall develop a prudent real estate collateral evaluation policy that allows the bank to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank has a valid appraisal or an appropriate evaluation obtained in connection with a real estate loan and in accordance with subpart C of this part, then the bank need not obtain another appraisal or evaluation when it acquires ownership of the property.

(c) *Sales of OREO.* A national bank need not obtain a new appraisal or evaluation when selling OREO if the sale is consummated based on a valid appraisal or an appropriate evaluation.

§ 34.86 Additional expenditures and notification.

(a) *Additional expenditures on OREO.* For OREO that is a development or improvement project, a national bank may make advances to complete the project if the advances:

(1) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount;

(2) Are not made for the purpose of speculation in real estate; and

(3) Are consistent with safe and sound banking practices.

(b) *Notification procedures.* (1) A national bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost and the bank's current

recorded investment amount (including any unpaid prior liens on the property) exceeds 10 percent of the bank's capital and surplus. A national bank need notify the OCC under this paragraph (b)(1) only once. A national bank need not notify the OCC that the bank intends to re-fit an existing building for new tenants or to make normal repairs and incur maintenance costs to protect the value of the collateral.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (a) of this section.

(3) Unless informed otherwise, the bank may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the bank's notification, subject to any conditions imposed by the OCC.

§ 34.87 Accounting treatment.

A national bank shall account for OREO, and sales of OREO, in accordance with the Instructions for the preparation of the Consolidated Reports of Condition and Income.

Dated: March 7, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–6481 Filed 3–19–96; 8:45 am]

BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB52

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts amendments to the regulations governing disclosure of loan information. The FCA removes the requirement that Farm Credit institutions give borrowers 10 days prior notification of a change in the interest rate on their variable rate loans and replaces it with a 10-day post notification for interest rate changes for administered rate loans and a 30-day notice if the loan is tied to an external index. The current requirement to notify borrowers of a decrease in interest rate no later than on the day of the decrease has been changed to the same standard as an increase. This action would reduce the burden on institutions of a delay in interest rate changes while still providing borrowers with timely notice of a change. The final regulation also deletes reference to eligible borrower stock as a technical amendment.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Robert Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4019, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On November 24, 1995 (60 FR 57962), the FCA Board published for comment a proposed amendment to § 614.4367(c)(3). The existing regulation requires Farm Credit institutions to provide notification to borrowers of an increase in the borrowers' interest rates 10 days prior to the effective date of the change and implements section 4.13 of the Farm Credit Act of 1971, as amended (Act). The proposed regulation would have permitted a rate change notification 10 days after the effective date of the rate change. The FCA received nine comments in response to the proposed regulations. Commenters included the Farm Credit Council (FCC), seven Farm Credit institutions, and a state agriculture department.

Subsequent to the FCA Board's adoption of the proposed regulation, section 4.13 of the Act was amended by the Farm Credit System Reform Act of 1996, Pub. L. 104–105 (Feb. 10, 1996). Section 4.13 of the Act now provides that notice to the borrower of a change in interest rate may be made within a reasonable time after the effective date of an increase or decrease in the interest rate. The FCA believes that the proposed regulations were consistent with the recently enacted legislation and that the final regulation implements the requirements of the legislation. The following discussion contains a summary of the comments and the final amendment to § 614.4367(c)(3).

I. Summary of Comments

The FCC and several Farm Credit institutions expressed their general support of the proposed regulation and some commented that if adopted, the regulation would provide additional flexibility to Farm Credit institutions in making interest rate changes without any significant disadvantage to borrowers. The individual Farm Credit institution commenters, however, urged the FCA to provide institutions with even greater flexibility in making interest rate changes than was proposed. Four institutions commented that the notification of an increase in interest rates should be extended to 30 days after the effective date of the change for all loans, including those loans not tied to an external index. Three of those institutions also suggested that no notice is necessary for decreases in interest rates, while the other commented that the notification should be the same regardless of the direction of the change in rates.

In support of a 30-day post notification, the institutions stated that they would be able to reduce mailing costs by including the notice in the regular monthly billing notices. They also noted that it is unlikely that borrowers would attempt to fix their rates or re-finance their loans if notified of rate increases within 10 days as proposed. Even if some borrowers might desire to do this, the lenders indicated that such action could rarely be accomplished within 10 days. The institutions felt that it is more likely that borrowers use the rate change notification to monitor the trends in lenders' rates and will take action after observing the trend in rates. For this reason, the institutions asserted that a 30-day post notification is just as useful to borrowers as a 10-day notification, and the 30-day notice results in much less work and cost for the lenders.

The institutions' basis for requesting no notification for a decrease in rates is that most lenders will likely take actions necessary to promote and preserve customer relations. Thus, lenders would want to notify borrowers of decreases in rates regardless of FCA disclosure requirements. Such notification could be in combination with notices of news about the interest rate market, a marketing opportunity, or information on a new program or service.

Three institutions commented that there should be no regulatory requirements for notification of a change in interest rates. One institution noted that a notification requirement is too onerous for loans tied to an external index, and that other non-System lenders are not required to notify borrowers of rate changes on similar loan products priced to LIBOR (London Interbank Offered Rate) or prime indexes. Another institution commented that notification serves no purpose and

that if the FCA believes that the statute requires notice, such notice should be in the least burdensome means possible. The institution noted that the least burdensome requirement would be to require notice of an increase in conjunction with regularly scheduled billing notices, and that a less favorable alternative would be 30 days post notice for increases and no notice for decreases. The remaining Farm Credit institution commenter stated that changing the prior notification to a 10-day post notification would not reduce any administrative or cost burden on the institution because existing loan products and systems are designed to meet current regulations and would be contractually out of sync with a post-notification system. The commenter asserted that the proposed amendments do not help institutions that have loans tied to external indexes and Congress did not intend to require prior or post notice for such loans. The commenter contended that loans that are priced to an external index should be exempt from any notice requirements as long as: (1) The interest rate is tied to an index entirely outside the control of the Farm Credit System; (2) the index is widely publicized; (3) interest rate disclosures clearly referencing the index are made when the loan is originated and closed; and (4) disclosures are required for any change to the index or the margin points (or spread).

The state agriculture department commented that as a matter of principle, debtors ought to be notified in advance of interest rate increases on their loans. The commenter asserted that the minimum economic advantage that may be gained by lenders would be more than offset by the negative perception the proposed changes would create in the eyes of borrowers. Further, the commenter contended that many farmers do not receive financial publications containing external indexes, and if they did, they would not necessarily be able to determine the change in their interest rate from a change in the index. The commenter finally noted that it did not believe post-notification would significantly reduce burden on Farm Credit institutions and that if institutions are concerned about mailing costs, they could delay a change in interest rates so that the required notice could coincide with another regular mailing.

II. Response to Commenters and Discussion of Final Regulation

In response to the commenters who asserted that the FCA should eliminate any notification requirements for changes in interest rates, the plain language of section 4.13 of the Act, as recently amended, requires notification to borrowers of a change in their interest rates. Further, the FCA has reviewed the legislative history of the amendment and is not aware of any expressed Congressional intent to exempt loans tied to external indexes from the notice requirement. In addition, the recent amendment to section 4.13 clearly requires notification of an increase or decrease in the interest rate. Therefore, the FCA interprets the Act as requiring notification of increases or decreases in interest rates for all loans within a reasonable time of the effective date of the change. The final regulation contains what the FCA concludes to be a reasonable time for notification under the Act, after giving consideration to the views of the commenters, the needs of borrowers for timely notice, and the FCA's desire to reduce burden on Farm Credit institutions.

The final regulation requires a 10-day post notification for interest rate changes for administered rate loans. For loans tied to an external index, prompt notification is required, but must be given within 30 days of the change in interest rate. The FCA carefully considered the comments addressing the 30-day post notification requirement for all loans and finally determined that the need to provide timely information to borrowers outweighed the regulatory burden that a 10-day post notice may entail. Although administered rate loans may closely follow changes in the prime rate or the institution's cost of funds, many variables may go into a decision to change an administered rate. Thus a borrower with an administered rate loan cannot be as certain of a rate change merely by following the prime rate or other index as is the case of a loan that is clearly tied to an external index. For those loans that are clearly priced to an external index, however, the FCA believes that delaying the notice by 20 days does not seriously disadvantage the borrower and may result in less burden on the institutions, in part, by reducing mailing costs. In those situations, borrowers can likely determine the change in their rates sooner than 30 days by following the changes in the index. The final regulation, both where a 10-day and 30-day post notification is permitted, will allow the institutions to make changes in borrowers' interest rates more quickly than under a prior-notification requirement.

The FCA is also amending § 614.4367(a)(4) which addresses disclosures to purchasers of stock. All references to protected eligible borrower stock are eliminated because the issuance of such stock is no longer authorized.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4014a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639; sec. 207 of Pub. L. 104–105, 110 Stat. 162.

Subpart K—Disclosure of Loan Information

§ 614.4367 [Amended]

2. Section 614.4367 is amended by removing the words ''Except with respect to eligible borrower stock under section 4.9A of the Act,'' and capitalizing the word ''a'' in paragraph (a)(4); by removing the words ''the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.'' and adding in its place, the words ''10 days after the effective date of a change in the interest rate. However, if the interest rate is directly tied to an external index that is widely publicized, the notice of change must be made promptly but not later than 30 days after the change in interest rate.'' at the end of paragraph (c)(3).

Dated: March 12, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–6648 Filed 3–19–96; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2361]

Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality, as Amended; Failure to Comply With INA; Correction

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule published on March 8, 1996 [61 FR 9325]. The regulation implements sec. 212(o) of the Immigration and Nationality Act (INA) as amended by section 506(b) of Pub. L. 103–317.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: On March 8, 1996 the Department published Public Notice 2345 [61 FR 9325] which finalized the interim rule published on October 11, 1994 at 59 FR 51367. The document contained an error in the third column of page 9325 in the final paragraph. This document corrects the Federal Register citation in that paragraph to read 59 FR 51367.

Dated: March 14, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–6699 Filed 3–19–96; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1260

[Docket No. 96–06; Notice 1]

RIN 2125–AD77

Certification of Speed Limit Enforcement

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Section 205(d) of the National Highway System Designation Act of 1995 repealed the National Maximum Speed Limit (NMSL) Compliance Program. It made the repeal effective on December 8, 1995, but provided that the Governors of certain States could delay the effective date of the repeal. This Final Rule provides that 23 CFR Part 1260, which contains the procedures for implementing the NMSL, is now applicable only to those States whose Governor delayed the effective date of the repeal of the NMSL. In effect, the regulation is rescinded for all other States. This Final Rule also rescinds the provisions of Part 1260 concerning speed monitoring, certification requirements and compliance standards.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: In FHWA, Janet Coleman, Office of Highway Safety, 202–366–4668; or Raymond W. Cuprill, Office of the Chief Counsel, 202–366–1377. In NHTSA, J. Michael Sheehan, Police Traffic Services Division, 202–366–4295; or Heidi L. Coleman, Office of the Chief Counsel, 202–366–1834.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph National Maximum Speed Limit (NMSL) was first instituted in 1974 as a temporary conservation measure in response to the oil embargo imposed by certain oil-producing nations. Because of the reduction in traffic fatalities that accompanied the institution of the speed limit, it was made permanent in 1975.

In 1978, Congress amended the law to require that, in addition to posting and enforcing the speed limit, States would have to achieve specific levels of compliance. In April 1987, Congress passed legislation which allowed States to post 65 mph maximum speed limits on rural Interstate highways. In December 1987, the President approved legislation enacting a limited demonstration program, which allowed the posting of speed limits as high as 65 mph on certain rural non-Interstate highways through the end of FY 1991.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made the demonstration program permanent, and allowed other rural non-Interstate highways that were not a part of the demonstration program to be posted at the 65 mph speed limit, provided they met certain criteria.

ISTEA also required the Secretary of Transportation to publish a rule to establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and to include a formula for determining compliance by the States.

FHWA and NHTSA had shared responsibility for the implementation of the NMSL compliance program since 1980. To implement this program and the requirements of ISTEA, the agencies promulgated a joint regulation, 23 CFR Part 1260.

On November 28, 1995, the President signed into law the National Highway System Designation Act of 1995 (NHS Act). Section 205(d) of the NHS Act repealed the NMSL compliance program, as set forth in 23 U.S.C. §§ 141(a) and 154.

The NHS Act made the repeal effective on December 8, 1995, but provided some States with an option to delay this effective date. In any State whose legislature was not in session on November 28, 1995, the Governor could declare, before December 8, 1995, that the legislature was not in session and that the State preferred to delay the effective date until after the State's legislature next convenes. In accordance with the NHS Act, such a declaration would delay the effective date of the repeal of the NMSL until the 60th day following the date on which the legislature next convenes. The agencies are aware of five States that have chosen to exercise the option: Kansas, Louisiana, Mississippi, Missouri and Ohio.

Accordingly, as provided in the NHS, on December 8, 1995, the NMSL was repealed for all States other than these five States. In these five States, it remains in effect until the 60th day following the date on which the legislature of that State next convenes.

This final rule adds an applicability section to Part 1260 (section 1260.4), making the regulation applicable only to these five States. By adding this section, the agencies in effect rescind the regulation for all other States.

While Part 1260 will continue to apply to these five States, the agencies have decided to rescind the sections of the regulation that pertain to speed monitoring, certification requirements and compliance standards (sections 1260.9, 1260.11, 1260.13, 1260.15, 1260.17, 1260.19 and 1260.21). This recision will greatly reduce the regulatory burden on these States. The section of the regulation that pertains to the adoption of the NMSL (1260.7) will remain in effect. Conforming changes have been made to other sections of the regulation (1260.1, 1260.3 and 1260.5).

Once the legislature has convened in each of these five States, and 60 additional days have passed, the NMSL will be repealed for each State. The agencies plan to rescind 23 CFR Part 1260 in its entirety upon the expiration of the 60-day period for the last State.

Regulatory Analyses and Notices

Civil Justice Reform

This final rule will not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather removes regulatory obligations that are no longer authorized by statute.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this action and determined that it is not significant within the meaning of Executive Order 12866 or of Department of Transportation regulatory policies and procedures. This final rule imposes no additional burden on the public. Regulatory obligations have been removed since they are no longer authorized by statute. Therefore, a regulatory evaluation is not required and was not prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements associated with 23 CFR Part 1260 (OMB Clearance No. 2125–0027). By rescinding the sections of Part 1260 that pertain to speed monitoring, certification requirements and compliance standards, the information collection requirement, as that term is defined by OMB in 5 CFR Part 1320, has been reduced by 93,024 reporting hours, to zero.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. There are no federalism implications pursuant to Executive Order 12612 since regulatory obligations are being suspended because they are no longer authorized under current law. Under these circumstances, the preparation of a Federalism Assessment is not warranted.

Notice and Comment

The agencies find that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because the agencies are not exercising discretion in a way that could be meaningfully affected by public comment. Instead, this repeal of the agencies' speed limit compliance regulations is mandated by the repeal of the NMSL compliance program in Section 205(d) of the NHS Act. Therefore, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation.

In addition, good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because this final rule ''grants or recognizes an exemption or relieves a restriction'' in accordance with 5 U.S.C. 553(d)(1). In repealing the NMSL regulation for all but five States, this action lifts Federal speed limit provisions and enables these States to make their own decisions as to appropriate speed limits. Consequently, the agencies are proceeding directly to a final rule which is effective upon its date of publication.

List of Subjects in 23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Traffic regulations.

In consideration of the foregoing, Part 1260 of Title 23, Code of Federal Regulations, is amended as follows:

PART 1260—[AMENDED]

1. The authority citation for Part 1260 is revised to read as follows:

Authority: Pub. L. 104–59, Stat. 577 and 23 U.S.C. 118, 141, 154, 315; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1260.1 is revised to read as follows:

§ 1260.1 Purpose.

The purpose of this part is to implement the provisions of 23 U.S.C. 154 as amended by the National Highway System Designation Act of 1995 relating to the adoption of the National Maximum Speed Limit.

3. Section 1260.3 is revised to read as follows:

§ 1260.3 Objective.

The objective is to maintain the fund transfer provisions for noncompliance with the National Maximum Speed Limits until 60 days after each State's legislature next convenes.

4. A new § 1260.4, is added to read as follows:

§ 1260.4 Applicability.

This part applies to each State only until the 60th day after the first date after December 8, 1995, on which the legislature in such State convenes.

5. Section 1260.5 is revised to read as follows:

§ 1260.5 Definitions.

As used in this part:

(a) *Highway* means all streets, roads or parkways under the jurisdiction of a State, including its political subdivisions, open for use by the general public, and including toll facilities.

(b) *Interstate System* means the Interstate System as is described in 23 USC 103(e).

(c) *Motor vehicle* means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(d) *National Maximum Speed Limits* mean the speed limits provided for the highways described in Section 1260.7 of this Part.

(e) *State* means the States in which the legislature was not in session on November 28, 1995, and the Governor of the State declared, before December 8, 1995, that the legislature was not in session and that the State prefers to delay the effective date of the repeal of the National Maximum Speed Limits until after the State's legislature next convenes.

§§ 1260.9, 1260.11, 1260.13, 1260.15, 1260.17, 1260.19, 1260.21 and Appendix to Part 1260 [Removed]

6. Sections 1260.9, 1260.11, 1260.13, 1260.15, 1260.17, 1260.19 and 1260.21, and the Appendix to Part 1260, are removed.

Issued on: March 13, 1966.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–6485 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8635]

RIN 1545–AS92

Nonbank Trustee Net Worth Requirements; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8635) which were published in the Federal Register on Wednesday, December 20, 1995 (60 FR 65547), and relates to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or remain an approved nonbank trustee.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 401 and 408 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8635) contain errors that are misleading and in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8635), which was the subject of FR Doc. 95–30684, is corrected as follows:

§ 1.401(f)–1 [Corrected]

1. On page 65549, column 1, amendatory instruction 2. under ''Par. 4.'', line 1 is corrected by adding a closed quotation mark following the number ''401(d)(1)''.

§ 1.408–2 [Corrected]

2. On page 65549, column 1, amendatory instruction 8. under ''Par. 5.'', line 3, the language ''the language '(n)(3) to (n)(7)' and'' is corrected to read ''the language '(n)(3) to (7)' and''.

3. On page 65549, column 1, amendatory instruction 9. under ''Par. 5.'', in line 5, the language ''adding 'the address prescribed by the'' is corrected to read ''adding 'address prescribed by the''; and in the last two lines, the language ''(e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)(v)(B).'' is corrected to read ''(e)(6)(iv), and in the first sentence of newly designated (e)(7)(v)(B).''.

4. On page 65549, column 2, amendatory instruction 17. under ''Par. 5.'' is corrected to read as follows:

17. Removing the language ''subparagraph, subdivision (n)(3)(v)'' and adding ''paragraph (e)(5), and paragraph (e)(2)(v)'' in its place, and removing the language ''subparagraph (n)(8)'' and adding ''paragraph (e)(7)'' in its place, in newly designated paragraph (e)(5)(viii).

5. On page 65549, column 2, amendatory instruction 18. under ''Par. 5.'', line 3, the language ''(e)(5)(i)(A)(3)' in its place, and '' is corrected to read ''(e)(5)(i)(A)*(3)*' in its place, and''.

6. On page 65549, column 2, amendatory instruction 20. under ''Par. 5.'' is corrected to read as follows:

20. Adding new paragraphs (e)(5)(ii)(A) and (D).

7. On page 65549, column 2, § 1.408–2 (e)(5)(ii)(A), second line from the bottom of the paragraph, the reference to ''paragraph (e)(6)(ii)(B) and (C)'' is corrected to read ''paragraph (e)(5)(ii)(B) and (C)''.

8. On page 65549, column 3, § 1.408–2 (e)(5)(ii)(D), sixth line from the top of the column, the reference to ''paragraph (e)(5)(ii)(B)(2)'' is corrected to read ''paragraph (e)(5)(ii)(B)(*2*)''.

9. On page 65549, column 3, § 1.408–2 (e)(5)(ii)(D), eighth line from the top of the column, the reference to ''paragraph (e)(5)(ii)(C)(2)'' is corrected to read ''paragraph (e)(5)(ii)(C)(*2*)''.

10. On page 65549, column 3, § 1.408–2 (e)(5)(ii)(D)*(2)*, paragraph (c) of the *Example*, line 2, the reference to ''§ 1.408–2 (e)(6)(ii)(B)'' is corrected to read ''§ 1.408–2 (e)(5)(ii)(B)''.

11. On page 65550, column 1, § 1.408–2 (e)(5)(ii)(D)*(2)*, paragraph (d) of the *Example*, line 2, the reference to ''§ 1.408–2 (e)(6)(ii)(C)'' is corrected to read ''§ 1.408–2 (e)(5)(ii)(C)''.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–6624 Filed 3–19–96; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Parts 1, 31, and 35a

[TD 8637]

RIN 1545–AT76

Backup Withholding, Statement Mailing Requirements, and Due Diligence; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 8637) which were published in the Federal Register Thursday, December 21, 1995 (60 FR 66105), providing final and temporary rules on backup withholding, statement mailing requirements, and due diligence.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting) with respect to domestic transactions, (202) 622–4910 (not a toll-free call); and Teresa Burridge Hughes of the Office of Assistant Chief Counsel (International) with respect to international transactions, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under sections 3406, 6042, 6044, 6049, and 6050N of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 8637) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8637), which was the subject of FR Doc. 95–30733, is corrected as follows:

§ 1.6049–6 [Corrected]

1. On page 66111, column 2, in the Par. 4. amendatory instruction, an amendatory instruction is added after 2.c. to read ''d. Paragraph (a), fifth sentence.''.

§ 31.3406(d)–4 [Corrected]

2. On page 66126, column 1, § 31.3406(d)–4 (a)(3), line 18, the language ''as described in sections 3406(a)(1)(B) or'' is corrected to read ''as described in section 3406(a)(1)(B) or''.

3. On page 66126, column 2, § 31.3406(d)–4 (b)(1)(iii), line 4, the language ''subject to withholding under sections'' is corrected to read ''subject to withholding under section''.

§ 31.3406(h)–2 [Corrected]

4. On page 66130, column 3, § 31.3406(h)–2 (b)(2)(i), line 5, the language ''under section 3406 31 percent of the fair'' is corrected to read

''under section 3406, 31 percent of the fair''.

PART 35a— [CORRECTED]

5. On page 66134, columns 1 and 2, Par. 12 and Par. 13 amendatory instructions are corrected to read as follows:

Par. 12. The authority citation for part 35a continues to read in part as follows:

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

Par. 13. Section 35a.3406–2 is amended by adding paragraph (l) to read as follows:

§ 35a.3406–2 Imposition of backup withholding for notified payee underreporting of reportable interest or dividend payments.

* * * * *

(l) *Effective date.* This section is effective until December 31, 1996.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–6623 Filed 3–19–96; 8:45 am]

BILLING CODE 4830–01–U

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Chapter IX

Transfer of Responsibilities and Effectiveness of PADC Regulations After PADC Termination

AGENCIES: Pennsylvania Avenue Development Corporation; General Services Administration; National Capital Planning Commission; National Park Service.

ACTION: Notification of transfer of responsibilities and status of regulations.

SUMMARY: The Pennsylvania Avenue Development Corporation (PADC) is issuing this document to inform the public of the transfer of its responsibilities to successor agencies and of the effectiveness of the PADC's regulations after PADC's termination. In accordance with Pub. L. 104–99, PADC will terminate on April 1, 1996, and the General Services Administration (GSA), the National Capital Planning Commission (NCPC), and the National Park Service (NPS) will succeed PADC for any remaining actions and will be responsible for managing any remaining assets and liabilities of PADC. Congress included a provision preserving the effectiveness of PADC's regulations until such time as they are suspended by GSA. PADC is publishing this document to inform the public that, when GSA, NCPC, and NPS assume responsibility for PADC's functions at termination, PADC's regulations generally will continue to govern the successor agencies' performance of these functions for occurrences that arise post-termination.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Madeleine B. Schaller, General Counsel, Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 724–9084.

SUPPLEMENTARY INFORMATION:

A. General Rule

Pub. L. 104–99 provides that PADC will terminate as of April 1, 1996. At that time, GSA, NCPC, and NPS will succeed PADC for any remaining actions and will be responsible for managing any remaining PADC assets and liabilities, in accordance with Pub. L. 104–99. Congress included a provision preserving the effectiveness of PADC's regulations, 36 CFR Chapter IX, until the regulations are suspended by GSA. Therefore, after PADC terminates on April 1, 1996, and its functions are transferred to GSA, NCPC, and NPS, PADC's regulations relating to the Pennsylvania Avenue Development Corporation Act of 1972 (40 USC 971) and the Federal Triangle Development Act (40 USC 1101–1109) as contained in 36 CFR Chapter IX (July 1, 1995, edition) generally will continue to govern GSA's, NCPC's, or NPS's performance of such functions in dealing with occurrences that arise post-termination until such time as the regulations are suspended by GSA.

The termination of PADC does not affect rights or obligations of PADC or third parties that have arisen under PADC's regulations prior to PADC's termination.

B. General Division of Responsibilities

1. The Federal Triangle Project

The Federal Triangle Project will continue to be administered by GSA. Contact Person: Lester M. Hunkele, III, Project Executive, General Services Administration, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 724–9073.

2. Maintenance and Use of Public Spaces

Contact Person: Arnold Goldstein, Superintendent, National Capital Parks Central, 900 Ohio Drive, S.W., Washington, D.C. 20242, (202) 485–9880.

3. Square Development

Contact Person: Judith Binder, Senior Asset Manager (WPT), Room 7618, GSA Regional Office Building, 7th and D Streets, S.W., Washington, D.C. 20407, (202) 708–8174.

4. Compliance With the Pennsylvania Avenue Plan

Sandra H. Shapiro, General Counsel, National Capital Planning Commission, 801 Pennsylvania Avenue, N.W., Suite 301, Washington, D.C. 20576, (202) 724–0187.

By order of the Executive Director.

Dated at Washington, DC, this 14th day of March 1996.

Diane G. Smith,

Secretary, Pennsylvania Avenue Development Corporation.

The following note is added to 36 CFR chapter IX:

Note: Public Law 104–99, which incorporated the terms of the Department of the Interior and Related Agencies Appropriations Act, 1996 (H.R. 1977), as passed by the House of Representatives on December 13, 1995, provides that the Pennsylvania Avenue Development Corporation terminates as of April 1, 1996. H.R. 1977 provides that ''any regulations prescribed by the [Pennsylvania Avenue Development] Corporation in connection with the Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. 871–885) and the Federal Triangle Development Act (40 U.S.C. 1101–1109) shall continue in effect until suspended by regulations prescribed by the Administrator of the General Services Administration.'' Accordingly, the authority to administer the regulations in 36 CFR Chapter IX is transferred to the General Services Administration. See the Pennsylvania Avenue Development Corporation document, ''Transfer of Responsibilities and Effectiveness of PADC Regulations After PADC Termination'', published at 61 FR _____, March 20, 1996.

[FR Doc. 96–6626 Filed 3–19–96; 8:45 am]

BILLING CODE 7630–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AH80

Standards of Ethical Conduct and Related Responsibilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations captioned ''STANDARDS OF ETHICAL CONDUCT AND

RELATED RESPONSIBILITIES.'' It removes VA regulations that in essence restate Government-wide standards contained in 5 CFR Part 735 and Chapter XVI. It also amends the VA regulations to refer VA employees to the Government-wide standards. The intended effect of this final rule is to delete unnecessary and repetitive material in VA regulations and to refer VA employees to the Government-wide standards.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Walter A. Hall, Assistant General Counsel (023), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–6334.

SUPPLEMENTARY INFORMATION: This final rule involves nonsubstantive changes. Accordingly, it is promulgated without regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, since the final rule is nonsubstantive and does not concern small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 0

Employee ethics and related responsibilities.

Approved: February 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 0 is amended as set forth below:

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502 (a) of E.O. 12674, 54 CFR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 CFR 42547, 3 CFR, 1990 Comp., p. 306.

§§ 0.735–1, 0.735–2, 0.735–5, 0.735–6, 0.735–7, 0.735–8 [Removed]

2. Sections 0.735–1, 0.735–2, 0.735–5, 0.735–6, 0.735–7, and 0.735–8 are removed.

§§ 0.735–3 and 0.735–4 [Redesignated as 0.735–1 and 0.735–2]

3. Sections 0.735–3 and 0.735–4 are redesignated as 0.735–1 and 0.735–2, respectively.

4. A new § 0.735–3 is added to read as follows:

§ 0.735–3 Government-wide standards.

For government-wide standards of ethical conduct and related responsibilities for Federal employees, see 5 CFR Part 735 and Chapter XVI.

[FR Doc. 96–6495 Filed 3–19–96; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 1

RIN 2900–AH84

Rulemaking Procedures

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the ''General Provisions'' in 38 CFR Part 1 by removing §§ 1.12 and 1.551. The regulatory history of § 1.12 indicates that, despite a statutory exemption, VA intended to self-impose the notice-and-comment provisions of 5 U.S.C. 553 on VA rulemaking concerning public property, loans, grants, benefits, or contracts (see 37 FR 3552, Feb. 17, 1972). Subsequent to the promulgation of § 1.12, statutory provisions were established that specifically applied the public notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning ''loans, grants, or benefits'' (see 38 U.S.C. 501(d)). These statutory provisions did not impose the same notice-and-comment provisions for rulemaking concerning public property or contracts. In our view, notice-and-comment requirements for rulemaking concerning public property and contracts should only be those imposed by statute. Also, there is no need to retain the provisions of § 1.551. In large part § 1.551 merely contained restatements of 5 U.S.C. 552. In addition, § 1.551 contained internal instructions to agency components which were not required to be promulgated as rules.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–7625.

SUPPLEMENTARY INFORMATION: This final rule merely reflects VA policy. Accordingly, it is promulgated without regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: March 8, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

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

§§ 1.12 and 1.55 [Removed]

2. Sections 1.12 and 1.551 are removed.

[FR Doc. 96–6496 Filed 3–19–96; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AH85

Lump-Sum Payment Under Public Law 93–177

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to remove a provision for making lump-sum payments based on the service of veterans who were dishonorably discharged from the United States Army as the result of an incident that occurred in Brownsville, Texas, on August 13, 1906. The law required that applications for the lump-sum payment be filed within 5 years after December 6, 1973. Since the time limit for filing for the lump-sum payment has expired, the rule is obsolete.

EFFECTIVE DATE: This amendment is effective March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension

Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The ''Brownsville Incident'' occurred on August 13, 1906, when an estimated 5 to 20 persons shot up the town of Brownsville, Texas. One civilian was killed and one wounded. It was charged that soldiers from the 25th Infantry Regiment, which was stationed adjacent to the town at Fort Brown, were responsible for the shootings, but it proved impossible to establish the guilt of individual soldiers. On November 5, 1906, President Theodore Roosevelt ordered that all 167 enlisted men in the three companies stationed at Fort Brown be dishonorably discharged.

On April 6, 1910, 14 of the 167 soldiers were exonerated by a special Army Tribunal and permitted to reenlist. On September 22, 1972, the Secretary of the Army ordered the discharges of all the dishonorably discharged soldiers changed to honorable.

On December 6, 1973, Congress enacted Public Law 93–177. Section 7 of Public Law 93–177 provided for payment of $25,000 to surviving veterans who were dishonorably discharged as a result of the ''Brownsville Incident'' and were not thereafter eligible for reenlistment. It also provided for payment of $10,000 to the unremarried surviving spouses of such veterans. The law provided that applications for these payments must be filed within 5 years after December 6, 1973.

Section 3.811 of 38 CFR was promulgated in 1974. Since more than 15 years have passed since anyone could file for payments under Public Law 93–177, we are removing 38 CFR 3.811 as obsolete.

Since this rulemaking merely removes an obsolete nonsubstantive provision, the Secretary finds under 5 U.S.C. § 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

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

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: March 11, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

§ 3.811 [Removed and reserved]

2. Section 3.811 is removed and reserved.

[FR Doc. 96–6494 Filed 3–19–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF74

Reservists Education: Commencing Date of Award of Educational Assistance

AGENCIES: Department of Defense, Department of Transportation (Coast Guard) and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Educational Assistance Regulations pertaining to the commencing dates of awards of educational assistance for members of the Selected Reserve. These regulations are changed to provide that all commencing dates for awards or increased awards of educational assistance be on or reasonably close to the date of the first day of class. The intended effect of the amendments is to make uniform the regulations governing the dates of commencement of awards of educational assistance under the Montgomery GI Bill—Selected Reserve, both for reservists pursuing a college degree and for those enrolled in courses not leading to a college degree.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on May 2, 1995 (60 FR 21486), the Department of Defense, the Department of Transportation (Coast Guard), and the Department of Veterans Affairs (VA) proposed to amend the ''Educational Assistance for Members of the Selected Reserve'' regulations (38 CFR Part 21, Subpart L). Interested persons were given 62 days to submit comments. No comments were received. Based on the rationale set forth in the proposal and in this document, the Department of Defense, the Department of Transportation, and the Department of Veterans Affairs are adopting the proposal as a final rule with nonsubstantive changes.

The Secretary of Veterans Affairs, the Secretary of Defense, and the Commandant of the Coast Guard have certified that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule will not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the amended regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This amended regulation has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans,

Vocational education, Vocational rehabilitation.

Approved: November 20, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Deborah R. Lee,

Assistant Secretary of Defense for Reserve Affairs.

Richard M. Larrabee,

Rear Admiral, U.S. Coast Guard, Office of Readiness and Reserve.

For the reasons set out in the preamble, 38 CFR part 21, subpart L is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 21.7631, paragraphs (b) and (c) and their authority citations are revised, to read as follows:

§ 21.7631 Commencing dates.

* * * * *

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When a student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting,

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered, and

(iii) The first scheduled class for the course or subject in which the student is enrolled begins during the calendar week when, according to the school's academic calendar, classes are generally scheduled to commence for the term.

(3) When a student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for the particular course or subject.

(4) When a student enrolls in a resident course or subject and neither the provisions of paragraph (b)(2) nor (b)(3) of this section apply to the enrollment, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the student is enrolled.

(Authority: 10 U.S.C. 16136(b)).

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.* (1) When a reservist enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

(2) When a reservist enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance in accordance with 38 U.S.C. 3686.

(3) When a reservist enrolls in a program of apprenticeship or other on-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 10 U.S.C. 16136(b))

* * * * *

[FR Doc. 96–6497 Filed 3–19–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4390/R2215; FRL–5354–3]

Pesticide Tolerance for Cadre

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the new herbicide, (AC 263,222) (+)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid applied as its ammonium salt and its metabolite (+)-2-[4,5- dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydromethyl-3-pyridinecarboxylic acid both free and conjugated, in or on peanut nut meat at 0.1 ppm. The regulation to establish a maximum permissible level for the residues of the herbicide was requested in petitions submitted by American Cyanamid Company.

EFFECTIVE DATE: This regulation becomes effective March 20, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 4F4390/R2215], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Room M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20450. In person, bring copy of objections and hearing request to: Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4390/R2215]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6027, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register on (August 17, 1995) (FRL–4963–7), which announced that the American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400, had submitted pesticide petition, PP 4F4390 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 34a(d), amend 40 CFR part 180, by establishing a regulation to permit residues of the herbicide, (+)-2-[4,5-dihydro-4-methyl-4-(1- methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid applied as its ammonium salt and its metabolite (+)-2-[4,5- dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydromethyl-3-pyridinecarboxylic acid both free and conjugated, in or on the raw agricultural commodity (RAC), peanut nutmeat at 0.1 part per million ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

Discussion of Toxicology Data

The scientific data submitted in the petition and all other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. An acute oral toxicity study in rats utilizing AC 263,222 as the test material resulted in a LD_{50} of greater than 5,000 mg/kg (males and females).

2. An acute dermal toxicity study in rabbits utilizing AC 263,222 as the test material resulted in a LD_{50} of greater than 2,000 mg/kg (males and females).

3. An acute inhalation toxicity study in rats utilizing AC 263,222 as the test material resulted in a LC_{50} of greater than 5.52 mg/liter (males and females).

4. In a 21–day dermal study in rabbits, AC 263,222 was applied at dose levels of 0, 250, 500 or 1,000 mg/kg/day. The no-observed-effect-level (NOEL) was 1,000 mg/kg/day for both systemic toxicity and dermal irritation. The lowest observed effect level (LEL) was not determined (greater than 1,000 mg/kg/day).

5. In a 3–month subchronic feeding study, AC 263,222 was administered in the diet to male and female Sprague-Dawley rats at dose levels of 0, 5,000, 10,000 or 20,000 ppm (0, 386, 760 or 1,522 mg/kg/day in males and 0, 429, 848 or 1,728 mg/kg/day in females). No treatment-related effects were observed. The NOEL was 20,000 ppm. The LEL was not determined (greater than 20,000 ppm).

6. A 2–year combined chronic feeding/carcinogenicity study was conducted with rats. AC 263,222 was administered in the diet to male and female Sprague-Dawley rats at dose levels of 0, 5,000, 10,000 or 20,000 ppm (0, 253, 505 or 1,029 mg/kg/day in males and 0, 308, 609 or 1,237 mg/kg/day in females). No treatment-related effects were observed and no increase in tumors was observed at any dose level. The NOEL for both male and female rats was 20,000 ppm. A LEL was not determined (greater than 20,000 ppm).

7. In a 1–year chronic feeding study, AC 263,222 was administered in the diet to male and female beagle dogs at dose levels of 0, 5,000, 20,000 or 40,000 ppm (0, 137, 501 or 1,141 mg/kg/day in males and 0, 180, 534 or 1,092 mg/kg/day in females). The NOEL was not determined in this study (below 5,000 ppm). The LEL was 5,000 ppm, based on slight degeneration/necrosis and lymphocyte/macrophage infiltration in skeletal muscle in males and females and slightly decreased creatinine levels in females.

8. An 18–month carcinogenicity study was conducted with mice. AC 263,222 was administered in the diet to male and female CD-1 mice at dose levels of 0, 1,750, 3,500 or 7,000 ppm (0, 271, 551 or 1,134 mg/kg/day in males and 0, 369, 733 or 1,422 mg/kg/day in females). No treatment-related effects were observed and no increase in tumors was observed at any dose level. The NOEL for both male and female mice was 7,000 ppm. A LEL was not determined (greater than 7,000 ppm).

9. A developmental toxicity study was conducted with rats. AC 263,222 was administered orally by gavage to pregnant Sprague-Dawley rats at dose levels of 0, 250, 500 or 1,000 mg/kg/day during gestation days 6 to 15. The maternal NOEL was 1,000 mg/kg/day. The maternal LEL was not determined (greater than 1,000 mg/kg/day). The developmental NOEL was 1,000 mg/kg/day. The developmental LEL was not determined (greater than 1,000 mg/kg/day).

10. In a developmental toxicity study with rabbits, AC 263,222 was administered orally by gavage to pregnant rabbits at dose levels of 0, 175, 350, 500 or 700 mg/kg/day during gestation days 7 to 19. The maternal NOEL was 350 mg/kg/day. The maternal LEL was 500 mg/kg/day, based on decreased body weight gain and decreased food consumption. The developmental NOEl was 500 mg/kg/day. The developmental LEL was not determined (greater than 500 mg/kg/day).

11. A reproduction study was conducted with rats. AC 263,222 was administered in the diet for 2 generations to Sprague-Dawley rats at dose levels of 0, 5,000, 10,000 or 20,000 ppm (equivalent to premating dose levels of 0, 301, 605 or 1,205 mg/kg/day in males and to premating dose levels of 0, 378, 737 or 1,484 mg/kg/day in females). The NOEL for both parents and offspring in the study was 20,000 ppm. A LEL was not determined (greater than 20,000 ppm).

12. Mutagenicity data included an Ames assay in *S. typhimurium* TA strains and *E. coli* WP2 (negative with and without metabolic activation), a forward mutation assay in CHO/HGPRT cells (negative with and without metabolic activation), an *in vitro* chromosomal aberration assay in CHO cells (negative with and without metabolic activation) and an *in vivo* bone marrow cytogenetic assay in rats (negative).

13. A metabolism study was conducted in which the absorption, distribution, metabolism and excretion of ^{14}C-AC 263,222 was studied in male and female rats. Radioactivity was rapidly absorbed and excreted, mostly in less than 6 hours. The major route of excretion was the urine. No significant bioaccumulation occurred in tissues. Less than 6% of the administered dose was metabolized, the majority of radioactivity appearing in the urine as unchanged parent compound.

The Reference Dose (RfD) for AC 263,222 is 0.50 mg/kg/day. This value is based on the LEL of 5,000 ppm (137 mg/kg/day in males and 180 mg/kg/day in females) determined in the 1–year chronic feeding study in dogs. An uncertainty factor (UF) of 300 was applied to the NOEL based on the following: an UF of 100 to account for inter-species extrapolation and intra-species variability and an additional UF of 3 to account for the lack of a NOEL in the study.

Nature of the Residue and Analytical Method

The nature of the AC 263,222 residue in plants ruminants is adequately understood. The residues of concern are the parent AC 263,222 and its hydroxymethyl metabolite, AC 263,284.

An adequately validated HPLC residue analytical method has been presented to gather the magnitude of the residue data for AC 263,222 and its metabolite AC 263,284 ranging from 0.1 ppm to 5 pm in peanut hulls and nutmeats. This method, M 2253.01, is suitable to enforce the tolerances of 0.1 ppm.

The nature of the residue in poultry has not been defined. It has been concluded that there is no reasonable expectation of finite AC 263,222 residues occurring in poultry from this use.

Since there are very low residues in peanuts and a livestock feeding and grazing restriction on the AC 263,222 treated peanut hay, there is no need to have cattle and poultry feeding studies; nor is there any need for secondary tolerances of AC 263,222 and its hydroxymethyl metabolite in meat, milk, poultry, and eggs in this petition only.

Risk Assessment

The DRES chronic analysis used the Reference Dose (RfD) of 0.50 mg/kg/day, based upon results in the 1–year chronic feeding study in dogs.

For chronic dietary exposure from the new use of AC 263,222 on peanuts the TMRC for the general U.S. population and the most highly exposed subgroups are as follows (as percent of the Reference Dose):

U.S. population	0.0015%
Children (1-6 Years Old)	0.0047%
Children (6-12 Years Old)	0.0034%

An acute dietary risk assessment is not required for AC 263,222.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 5, 1996.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. By adding § 180.490 to subpart C, to read as follows:

§ 180.490 Cadre, tolerance for residues.

Tolerance is established for residues of the herbicide; (+)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid applied as its ammonium salt and its metabolite (+)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydromethyl-3-pyridinecarboxylic acid both free and conjugated; in or on the following raw agricultural commodity:

Commodities	Parts per million
Peanut nutmeat	0.1

[FR Doc. 96–6438 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4F4398/R2209; FRL–5352–2]

RIN 2070–AB78

Dried Fermentation Solids and Solubles of Myrothecium Verrucaria; Exemption From the Requirement of a Tolerance on All Food Crops and Ornamentals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of killed*Myrothecium verrucaria* in or on all food crop and ornamental commodities when applied pre-planting, pre-seeding or post-planting in accordance with good agricultural practices. This exemption was requested by Abbott Laboratories. This regulation eliminates the need to establish a maximum permissible level for residues of this nematicide on food crops and ornamentals.

EFFECTIVE DATE: This regulation becomes effective March 20, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 4F4398/R2209], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 4F4398/R2209] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Cindy Schaffer, Product Manager (PM) Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. (703) 308–8272; e-mail: schaffer.cindy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 8, 1995 (60 FR 7539), EPA issued a notice (PF–617; FRL–4926–4) that Abbott Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064, had submitted pesticide petition (PP) 4F4398 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the nematicide dried fermentation solids and solubles of*Myrothecium verrucaria* in or on food crops and ornamental commodities when applied in accordance with good agricultural practices.

There were no adverse comments, or requests for referral to an advisory committee received in response to the notice of filing of PP 4F4398.

Myrothecium Verrucaria Natural Occurance

Myrothecium verrucaria is a soil hyphomycete fungus originally isolated from a nematode cadaver. This organism has been found on plant material, cellulosic matter, running and still water, and in various cultivated and non-cultivated soils.

Toxicology Assessment

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include: an acute oral toxicity study, an acute dermal toxicity study, an acute intratracheal toxicity study, and a primary dermal irritation study.

The results of these studies indicated that the organism was not toxic to test animals when administered via oral, dermal, intratracheal, or inhalation routes.

Mild ocular irritation observed in the eye irritation study dissipated within 3 days; very slight skin irritation noted immediately following exposure to the compound dissipated within 3 days. There have been no reports of hypersensitivity related to the active ingredient. All of the toxicity studies submitted are considered acceptable.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of killed*Myrothecium verrucaria* on all food crops and ornamental commodities in accordance with good agricultural practices.

Residue data requirements shall apply to microbial pesticides when Tier II or III toxicology data are required, as specified in 40 CFR 158.740 and are therefore not relevant to this petition. The data submitted demonstrate that this biological control agent is not toxic to humans at a Tier I level by dietary exposure. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this killed biological control agent.

Submitted Data-Acute Toxicology for dried*Myrothecium verrucaria* solids and solubles:

Acute Oral LD_{50} > 5,000 mg/kg
Acute Dermal LD_{50} > 2,000 mg/kg
Acute Inhalation LD_{50} > 5.99 mg/L
Acute Intratracheal LD_{50} > 50 mg/kg
Primary Dermal Irritation - Mild Irritant
Primary Eye Irritation - Slight Irritant

Conclusion

Based on the low toxicity of dried*Myrothecium verrucaria* solids and solubles, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

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

A record has been established for this rulemaking under the docket number [PP 4F4398/R2209] (including any comments and data submitted electronically). A public version of this

record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, enabling timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because the rule imposes no regulatory requirements on any party.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 29, 1996.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1163 is added to subpart D to read as follows:

§ 180.1163 Killed Myrothecium verrucaria; exemption from the requirement of a tolerance.

Killed *Myrothecium verrucaria* is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a pre-seed or pre- or post-planting soil treatment alone or mixed with water and the mixed suspension be applied through drip or border irrigation systems at a rate not to exceed 20 to 40 lbs/acre and the indicator mycotoxin levels do not exceed 15 ppm.

[FR Doc. 96–6730 Filed 3–19–96; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATE: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield (FEMA Docket No. 7158).	City of Norwalk	October 4, 1995, October 11, 1995, *Norwalk Hour.*	The Honorable Frank J. Esposito, Mayor of the City of Norwalk, City Hall, 125 East Avenue, Norwalk, Connecticut 06851.	October 12, 1995.	090012 D
Georgia: Cobb (FEMA Docket No. 7158).	Unincorporated Areas .	September 21, 1995, September 28, 1995, *Marietta Daily Journal.*	Mr. William Byrne, Chairman of the Cobb County Board of Commissioners, 100 Cherokee Street, Suite 300, Marietta, Georgia 06851.	September 11, 1995.	130052
Illinois: DuPage (FEMA Docket No. 7158).	Village of Glendale Heights.	September 28, 1995, October 5, 1995, *Glendale Heights Press.*	Mr. Ben Fajardo, Glendale Heights Village Center Plaza, Glendale Heights, Illinois 60139.	September 18, 1995.	170206 C
Maine: Androscoggin (FEMA Docket No. 7150).	City of Lewiston	September 4, 1995, September 11, 1995, *The Sun-Journal.*	The Honorable John Jenkins, Mayor of the City of Lewiston, City Hall, Pine Street, Lewiston, Maine 04240.	August 30, 1995.	230004 B
Massachusetts: Plymouth (FEMA Docket No. 7150).	City of Duxbury	July 12, 1995, July 19, 1995, *Duxbury Clipper.*	Ms. Margaret Kearney, Chairman of the Town of Duxbury Board of Selectman, 878 Tremone Street, Duxbury, Massachusetts 02332.	July 3, 1995	250263 C
Minnesota: Olmsted (FEMA Docket No. 7150).	City of Rochester	September 5, 1995, September 12, 1995, *Post-Bulletin.*	The Honorable Chuck Hazama, Mayor of the City of Rochester, 224 1st Avenue SW., City Hall, Rochester, Minnesota 55902.	August 29, 1995.	275246 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New York: Erie (FEMA Docket No. 7150).	Town of Amherst	August 23, 1995, August 30, 1995, *Amherst Bee*.	Mr. Thomas Ahern, Town Supervisor, Amherst Municipal Building, 5583 Main Street, Williamsville, New York 14221.	August 17, 1995.	360226
South Carolina: Greenville (FEMA Docket No. 7150).	City of Mauldin	August 24, , 1995, August 31, 1995, *The Greenville News*.	The Honorable L. S. Green, Mayor of the City of Mauldin, P.O. Box 249, Mauldin, South Carolina 29662.	August 17, 1995.	450198 C

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

Dated: March 11, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6687 Filed 3–19–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7173]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and Name of Newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Lee	Unincorporated areas	December 22, 1995, December 29, 1995, *News-Press*.	Mr. Donald P. Stilwell, Lee County Manager, Administration Department, P.O. Box 398, Fort Myers, Florida 33902–0398.	December 7, 1995.	125124 B
Georgia: Chatham	Unincorporated areas	December 27, 1995, January 3, 1996, *Savannah News-Press*.	Mr. Joseph Mahany, Chairman of the Chatham County Board of Commissioners, 124 Bull Street, P.O. Box 8161, Savannah, Georgia 31412.	April 3, 1996	130030-C
Illinois: Dekalb	City of DeKalb	December 8, 1995, December 15, 1995, *Daily Chronicle*.	The Honorable Greg Sparrow, Mayor of the City of DeKalb, 200 South 4th Street, DeKalb, Illinois 60115.	December 4, 1995.	170182 B
Illinois: Cook	Prospect Heights (City)	January 3, 1996, January 10, 1996, *Daily Herald*.	The Honorable Edward Rotchford, Mayor of the City of Prospect Heights, No. 1 Elmhurst Road, Prospect Heights, Illinois 60070.	December 20, 1995.	170054 B
Ohio: Lorain	Avon (City)	December 28, 1995, January 4, 1996, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, Ohio 44011.	December 15, 1995.	390348 C
Ohio: Fairfield and Franklin.	Columbus (City)	August 30, 1995, September 6, 1995, *The Columbus Dispatch*.	The Honorable Gregory Lashutka, Mayor of the City of Columbus, Columbus City Hall, 90 West Broad Street, Columbus, Ohio 43215.	August 23, 1995.	390170 G
Massachusetts: Plymouth.	Plymouth (Town)	December 14, 1995, December 21, 1995, *The Old Colony Memorial*.	Ms. Eleanor Beth, Acting Manager of the Town of Plymouth, 11 Lincoln Street, Plymouth, Massachusetts 02360.	December 7, 1995.	250278 C
New Jersey: Hunterdon	Delaware (Township)	December 28, 1995, January 4, 1996, *Hunterdon County Democrat*.	The Honorable Richard Macomber, Mayor of the Township of Delaware, Township Hall, Sergeantville, New Jersey 08557.	April 4, 1996	340506 B
Wisconsin: La Crosse	Unincorporated areas	January 4, 1996, January 11, 1996, *La Crosse Tribune*.	Mr. James A. Ehrsam, La Crosse County Board Chairman, 400 North Fourth Street, La Crosse, Wisconsin 54601.	December 28, 1995.	550217 A
Wisconsin: Juneau	Wonewoc (Village)	June 8, 1995, June 15, 1995, *The Wonewoc Reporter*.	Mr. John P. Cler, Village of Wonewoc President, P.O. Box 37, Wonewoc, Wisconsin 53968–0037.	May 25, 1995.	550208 C

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

Dated: March 11, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6689 Filed 3–19–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
KENTUCKY	
Pineville (City), Bell County (FEMA Docket No. 7128)	
Cumberland River:	
At downstream corporate limits approximately 0.52 miles downstream of Tennessee Avenue	*1019
At upstream corporate limits approximately 530 feet upstream of Route 119	*1027
Straight Creek:	
At its confluence with Cumberland River	*1022
At its upstream corporate limit, approximately 0.48 mile upstream of its confluence with Cumberland River	*1022
Maps available for inspection at the City Hall, Corner of Walnut and Virginia, Pineville, Kentucky.	
MASSACHUSETTS	
Monson (Town), Hampden County (FEMA Docket No. 7155)	
Twelvemile Brook:	
At the upstream side of Pulpit Rock Pond dam	*367
Approximately 1,000 feet upstream of Reimers Street	*426
Thayer Brook:	
Approximately 210 feet downstream of Lakeshore Drive	*367
Approximately 40 feet upstream of Lakeshore Drive	*385
Maps available for inspection at the Building Inspector's Office, 110 Main Street, Monson, Massachusetts.	
MICHIGAN	
Bay City (City), Bay County (FEMA Docket No. 7097)	
Saginaw River:	
At downstream of corporate limits	*586
Approximately 0.4 mile downstream of the upstream corporate limits	*586
Maps available for inspection at the Code Enforcement Office, 310 Washington Avenue, Bay City, Michigan.	
– – –	
Bangor (Charter Township), Bay County (FEMA Docket No. 7136)	
Kawkawlin River:	
At confluence with Saginaw Bay	*586
Approximately 125 feet upstream of Euclid Road	*586
Saginaw River:	
At confluence with Saginaw Bay	*586
At upstream corporate limits	*586
Saginaw Bay:	
Shoreline along Donohue Road	*588
Shoreline along Bay Shore Drive	*588
Shoreline along Killarney Beach Road	*588
Remaining shoreline of Bangor Charter Township	*588
Shoreline from approximately 4,500 feet south of Parrish Road along Detroit and Mackinac Rail to a point approximately 1,500 feet south of intersection of Tobico Road and Ploof Road	*589
Maps available for inspection at the Bangor Administration Office, 180 State Park Drive, Bay City, Michigan.	
– – –	
Essexville (City), Bay County (FEMA Docket No. 7097)	
Saginaw River:	
At the downstream corporate limits	*586
Approximately 380 feet upstream of Detroit & Mackinac Railroad	*586
Maps available for inspection at the Essexville City Hall, 1107 Woodside Avenue, Essexville, Michigan.	
– – –	
Frankenlust (Township), Bay County (FEMA Docket No. 7097)	
Saginaw River:	
At the downstream corporate limits (Hotchkiss Road)	*586
At the upstream corporate limits (the Bay/Saginaw County Boundary)	*587
Dutch Creek:	
At the confluence with Saginaw River West Channel	*586
At Hotchkiss Road	*586
Squaconning Creek:	
At confluence with Dutch Creek	*586
At Northbound Interstate Highway 75	*586
Maps available for inspection at the Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan.	
– – –	
Fraser (Township), Bay County (FEMA Docket No. 7136)	
Saginaw Bay:	
Shoreline along Saginaw Bay (approximately 925 feet east of the intersection of Elevator Road and Anderson Road, to Gregory Drain	*586
Maps available for inspection at the Fraser Township Hall, 1474 North Mackinaw Road, Linwood, Michigan.	
– – –	
Hampton (Township), Bay County (FEMA Docket No. 7097)	
Saginaw Bay:	
Entire shoreline within community	*586
Maps available for inspection at the Hampton Township Hall, 801 West Center, Essexville, Michigan.	
– – –	
Merritt (Township), Bay County (FEMA Docket No. 7097)	
Saginaw Bay:	
Entire shoreline within community	*586
Maps available for inspection at the Merritt Township Hall, 48 East Munger Road, Munger, Michigan.	
– – –	
Monitor (Township), Bay County (FEMA Docket No. 7136)	
Kawkawlin River:	
At downstream corporate limits	*591
Approximately 500 feet upstream of confluence with North Branch Kawkawlin River	*592
North Branch Kawkawlin River:	
At confluence with Kawkawlin River	*592
At upstream corporate limits	*593
Maps available for inspection at the Monitor Township Hall, 2483 Midland Road, Bay City, Michigan.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
– – –	
Portsmouth (Township), Bay County (FEMA Docket No. 7097)	
Saginaw River:	
Approximately 1.7 miles downstream of the downstream corporate limits (near McGraw Avenue)	*586
At the upstream corporate limits	*587
Maps available for inspection at the Portsmouth Township Hall, 1711 West Cass Avenue, Bay City, Michigan.	
– – –	
MINNESTOA	
International Falls (City), Koochiching County (FEMA Docket No. 7138)	
Rainy River:	
Approximately 3.7 miles downstream of Toll Bridge	*1,089
Approximately 0.5 mile upstream of Toll Bridge	*1,111
Maps available for inspection at the City Engineer's Office, 601 3rd Street, International Falls, Minnesota.	
MISSISSIPPI	
Columbus (City), Lowndes County (FEMA Docket No. 7149)	
Moore Creek:	
Approximately 900 feet upstream of Willowbrook Road	*177
At the upstream corporate limits of the City of Columbus	*180
Maps available for inspection at the City Hall, 523 Main Street, Columbus, Mississippi.	
– – –	
Lowndes County (Unincorporated Areas) (FEMA Docket No. 7149)	
Moore Creek:	
At Columbus and Greenville Railway	*181
Approximately 250 feet upstream of Columbus and Greenville Railway	*181
Ellis Creek Tributary:	
Approximately 3,000 feet upstream of the confluence with Ellis Creek At Hildreth Road	*206
Maps available for inspection at the Lowndes County Inspection Department, 17 Airline Road, Columbus, Mississippi.	
NEW JERSEY	
Flemington (Borough), Hunterdon County (FEMA Docket No. 7155)	
Walnut Brook:	
Approximately 605 feet downstream of downstream corporate limits	*169
Approximately 400 feet upstream of State Route 12	*182
Bushkill Brook:	
Approximately 70 feet downstream of State Route 31	*129
Approximately 900 feet upstream of Elizabethtown Gas Company bridge	*140
Maps available for inspection at the Flemington Borough Building, 38 Park Avenue, Flemington, New Jersey.	
PENNSYLVANIA	
Smithfield (Township), Huntingdon County (FEMA Docket No. 7149)	
Juniata River:	
Approximately 2,650 feet above confluence of Raystown Branch Juniata River	*608
Upstream corporate limits	*639
Crooked Creek:	
At confluence with Juniata River	*619
Approximately 0.71 mile upstream of confluence with Juniata River	*619
Maps available for inspection at the Smithfield Township Building, 13th and Mt. Vernon Avenue, Huntingdon, Pennsylvania.	
VIRGINIA	
Norfolk (City), Independent City (FEMA Docket No. 7155)	
Chesapeake Bay:	
Approximately 1,300 feet northeast of the intersection of Pleasant Avenue and 30th Bay Street	*12
Little Creek:	
Approximately 1,400 feet east of the intersection of Pleasant Avenue and 30th Bay Street	*10
Maps available for inspection at the Norfolk City Planning Office, Suite 508, City Hall Building, 810 Union Street, Norfolk, Virginia.	

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

Dated: March 11, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6688 Filed 3–19–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–195; RM–5810]

Radio Broadcasting Services; Onawa, Iowa; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to the FM Table of Allotments as published in the October 1, 1994, revision of 47 CFR Part 73. The listing for Onawa, Iowa, in Section 73.202(b) incorrectly shows Channel 272C1A instead of Channel 272C1. Channel 272C1 was substituted for Channel 272A at Onawa pursuant to the *Report and Order,* MM Docket 88–195, 54 FR 3781, January 26, 1989.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

Channel 272C1 was substituted for Channel 272A at Onawa, IA, and Channel 272A was substituted for Channel 272A at Vermillion, SD, so that Station KOOO's construction permit could be modified to specify the higher powered channel.

Need for Correction

As published, the final regulation contains a wrong channel allotment at Onawa, IA, which is misleading and needs correction.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 272C1A and adding Channel 272C1 at Onawa.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6659 Filed 3–19–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD29

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Aubrey Valley, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the Arizona Game and Fish Department will

introduce black-footed ferrets (*Mustela nigripes*) into Aubrey Valley, Arizona. This reintroduction is a primary recovery action for this federally listed endangered species and will allow evaluation of release techniques. If conditions are acceptable, surplus captive-raised black-footed ferrets will be released in 1996, or later. Additional surplus animals will be released annually thereafter for several years or until a self-sustaining population is established. Releases will use and refine reintroduction techniques used in other areas. If the Aubrey Valley program is successful, a wild population could be established within about 5 years. The Aubrey Valley ferret population is designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population will be managed under the provisions of an accompanying special rule.

EFFECTIVE DATE: March 20, 1996.

ADDRESSES: You may inspect the complete file for this rule during normal business hours at the following office: Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021. You must make an appointment in advance if you wish to inspect the file.

FOR FURTHER INFORMATION CONTACT: William Austin, at the above address, or telephone (602) 640–2720.

SUPPLEMENTARY INFORMATION:

Background

Legislative

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), was changed significantly by the Endangered Species Act Amendments of 1982 (Pub. L. No. 97–304). A new subsection 10(j) was added to the Act to allow designation of specific populations of listed species as ''experimental populations.'' Before this amendment, the U.S. Fish and Wildlife Service (Service) was authorized to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local citizens often opposed reintroduction because they were concerned about restrictions and prohibitions on Federal and private activities. This opposition severely handicapped the effectiveness of reintroduction as a management tool. Under section 10(j), the Service can designate reintroduced populations established outside the species' current range but within its historical range as ''experimental.'' This designation increases the Service's flexibility to manage reintroduced populations of endangered species. Experimental populations are treated as threatened species under the Act, and the Service has greater discretion in devising management programs and special regulations. Section 4(d) of the Act allows the Service to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. These regulations may be less restrictive than those for endangered species and more compatible with current or planned human activities in the reintroduction area. For example, a person may take a black-footed ferret (*Mustela nigripes*) in the wild within the Aubrey Valley Experimental Population Area, provided the take is incidental (as defined under the Act), and any resulting injury or mortality is unintentional and not due to negligent conduct. The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The Service will not take legal action for incidental take. However, the Service will refer instances of knowing, non-incidental take of black-footed ferrets to the appropriate authorities for prosecution.

The Service can designate experimental populations as ''essential'' or ''nonessential.'' Nonessential populations are not essential to the continued existence of the species. The Aubrey Valley population of black-footed ferrets is designated as a nonessential experimental population in accordance with section 10(j) of the Act.

Section 7 of the Act applies selectively to a nonessential experimental population located outside of the National Wildlife Refuge System or National Park System lands. Generally, it is treated if it were were proposed for listing. Section 7(a)(4) applies in that case, requiring Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species continues to apply, but section 7(a)(2), which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, does not. Section 7 only affects activities on private lands if they are authorized, funded or carried out by a Federal agency.

Section 7(a)(2) of the Act requires that animals used to establish an experimental population may be removed from a source or donor population only after the Service determines that the removal is not likely to jeopardize the continued existence of the species. Removal also requires a permit as described in 50 CFR 17.22.

Biological

The black-footed ferret is an endangered carnivore with a black face mask, black legs, and a black-tipped tail. A black-footed ferret is nearly 60 centimeters (2 feet) in length and weighs up to 1.1 kilogram (2.5 pounds). It is the only ferret species native to North America.

Historically, the black-footed ferret occurred over a wide area, but it is difficult to determine its historical abundance because it is nocturnal and secretive. The historical range of the species, based on specimen collections, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence shows that this ferret once occurred from the Yukon Territory in Canada to New Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and breeding black-footed ferrets have never been documented outside of prairie dog colonies. Specimens of black-footed ferrets have come from the ranges of three species of prairie dogs—the black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (Cynomys leucurus), and Gunnison's prairie dog (*Cynomys gunnisoni*) (Anderson *et al.* 1986).

Widespread poisoning of prairie dogs and conversion of native prairie to farmland drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog numbers, particularly in the southern portions of their ranges. The severe decline of prairie dogs nearly caused the extinction of the black-footed ferret. The ferret's decline may be partly due to other factors such as secondary poisoning from prairie dog toxicants and canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and was studied intensively. This

population disappeared from the wild in 1974, and its last member died in captivity in 1979. The species was then thought to be extinct until a small population was discovered in 1981 near Meeteetse, Wyoming. The Meeteetse population declined severely in 1985–1986 due to canine distemper. Eighteen survivors were taken into captivity in 1986–1987 to prevent the species' extinction and to serve as founder animals for a captive propagation program. Today, the captive population includes approximately 400 animals held in 7 separately maintained locations.

Recovery Efforts

The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) establishes a national recovery objective. This objective is to ensure immediate survival of the species by—

(a) increasing the captive population of ferrets to 200 breeding adults by 1991, which has been achieved;

(b) establishing a prebreeding census population of 1,500 free-ranging breeding adults in 10 or more different populations with no fewer than 30 breeding adults in each population by the year 2010; and

(c) encouraging the widest possible distribution of reintroduced animals throughout their historic range.

When this national objective is achieved, the black-footed ferret will be downlisted to threatened status, assuming that the extinction rate of established populations remains at or below the rate at which new populations are established for at least 5 years. Cooperative efforts to rear black-footed ferrets in captivity have been successful. In 8 years, the captive population has increased from 18 to over 400 animals. In 1988, the single captive population was divided into three separate captive subpopulations to avoid the possibility that a single catastrophic event would eliminate the entire captive population. Two additional captive subpopulations were established in 1990 and one each in 1991 and 1992, for a total of seven subpopulations. Recovery efforts have advanced to the reintroduction phase of putting animals back into the wild, since a secure captive population of 240 breeding adults has been achieved.

Reintroduction Sites

Site Selection Process

The Service, in cooperation with 11 western State wildlife agencies, has identified potential ferret reintroduction sites within the historical range of the black-footed ferret. So far, reintroduction attempts have occurred in Wyoming, Montana, and South Dakota. Utah and Colorado are now identifying potential reintroduction sites, while other western States are evaluating potential reintroduction sites. The Service selects reintroduction sites in coordination with the Black-footed Ferret Interstate Coordinating Committee.

Northwest Arizona/Aubrey Valley Site

On November 15, 1995, the Service proposed in the Federal Register (60 FR 57387) to reintroduce a nonessential experimental population of black-footed ferrets into the Aubrey Valley in northwestern Arizona. The area selected is designated the Aubrey Valley Experimental Population Area (AVEPA). The AVEPA includes parts of Coconino, Mohave, and Yavapai counties in northwestern Arizona. The AVEPA is described as the Aubrey Valley west of the Aubrey Cliffs. Its boundaries are as follows: from Chino Point, north along the crest of the Aubrey Cliffs to the Supai Road (Indian Route 18), southwest along the Supai Road to Township 26 North, then west to Range 11 West, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of Section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of Section 12, Township 24 North, Range 9 West; then southeast to the SE corner Section 20, Township 24 West, Range 8 West; then south to the SE corner Section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 33, Township 24 North, Range 8 West; then northeast to the SE corner of Section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 12, Township 23 North, Range 8 West; then southeast to the SE corner of Section 8, Township 23 North, Range 7 West; then southeast to the SE corner of Section 16, Township 23 North, Range 7 West; then east to the half section point of the north boundary line of Section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of Section 26, Township 23 North, Range 7 West; then east along section line to Route 66; then southeast along Route 66 to the point of origin at Chino Point. This area encompasses 25,598 hectares (ha) (63,253 acres) of deeded land, 18,536 ha (45,802 acres) of State trust land, and 45,686 ha (112,839 acres) of Hualapai Tribal land for a total of 89,820 ha (221,894 acres). A detailed map showing the location and delineating the boundaries of the AVEPA accompanies this special rule.

Surveys conducted in 1992 indicated that approximately 7,000 ha (17,297 acres) of prairie dog towns exist within the AVEPA. Using an index outlined in Biggins *et al.* (1989), the Service calculates that this area has a current black-footed ferret family rating of 35, which means that the AVEPA can potentially support about 53 adult black-footed ferrets. The ferret family rating is a numerical value derived from the acreage and density of prairie dogs and is used to estimate ferret carrying capacity of a prairie dog complex. Since 1990, the Service, the Department, and a variety of cooperators have conducted 10 surveys in the Aubrey Valley for black-footed ferrets. These surveys did not discover any evidence of extant black-footed ferrets, and it is unlikely that wild ferrets exist within the AVEPA. Consequently, the Service concludes that ferrets reintroduced into the AVEPA will be separate and distinct from other existing populations.

The Service and the Department plan to release ferrets into a subportion of the AVEPA (within the area considered best for the release) that is designated on the accompanying map and is referred to in this rule as the ''Reintroduction Area.'' If this reintroduction is successful, black-footed ferrets will probably disperse into other areas of the AVEPA. Other ferrets may be released into selected portions of the AVEPA at a later date. Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework that has been developed. The Service, in cooperation with the Department and other project cooperators, will reevaluate reintroduction efforts in the AVEPA if any of the following conditions occur:

(a) Black-footed ferret habitat is not maintained sufficient to support more than 30 breeding adults after 5 years;

(b) At least 90 percent of prairie dog acreage known in 1992 is not maintained;

(c) A wild black-footed ferret population is found within the AVEPA prior to the first breeding season following the initial reintroduction;

(d) Evidence of active canine distemper or other diseases known to be

detrimental to ferrets is found in or near the reintroduction area;

(e) Fewer than 20 black-footed ferrets are available for the first release;

(f) Funding is not available to implement reintroduction plans in Arizona; or

(g) Land ownership changes or cooperators withdraw from the project.

Reintroduction Protocol

The reintroduction protocol involves releasing approximately 20 or more captive-raised black-footed ferrets in the first year of the program, and up to 50 or more animals annually for the next 2–4 years. Released animals will be excess to the needs of the captive breeding program. Hence, any loss of released animals would not affect the genetic diversity of the captive animals. Since captive breeding of ferrets will continue, any animal lost in the reintroduction effort can be replaced. In future releases, it may be necessary to obtain ferrets from established reintroduced populations to enhance the genetic diversity of the population in the AVEPA.

Two protocols (''hard'' and ''soft'' release) are available that have been successfully employed for releasing captive-reared ferrets into the wild. Release of animals shortly after arrival at the release site is known as a ''hard'' release. When the animals are supplied with food, shelter, and protection from predators for a period of time before being released, the release is characterized as ''soft.'' In either method, ferrets are released from above-ground cages with access to underground nest boxes. Preconditioned or nonconditioned young or adult animals may be released. Captive-bred ferrets may be preconditioned by placing them in large pens that enclose portions of natural prairie-dog colonies. In addition, it may be necessary to surround each above-ground cage with an electric fence to prevent damage from livestock or access by predators. The Service, in cooperation with the Department and other project cooperators, will decide what reintroduction method is best suited for the proposed ferret release at the AVEPA. Cooperators are jointly developing a specific release protocol that will become a condition of the endangered species permit authorizing the Arizona reintroduction. As an experiment to enhance reintroduction success, excess captive pregnant female ferrets will be shipped to large preconditioning pens and allowed to whelp onsite in the AVEPA. After an extended period of acclimation, family groups will be released together by simply opening the pens.

To the extent possible, released ferrets will be vaccinated against diseases, including canine distemper. Measures will be taken during the initial reintroduction stage to reduce predation from coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators. Habitat conditions also will be monitored during the reintroduction phase. All released ferrets will be marked (e.g., with passive integrated transponder tags (PIT tags)). Several released ferrets may be radio-tagged and their behavior and movements monitored. Other monitoring will include use of spotlight and snow tracking surveys and visual surveillance.

A high percentage (perhaps as high as 90 percent) of the animals may die during the first year of release. Despite prerelease conditioning, which should improve survival, captive-bred animals are more susceptible to predation, starvation, and environmental conditions than wild-born individuals. Mortality will probably be highest during the first month following release. A realistic goal in the first year of the program is to have some ferrets survive the first month in the wild and at least 10 percent of the animals surviving their first winter.

From 1982 to 1986, intensive studies were conducted on the Meeteetse population to establish baseline data to aid future reintroduction efforts. These baseline data have supplemented the biological and behavioral data obtained from the South Dakota population in the 1960's and 1970's. In addition, the Wyoming, South Dakota, and Montana reintroduction programs also have provided data that are useful for this and future releases.

The goal of the Arizona reintroduction effort is the establishment of a free-ranging population of at least 30 adult animals within the AVEPA by the year 2001. The Service, Department, and cooperators will monitor the progress of the project on an annual basis, including all determinable sources of mortality. The status of the population and the information gained at this site will be evaluated annually for the first 5 years to assess future ferret management needs. The Service does not expect to change the nonessential designation for this experimental population unless it deems the experiment to be a failure or until the black-footed ferret is recovered.

Status of Reintroduced Population

The Service designates the Aubrey Valley black-footed ferret population ''nonessential'' under section 10(j) of the Act for the following reasons:

(a) The captive breeding population is the primary population of the species and it has been protected against the threat of extinction from a single catastrophic event by dividing it into seven widely separated subpopulations. Hence, any loss of an experimental population will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is now the 240 breeding adults in the captive breeding population. Animals selected for reintroduction purposes will not be needed to maintain the captive population. Hence, any loss of animals for reintroduction into an experimental population will not affect the overall genetic diversity of the species.

(c) All animals lost during this reintroduction attempt will be replaced through captive breeding. Juvenile ferrets are now being produced in excess of the numbers needed to maintain 240 breeding adults in captivity.

This will be the fourth experimental population of black-footed ferrets released into the wild. The other reintroduction efforts are in Wyoming, southwestern South Dakota, and north-central Montana. Ferret reintroduction is important to help recover the species to a point where it can be downlisted and eventually delisted. Ferrets held in captivity may lose behavioral traits critical to their survival in the wild. Consequently, it is important to release captive-held ferrets as soon as possible to increase the likelihood of successful reintroduction.

Approximately 33 percent of the land in the AVEPA is deeded land. State trust lands and Reservation lands make up the remaining 22 percent and 45 percent of the AVEPA, respectively. The nonessential experimental population designation will facilitate reestablishment of the species in the wild by alleviating landowner concerns about possible land use restrictions that could otherwise apply under the Act. The nonessential experimental designation is intended to relax regulations that protect reintroduced populations of endangered species, while promoting the conservation of these populations. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners can continue unaffected.

Attempts to reintroduce ferrets into the wild (in Wyoming, South Dakota, and Montana) have placed emphasis on developing and improving reintroduction techniques. That research will advance the groundwork for ferret reintroduction and management protocols at future release sites. The data obtained from this reintroduction effort also will be used to improve ferret reintroduction techniques, particularly as they apply to reintroduction in Gunnison's prairie dog towns. All previous releases have occurred in black-tailed or white-tailed prairie dog towns.

Location of Reintroduced Population

Section 10(j) of the Act requires that an experimental population be geographically separate from other nonexperimental populations of the same species. Since 1987, when the last members of the Meeteetse population were captured for inclusion in the captive population, no ferrets (other than those released in Wyoming, Montana and South Dakota) have been documented from the wild. Nevertheless, other ferrets may exist in the wild today. Extensive surveys were conducted for black-footed ferrets in the AVEPA. In addition to these surveys, many hours were spent surveying prairie dog colonies at the proposed relocation site. No ferrets or ferret sign (skulls, feces, or trenches) were located. Therefore, the Service finds, and administratively determines with this rule, that wild black-footed ferrets no longer exist in the AVEPA, and that ferrets reintroduced into the AVEPA will not overlap with wild populations of ferrets.

The AVEPA is located in northwestern Arizona and includes the Aubrey Valley west of the Aubrey Cliffs. The area has substantial geographic features that will hinder, but may not preclude black-footed ferret movements outside of the AVEPA. Given the geography and the poorer habitat conditions found outside of the AVEPA, the Service and Department believe that ferret movements outside the designated area are highly unlikely.

The AVEPA will be one of the core recovery areas described in the Black-footed Ferret Recovery Plan. After the first release and before the first breeding season, the nonessential experimental population will include all marked ferrets in the AVEPA. During and after the first breeding season the nonessential experimental population will include all ferrets located in the AVEPA, including unmarked offspring of released ferrets. All released ferrets and their offspring are expected to remain in the AVEPA because of prime prairie dog habitat, their limited home range, and surrounding geographic barriers. The Service and its cooperators may capture any stray ferret that leaves the AVEPA and return it to the management area, translocate it to another reintroduction site, place it in captivity, or leave it in place. If a ferret leaves the reintroduction area (but remains within the AVEPA), the affected landowner may request its removal. The Service will honor landowner requests to remove straying ferrets. If a landowner does not object to the ferret remaining on his/her property, the animal will not be removed.

All ferrets released in the AVEPA will be marked. The Service and its cooperators will attempt to determine the source of any unmarked animals found after the first release and before the first breeding season. Any ferret in Arizona outside the AVEPA will be considered endangered and may be captured for genetic testing or evidence of identification tags. If the animal originated from the experimental population, it may be returned to the AVEPA, held in captivity, released at another reintroduction site, or left in place. If the captured animal is genetically unrelated to ferrets from the experimental population (possibly a wild animal), it may be retained for use in the captive breeding program. Under an existing contingency plan, up to nine wild ferrets can be captured for the captive population. If a landowner outside the experimental population area wishes black-footed ferrets to remain on his or her property, the Service will seek a conservation agreement or easement with the land owner.

Management

The Service will undertake the AVEPA reintroduction in cooperation with the Department, Navajo Nation, Arizona State Land Department, other landowners in AVEPA, and the Phoenix Zoo (in accordance with the Cooperative Reintroduction Plan For Black-footed Ferrets—Aubrey Valley, Arizona (Belitsky *et al.* 1994)). Specific aspects of the reintroduction program are discussed below.

Monitoring

Several monitoring efforts are planned during the first 5 years of the program. The Service and cooperators will monitor prairie dog numbers and distribution, as well as sylvatic plague occurrence on an annual basis. Canine distemper will be monitored before the reintroduction and annually thereafter. Reintroduced ferrets and their offspring will be monitored annually using spotlight surveys and/or snow tracking surveys. Several ferrets may be fitted with radio transmitters for more intensive monitoring. If ferrets survive the first winter, surveys will monitor breeding success and juvenile recruitment for the surviving population. Ferret behavior also will be investigated during the reintroduction phase.

The Service, Department, and/or authorized cooperators will monitor ferret populations and their habitat annually to document hazards or activities that would affect ferrets. When appropriate, the Service and the Department will develop strategies in cooperation with involved parties and affected landowners to minimize harm to ferrets.

The Service, the Department, and cooperators will inform other agencies and the public about the presence of ferrets in the AVEPA through public outreach programs. Educational programs will address the handling of sick or injured ferrets. The Service has asked the Department to serve as the primary contact agency for government entities, private landowners, and the public within and surrounding the black-footed ferret reintroduction area. The Department has assigned its Regional Wildlife Program Manager, Kingman, Arizona, ((602) 692–7700) as principal contact to answer any public inquiries and follow up on reports of injured or dead ferrets. The Department will report such incidents to the Service's Field Supervisor, Ecological Services, Phoenix, Arizona, ((602) 640–2720). The Field Supervisor will notify the Service's Division of Law Enforcement of any reports of dead or injured ferrets. The public should report injured or dead ferrets directly to either the Department's Regional Wildlife Program Manager or the Service's Field Supervisor at the phone numbers identified above. Any ferret carcass found should be preserved. Any individual who finds a dead ferret should not disturb potential evidence that may be used to determine cause of death.

Disease Considerations

If canine distemper is documented in any wild mammal found near or within the reintroduction site, the Service will reevaluate the reintroduction program. At least 10 coyotes, and possibly badgers, will be tested for canine distemper before ferrets are released at the AVEPA.

The Service and cooperators will attempt to limit potential sources of distemper by—

1. Discouraging people from bringing dogs into the AVEPA,

2. Encouraging residents and hunters to vaccinate pets, and

3. Encouraging people to report any dead mammals or any unusual behavior in wild mammals within the area.

Efforts are underway to develop an effective, permanent canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague within prairie dog towns will occur before and during reintroduction efforts.

Genetic Considerations

Ferrets selected for the initial reintroduction will be animals not needed to preserve the genetic diversity of captive populations. Experimental populations of ferrets usually contain less genetic diversity than captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with as much genetic diversity as possible.

Prairie Dog Management

The Service will work cooperatively with landowners and land management agencies in the AVEPA to maintain sufficient prairie dog habitat to support more than 30 breeding adult ferrets, as well as to maintain at least 90 percent of the prairie dog habitat known in 1992. The Service will work cooperatively with the affected landowners and land management agencies to resolve any prairie dog management conflicts.

Mortality

Only animals not needed for the captive breeding program will be used in this reintroduction attempt. The Service expects significant mortality since captive-reared animals must adapt to the wild. Predator and prairie dog management, vaccination, supplemental feeding, and/or improved release methods should partially offset natural mortality resulting from predation, a fluctuating food supply, disease, and lack of experience in killing prey (prairie dogs). Public education will reduce potential human-related mortality. The Service expects only a low level of mortality from incidental take since the reintroduction is deemed compatible with traditional land use in the area.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret in the AVEPA provided the take is incidental as defined under the Act, and if any resulting injury or mortality is unintentional, and not due to negligent conduct. Such take will not be considered ''knowing take'' and the Service will not take legal action. However, the knowing, deliberate take of a black-footed ferret will be referred to the appropriate authorities for prosecution. Any take of a black-footed ferret must be reported immediately to the Service's Field Supervisor (see **ADDRESSES** section).

The biological opinion prepared for the reintroduction anticipates an annual incidental take of about 12 percent of all reintroduced ferrets and their offspring in the AVEPA. If this level is exceeded in a given year, the Service, in cooperation with the Department, landowners, and land managing agencies, will conduct an evaluation to develop and implement measures to reduce the level of incidental take.

Special Handling

Under special regulations that apply to the experimental population, Service employees and their acting agents may handle black-footed ferrets for various reasons—scientific purposes, relocation to avoid conflict with human activities, recovery efforts, relocation to future reintroduction sites, aiding sick, injured, or orphaned animals, and salvaging dead animals. Any ferret deemed unfit to remain in the wild will be placed in captivity. The Service also will decide the placement or disposition of all sick, injured, orphaned, and dead animals.

Coordination With Landowners and Land Managers

The Service and Department attempted to identify issues and concerns associated with the ferret reintroduction in the AVEPA before developing the proposed rule. The reintroduction has been discussed with potentially affected State agencies and landowners within the release area. The affected State agencies and landowners/managers have indicated support for ferret reintroduction if the animals released in the AVEPA are a nonessential experimental population and if land use activities in the AVEPA are not constrained without the consent of affected landowners.

Potential for Conflict with Grazing and Recreational Activities

Under the current management scheme for the AVEPA, the Service does not expect conflicts between livestock grazing and black-footed ferret management. The State Regional Wildlife Program Manager will coordinate any ferret reintroduction measure that might affect grazing patterns in the AVEPA, such as the placement of ferret release pens, and will secure the concurrence of affected landowners. Livestock graze on all lands in the AVEPA and existing grazing practices are not expected to adversely affect ferret habitat. No restrictions will apply to landowners regarding prairie dog control on private lands within the AVEPA. If prairie dog control efforts proposed for private or State trust lands locally affect ferret prey base within a specific area, State and Federal biologists will determine whether ferrets would be potentially impacted. The Service, Department, or authorized cooperators may translocate ferrets from problem areas to other areas of lesser conflict. Big game hunting, prairie dog shooting, and trapping of furbearers or predators in the AVEPA are not expected to affect ferrets. If private activities impede the establishment of ferrets, the Service and Department will work closely with landowners to develop appropriate responses to avoid or minimize problems.

Protection of Black-footed Ferrets

To the extent possible and appropriate, ferrets will be released in a manner that provides short-term protection from natural mortality (predators, disease, lack of prey base) and from human-related sources of mortality. Improved release methods, vaccination, predator management, and the management of prairie dog populations will reduce natural mortality.

Human causes of mortality will be minimized by releasing ferrets in areas with low human population densities and little development potential, and by working with landowners to help avoid existing or proposed activities that could impair ferret recovery.

The Service has prepared a final biological opinion for the reintroduction of ferrets in the AVEPA. It concludes that this action is not likely to jeopardize the continued existence of the species.

Public Awareness and Cooperation

An extensive educational effort will be undertaken to inform the public in the region and nationally about the importance of this reintroduction project in the overall recovery of the black-footed ferret. This should enhance public awareness of the significance of the AVEPA program and of the importance of the prairie habitats upon which ferrets depend.

Effective Date

The provisions of 5 U.S.C. 553(d)(3) require that at least 30 days must be allowed before a rule becomes effective, unless an agency has good reason to make it effective sooner. The success of this reintroduction requires that reintroduction facilities be fully installed and the management program in place before pregnant female ferrets are transported to the AVEPA, beginning in March 1996 or soon thereafter. The timing of the project therefore requires that this rule become effective immediately upon publication in the Federal Register.

Conclusion

The designation of the AVEPA population as a nonessential experimental population should encourage local cooperation since this designation will minimize recovery project impacts on normal activities within the release site. The Service considers the nonessential experimental population designation to be necessary to gain the full cooperation of landowners, agencies, and recreational interests in the affected area. Based on the above information, and utilizing the best scientific and commercial data available, (in accordance with 50 CFR 17.81), the Service finds that the reintroduction of black-footed ferrets into the AVEPA will further the conservation and recovery of the species.

Summary of Comments and Recommendations

The November 15, 1995, proposed rule and associated notifications requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Williams-Grand Canyon News* on November 22, 1995, the *Kingman Daily Miner* on November 26, 1995, and the *Arizona Republic/Phoenix Gazette* on November 27, 1995. Sixteen written comments were received and are discussed below. Seven supported the action, 2 were opposed, and 7 were neutral on the proposed action.

A public hearing was conducted in Seligman, Arizona, on December 12, 1995. Seventeen people attended the hearing. Four oral comments were received: Three favored the proposal and one took no position.

The Service arranged for 5 individuals knowledgeable of black-footed ferret biology to review the proposal. However, they provided no comments.

The following summary addresses written comments and oral statements presented at the public hearing and received during the comment period. Comments of a similar nature or point are grouped into general issues. These issues and the Service's response to each are discussed below.

Issue 1: Historic biodiversity of species should be reestablished as nearly as is possible.

Service Response: The Service agrees with this comment. Establishing 10 ferret populations, an identified recovery plan objective, will help restore historic species biodiversity.

Issue 2: Are any reintroduction sites proposed for southern Arizona?

Service Response: No appropriate sites have been identified for southern Arizona and none are being considered at this time. This rule applies only to the population of black-footed ferrets to be reintroduced in the Aubrey Valley of northern Arizona.

Issue 3: Respondents expressed concern about the well-being of released ferrets.

Service Response: The reintroduction of captive ferrets into the wild removes most protection that humans can provide. This and other reintroductions seek to establish self-sustaining, free-ranging populations of ferrets. Each reintroduction includes techniques to ensure long-term survival of released ferrets to the greatest extent possible, and provides means to evaluate the best ways to reintroduce and release ferrets.

Issue 4: Are there any alternatives to release or reintroduction of ferrets such as adoption programs, pet stores, and so on?

Service Response: There appears to be confusion over the distinction between domestic ferrets and the black-footed ferret. The former is an exotic species commonly raised and sold as a pet. The latter is a native species listed as endangered under the Act. Adoption programs are inappropriate and commercial trade in the species is illegal.

Issue 5: Media accounts appear to be contradictory concerning the success of black-footed ferret reintroduction and whether the species is recovered.

Service Response: The black-footed ferret is far from recovery. The captive breeding program has been very successful. Reintroduction efforts are recent, but also have achieved limited success. Black-footed ferrets have survived and reproduced in the wild following release. However, according to the goals of the current recovery plan, the reintroduction effort must continue and substantially expand before recovery is fully achieved.

Issue 6: There appears to be a contradiction regarding black-footed ferrets being affected by predators and the Service's anti-predator-control stance. Electric fencing may be the best means of predator control. Controlling coyotes could lead to an influx of new coyotes and increase disease. The Service should disclose any previous disease data collected on predators from the proposed reintroduction area. Will any predators killed in control efforts be included in the sample of animals needed to monitor diseases? When can disease monitoring activity be discontinued?

Service Response: Several predators prey on black-footed ferrets, and predators can seriously compromise ferret reintroduction success. Consequently, a ferret release protocol for the Aubrey Valley requires an adequate predator management strategy. We can reduce predation in several ways including some that kill the predators and others that deter or exclude them. The Service and Department will attempt to minimize ferret predation at crucial periods of reintroduction. The Service and Department are keenly interested in continuing development and application of predator management tools that would alleviate the need for killing predators. Electric fencing employed in the Montana ferret reintroduction project has shown significant promise in reducing coyote and badger predation on ferrets, and similar fencing for the Aubrey Valley project will be evaluated. However, the Service and Department must fully weigh whether electric fencing or other predator management means (including killing) are the most practical considering logistics, timing, and funding constraints. Although there are few supporting data, lethal control of coyotes, especially during pup dispersal, could conceivably lead to increased numbers of coyotes in local reintroduction areas. Since 1993, 29 coyotes from the Aubrey Valley/Seligman area have been collected to test for the presence of canine distemper. The information obtained indicates that no recent canine distemper outbreaks have occurred in this area. Any predators collected in the AVEPA for future control measures would be evaluated for evidence of distemper and sylvatic plague. Because these diseases could potentially devastate the reintroduced ferret population and could confound

subsequent releases, it is essential that a minimum number of predators be collected each year for the duration of the reintroduction program.

Issue 7: Prairie dogs damage land.

Service Response: Prairie dogs create burrows and reduce the amount of vegetation immediately surrounding their burrows. However, prairie dogs evolved on native grasslands and are an extremely important component of the prairie ecosystem. Prairie dogs provide the only known habitat for black-footed ferrets. All reintroductions so far (and the one to be carried out in the Aubrey Valley, Arizona) are in areas where prairie dogs currently exist. In fact, the presence and abundance of prairie dogs is the prime factor by which reintroduction sites are evaluated. Prairie dogs are considered a keystone species of the prairie environment and create and provide habitat for numerous wildlife species. The Service believes that landowners in the AVEPA are aware of both the problems associated with prairie dogs and of their importance to ferret recovery and the overall prairie ecosystem.

Issue 8: A landowner requested that none of his land be designated as critical habitat.

Service Response: The Service has not designated critical habitat for the black-footed ferret and has no plans to do so.

Issue 9: Is the nonessential experimental designation really appropriate in this instance or in general? Release efforts have been confounded by predation, disease and other factors. There are many reasons why designation as essential is vital and more appropriate. An essential designation would provide beneficial protection, and the protection would not completely halt projects anyway. The captive breeding population was never designated as an essential population.

Service Response: Section 10(j) of the Act authorizes the Secretary of Interior to designate experimental populations in order to facilitate recovery of threatened or endangered species. Experimental population provisions permit the Service to exercise flexibility in avoiding situations that would otherwise confound recovery activities because of land use restrictions potentially imposed under sections 7 and 9 of the Act. Evaluations performed by the Department, Service, and their cooperators have indicated that the AVEPA represents the best known potential black-footed ferret habitat in Arizona. Since lands in the AVEPA are either privately owned or are State lands leased for specific land uses (principally grazing), the Service can not (and will not) engage in recovery activities in the AVEPA without the consent of landowners. Landowner consent would be impossible without the experimental designation, which alleviates the possibility of imposing land use restrictions. Nevertheless, landowners in the AVEPA have concurred with the project, and the Service finds existing land use practices and the reintroduction program mutually compatible. Because the distribution of potential ferret habitat in the United States overlays a great amount of private land, the recovery of this species is likely to depend on the good will and cooperation of private land owners. The Service must work cooperatively with potentially affected landowners in order to recover the ferret on private lands where the presence of ferrets is compatible with other activities.

The Service's rationale for designating ferrets reintroduced to the AVEPA as a ''nonessential'' experimental population rather than an ''essential'' experimental population was explained above under ''Status of Reintroduced Population.'' Black-footed ferrets do not occur in the wild except in three nonessential experimental populations in Montana, South Dakota, and Wyoming. Moreover, the primary genetic repository of the species is found in the captive population, which is maintained at seven separate facilities. Ferrets to be released in the AVEPA are surplus to the captive population and are not needed to maintain captive population levels. Animals lost through the reintroduction effort can be replaced by captive breeding. Consequently, the Service finds that the captive breeding population of black-footed ferrets is essential to the survival of the species. The Service's finding is supported by the preamble to the final rule that implemented the Act's experimental population provisions (49 FR 33885, August 27, 1984). It explains that organisms classified as experimental are those to be removed from an existing source or donor population. ''Essential experimental population''is defined, in part, in 50 CFR 17.80(b) as ''* * * an experimental population whose loss would be likely to appreciably reduce the likelihood of survival of the species in the wild.''

Issue 10: The Service is too lenient or too vague about allowable prairie dog control (shooting, trapping, poisoning) in the area. The Service should clearly delineate a prairie dog control policy for lands in the reintroduction zone that focuses on ferret recovery.

Service Response: The special rules clearly indicate that otherwise legal activities (such as prairie dog control) within the AVEPA, even those that may incidentally take black-footed ferrets, will not violate the Act. At the same time, current land use practices within the AVEPA are considered compatible with the viability of black-footed ferrets on the site. The use of the area as a reintroduction site depends on the cooperation of the landowners. Success of this effort also will depend on the cooperation of all involved entities to ensure that sufficient prairie dog populations are allowed to persist. The Service believes that prairie dog population maintenance can be achieved on a cooperative basis.

Issue 11: Two comments recommended refinement of the boundaries of the experimental area. One requested that the southern boundary be more readily identifiable by legal descriptions instead of contour lines. A landowner, the Hualapai Tribe, requested that the northwest boundary of the AVEPA be expanded to include all suitable prairie dog habitat on the Hualapai Indian Reservation.

Service Response: The Service contacted the Hualapai Tribe to seek clarification on the location of suitable prairie dog habitat on the Hualapai Indian Reservation. The Service concurred and the boundaries were modified in accordance with the recommendations of both commenters.

Issue 12: When will there be an essential population designated ''in the wild?'' Now is the time.

Service Response: Under section 10(j) of the Act, the Secretary (Service) determines whether or not an experimental population is ''essential'' to the continued existence of a species. The Service uses the Act's flexibility to reintroduce surplus, captive raised black-footed ferrets into nonessential experimental population areas. The Service does not expect to draw from ferrets needed to maintain the captive population in order to establish experimental populations. To release a proportion of the ''essential'' captive population would reduce the number of effective breeding animals. It would also affect the supply of captive-reared ferrets for existing and future recovery efforts, and could possibly jeopardize the continued existence of the species.

Issue 13: Designating a population as nonessential experimental to obtain additional knowledge for future reintroduction seems counterintuitive. The stated purpose of the Act is to conserve species and ecosystems. The Service should not view reintroduction of the black-footed ferret as an isolated event that can be adequately achieved through nonessential experimental designations. The action involves a

moral issue of humans playing God in designating species as ''nonessential'' and ''experimental.''

Service Response: The Service believes that the latitude provided in the Act to designate nonessential experimental populations affords a realistic means of achieving recovery of the black-footed ferret. A significant proportion of the potential habitat remaining within the former range of the black-footed ferret is on private land. To recover the ferret and preserve the prairie ecosystems on which it depends requires that the Service, and other Federal and State agencies, succeed in developing cooperative reintroduction programs with interested parties, especially private landowners. The designation as nonessential experimental does not diminish the importance the Service attaches to individual reintroduction projects or imply a lack of concern for the well-being of the ferrets involved. The Service agrees that the recovery of the species cannot be achieved through an isolated experimental reintroduction. However, such efforts are essential for the development of effective reintroduction techniques and the establishment of self-sustaining populations over several western prairies.

Issue 14: If there is a problem with capacity for black-footed ferrets in captivity, then one solution may be to place priority on wild populations and decrease the level of captive breeding. Given the genetic redundancy in the captive breeding population, its continuation is unnecessary. We may want to retain the captive breeding population to bolster wild populations, but not as an essential population.

Service Response: Thus far, the captive breeding program has been a success, and recovery goals for the black-footed ferret depend on the continued success of the captive breeding program. The captive population itself is not genetically redundant. Maintaining and maximizing the genetic diversity of the captive population is an integral part of the current recovery effort.

Issue 15: If there are no impacts to current land uses from the reintroduction, why eliminate the benefit of sections 7 and 9 of the Act from the action? Black-footed ferrets should be reintroduced with full protection as endangered due to current risks they face. Such a reintroduction also would provide the opportunity to establish critical habitat in the AVEPA. There is a problem when small, local interests can drive reintroduction/conservation of one of the most endangered species on the continent. The action is very biased toward protecting human activities.

Service Response: There appears to be some misunderstanding of the process involved in the nonessential experimental determination and the reintroduction process as it applies to the Aubrey Valley project. The Department, Service, and other cooperators evaluated much of the remaining prairie dog habitats in Arizona in order to find the best potential ferret reintroduction site. The evaluation included an assessment of whether existing and foreseeable land uses in the area were compatible with the maintenance of a ferret population. Despite intensive surveys, no wild black-footed ferrets were found in the Aubrey Valley area. Landowners in the AVEPA were approached by the Department and Service to solicit their support for the project. Such support could only be obtained through a nonessential experimental designation. The landowners and other cooperators who support the establishment of wild ferret population in the Aubrey Valley deserve credit for voluntary cooperation in the recovery of the ferret.

Issue 16: Language in the rule prescribing a reevaluation of the reintroduction efforts in the AVEPA is too restrictive regarding disease factors and the minimum number of ferrets available for a release.

Service Response: The final rule has been modified to address disease concerns relating specifically to the black-footed ferret. Provisions of the rule allow for flexibility to ''reevaluate'' reintroduction efforts in the event of an identified disease or if fewer than 20 animals are available. It does not require curtailment of the effort with discovery of a single case of disease. Other factors, such as the species carrying the disease, the animal's age, and the proximity of the animal to the release area or experimental population boundaries would be considered, and the Service would seek evaluations by experts before responding to a report of disease. The Service must maintain flexibility to evaluate disease circumstances as they arise without adopting a requirement to change management capabilities only after documentation of a set number of disease cases. Likewise, the rule does not require that the project be curtailed if only 19 animals are available for release. However, the Service would evaluate the potential benefits of an experimental release of a small number of ferrets against augmenting an established release with those same animals. The reintroduction of at least 20 ferrets is a minimum target release level established in previous black-footed ferret reintroduction projects.

Issue 17: A canine distemper vaccine is available for black-footed ferrets although in short supply. The Service should not restrict release of ferrets if they have not been vaccinated. Vaccination should be done on a ''whenever possible'' basis.

Service Response: The Service agrees, and the rule has been modified to specify that ferrets will be vaccinated to the extent possible.

Issue 18: Genetic testing may not be necessary to determine the origin of a marked ferret found outside the AVEPA (i.e., whether it came from the AVEPA). Genetic testing may only be necessary for unmarked or other unidentified animals, such as dispersing young. The rule should state that any unmarked ferret occurring outside AVEPA will initially be considered endangered, but should be captured for genetic testing to determine the origin of the individual. It also should state that if the captured animal is determined to be genetically unrelated to ferrets from the experimental population (possibly a wild animal), it will be retained for use in the captive breeding program.

Service Response: The rule has been modified to reflect that the origin of a ferret captured outside the AVEPA can be determined by the presence of identification tags. Ferrets genetically unrelated to the nonessential experimental population that are found outside the AVEPA will be considered endangered and can be retained in captivity. This issue is discussed in greater length below.

Issue 19: The proposal states that at least 10 coyotes, and possibly badgers, will be tested for canine distemper before ferrets are released in the AVEPA. Setting a minimum number could delay release efforts if goals are not obtained before the release date. Instead, the rule should state that prior to the release of ferrets, an attempt will be made to test at least 10 coyotes, and possibly badgers, for evidence of canine distemper.

Service Response: An episode of canine distemper in the AVEPA could have a profound affect on the management of the reintroduced ferret population. Consequently, the Service and Department must establish adequate canine distemper monitoring. The collection and evaluation of 10 predators/each year is considered a minimally acceptable level.

Issue 20: The term ''predator management'' should be substituted for ''predator control.'' Traditionally, ''control'' implies killing, and nonlethal

techniques should be evaluated before implementing any control program.

Service Response: The Service agrees with this comment, and the appropriate changes have been made.

Issue 21: The status of the Arizona State Land Department is unclear. Is it a landowner, cooperator, and/or land-managing agency? What is the difference among these terms in various contexts? The proposed rule is confusing as to the role of the Arizona Game and Fish Department, which does not have authority to make decisions for the Arizona State Land Department, the owner and trustee of school trust lands.

Service Response: In the various contexts of the rule, the Arizona State Land Department is a landowner, cooperator, and land-managing agency. There is no distinction as to how the provisions of the rule are applied to any of these categories. The rule was revised to clarify the status of all landowners affected by this rule.

Issue 22: The status of ferrets found outside boundaries of the Aubrey Valley Management Area is unclear. Ferrets introduced to the Aubrey Valley may migrate to other areas where prairie dogs exist. The commenter would oppose the reintroduction plan if such migration could lead to the designation of critical habitat or other consequences under the Act that would affect lands in the vicinity of, but outside the boundaries of, the Aubrey Valley Management Area.

Service Response: Black-footed ferrets outside the boundary of the AVEPA will be classified as endangered under the Act. Although the Service cannot make a commitment that lands outside of AVEPA will never be designated as critical habitat, designation is extremely unlikely. A designation of critical habitat would require a separate rulemaking process that also would involve assessments of economic impacts and would provide for public comment and hearings. No critical habitat has been designated for the black-footed ferret, and no such designations are planned. The Service regards full cooperation with any potentially affected landowner, inside or outside of the AVEPA, as essential to the success of this and future black-footed ferret reintroduction projects. The Service will try to settle conflicts between ferret recovery concerns and land use activities to the benefit of both ferrets and landowners. The Service and Department do not expect black-footed ferrets to leave the AVEPA.

Issue 23: What is the legal significance of the distinction between the ''reintroduction area,'' the ''experimental population site,'' the ''Aubrey Valley Experimental Population Area,'' and the ''Aubrey Valley Management Area?'' Language in the rule should clarify the origin of the term ''reintroduction area.''

Service Response: The ''reintroduction area'' is that portion of the AVEPA where the actual release of ferrets will occur. The ''experimental population site'' is the AVEPA; AVEPA is an acronym for the Aubrey Valley Experimental Population Area. Use of these terms in the rule has been clarified.

Issue 24: Will State-owned lands receive the same protection and treatment as ''private lands?''

Service Response: Yes. This rule makes no distinction between and applies no separate conditions to State versus private lands.

Issue 25: The proposed rule implies that ferrets will not be removed from lands outside the designated experimental area if they migrate to these areas. What justifies this distinction? Ferrets that leave the AVEPA should be returned upon request by an affected landowner.

Service Response: The special rules allow removal of black-footed ferrets within the AVEPA at the request of a landowner. Ferrets outside of the AVEPA would have endangered status. The Service cannot remove endangered species solely at the request of a landowner. However, the Service, the Department, and/or authorized cooperators can capture ferrets outside of the AVEPA and would probably move ferrets that originated from the AVEPA back to the experimental area. Moreover, in the unlikely event that a ferret is found outside of the AVEPA, regardless of whether or not it originated in the AVEPA, the Service will work closely with affected landowners to ensure that applicable conservation measures are developed cooperatively, and to the benefit of both landowner and ferrets.

Issue 26: The proposal does not clearly state under what circumstances the Service would reevaluate the plan, and what the consequences might be for State-owned lands. Is a single ''5-year evaluation'' contemplated, or will there be annual evaluations for the first 5 years of the program? If the program continues more than 5 years after the reintroduction, when, how frequently, and under what circumstances will it be reevaluated? Can the Service, after the first 5 years, reevaluate the ''nonessential experimental'' designation for the population in the Aubrey Valley?

Service Response: The special rules require overall evaluation of the reintroduction effort at 5 years. Management efforts carried out as part of the reintroduction also will be evaluated on an annual basis. For instance, if disease substantially decreases prairie dog populations in a given year, the Service and Department may decide not to release ferrets that year. Although the rules do not specifically mention other evaluations, if the active reintroduction effort continues beyond 5 years, it will continue to be evaluated as appropriate. The special rules make clear that the planned 5-year evaluation will not include a reevaluation of the experimental population designation. Although the Service can technically reevaluate the experimental population designation at any time, a change in designation would have to be done with the concurrence of landowners for the program to continue. Any change of designation would have to be done through the rulemaking process, which provides for public comment and hearings. No changes in designation are expected or planned.

Issue 27: Can landowners only require the Service to remove ferrets from their lands if the nonessential experimental status is altered? Can the State of Arizona require removal of ferrets from its lands if the status is altered, or is that right limited to ''private landowners?''

Service Response: The general regulations governing nonessential experimental populations under the Act and this rule give State lands the same status as private lands. The rule has been modified to clarify the distinction between Federal public lands and all other landowners. This rule imposes no requirements for landowners to maintain ferrets on their properties in the AVEPA over any specified time period. The Service would attempt to fully accommodate any request from a landowner/cooperator who wishes to withdraw from the project and who sought to remove or exclude project facilities, personnel, and/or ferrets.

Issue 28: How long will the experimental population be maintained in the Aubrey Valley?

Service Response: The duration of designation of the population as experimental is indefinite. The reintroduction effort will continue until it either succeeds or fails. If recovery is achieved and the species is delisted, the Service will withdraw the experimental population designation. The entire species would then not retain any legal status or protection under the Act.

Issue 29: The Arizona State Land Department is not presently named as a party to the Cooperative Reintroduction Plan. Is the Plan part of the rule? What

is the legal significance of references in the rule to the Plan? How will the rule affect landowners who are not parties to the Plan?

Service Response: The rule refers to the Cooperative Reintroduction Plan. It will be used as a guiding document for actual reintroduction efforts; however, it has no legal basis. The rule establishes and adopts regulations under section 10(j) of the Act for the establishment of the AVEPA. It applies equally to all landowners in the AVEPA.

Issue 30: What restrictions on land management activities are contemplated for any of the areas affected by the rule? What restrictions does the Cooperative Reintroduction Plan impose? Will there be any restrictions imposed other than those that a landowner has accepted in writing?

Service Response: The rule and the Cooperative Reintroduction Plan do not impose restrictions on land management activities. The Cooperative Reintroduction Plan is the vehicle to guide development of management measures that will aid ferret reintroduction and recovery efforts. Landowners and cooperators involved in the Aubrey Valley ferret project have cooperatively developed these measures.

Issue 31: What specific area is referred to as ''the prairie dog habitat known in 1992?'' What activities or conditions would result in a reduction of that ''prairie dog habitat?'' What happens if landowners eventually devote their lands to a use incompatible with use as prairie dog habitat?

Service Response: The specific area encompasses all prairie dog colonies that were discovered by field surveys in 1992. Several activities or conditions could affect that habitat, such as disease, prairie dog poisoning, and actual disruption or destruction of lands occupied by prairie dogs. If large, widespread acreage of lands in the AVEPA were eventually devoted to uses incompatible with prairie dog and ferret habitat, the Service and Department would have to reconsider continuation of the reintroduction program in the Aubrey Valley.

Issue 32: The application of ''take'' prohibitions and requirements is unclear. What is meant by ''necessary measures'' that would be taken if incidental take exceeds 12 percent? What will the role of landowners be in determining what measures will be taken and in what specific locations? The measures should be implemented only with the consent of any affected landowners.

Service Response: The figure of 12 percent is an allowable take level established in the intra-Service section 7 consultation that was required for the planning of a nonessential experimental black-footed ferret population in the Aubrey Valley. The biological opinion that resulted from that consultation included several reasonable and prudent measures that must be incorporated by the Service to reduce or eliminate anticipated incidental take. ''Necessary measures'' can only include those that would be developed in cooperation with landowners within the AVEPA as additional means to help reduce or eliminate incidental take. Any such measures that could affect existing landusers would have to be carried out in cooperation with, and with the consent of, AVEPA landowners.

Issue 33: What is the legal relationship between the Black-footed Ferret Recovery Plan and the rule? In the event of a conflict between the two with regard to the treatment of landowners, will the rule take priority over the recovery plan?

Service Response: There is no legal relationship between the recovery plan and this rule. The recovery plan is a nonbinding document that includes recommended measures for recovering the black-footed ferret. This rule is a change in regulation that assigns a specific status to a particular population, and in turn provides means to manage that population. In the event of a conflict in intent, meaning, etc., the rule would prevail over the recovery plan.

Issue 34: The rule should state that, when appropriate, strategies and contingencies to minimize harm to ferrets will be included in the management plan and, with the consent of any affected landowners, will be implemented by the Service. Objectives to maintain prairie dog habitat should be negotiated through written agreements with affected landowners. No restrictions should be placed on landowners without their written consent.

Service Response: This rule places no restrictions on landowners. Affected landowners have already reviewed and approved a reintroduction plan that incorporates strategies and contingencies to manage ferrets. The Service and Department intend for that plan to be dynamic, and any measures necessary to maintain prairie dog habitat will be carried out in cooperation with affected landowners.

Issue 35: What does the Service consider to be ''negligent'' conduct, or intentional conduct, that would constitute a take violation? The last sentence of special rule (g)(5) should be changed to read, ''Intentional take that is not 'incidental take' as defined in this rule will be referred to the appropriate authorities for prosecution. Otherwise lawful land use activities, including the alteration of prairie dog and ferret habitat, whether or not such activities are intentional or 'negligent,' shall not be considered to be an unlawful take under the Act unless they are contrary to the provisions of a cooperative agreement between the Service and an affected landowner.''

Service Response: The legal limits of ''negligence'' related to the incidental take of ferrets are difficult to prescribe. The suggestion to modify the rule to authorize ''intentional'' or ''negligent'' incidental take in the course of an otherwise legal activity is beyond the scope of this rule and would require a change in the Act and implementing regulations. Inadvertent take by persons engaged in otherwise lawful activities (e.g. operating vehicles) without a knowing, intentional effort to do so, would be considered incidental and would not be subject to punishment under the Act. A reason for adopting a nonessential experimental designation is to allow management of ferrets in the AVEPA without affecting existing land uses or other human activities. Special rule (g)(5) has been applied to all previous former black-footed ferret reintroduction sites and has been thoroughly reviewed by the Service and by Department of the Interior solicitors. The take prohibition of the Act cannot be modified through this special rule and cannot be governed by specifications of a separate cooperative agreement not authorized through regulation.

Issue 36: The rule should state that affected landowners will support the reintroduction if ferrets located in or dispersing or migrating from the AVEPA are considered to be a nonessential experimental population and if the reintroduction does not constrain otherwise lawful land use activities, such as grazing, without the consent of the affected landowner.

Service Response: This rule only establishes experimental population status for ferrets in the AVEPA. Any change in status of ferrets outside the AVEPA would have to be accomplished through additional rules. It should be noted that the Service and Department believe that ferrets are extremely unlikely to move out of the experimental area.

Issue 37: The next to last sentence of special rule (g)(9)(iv) should be changed to read: ''A black-footed ferret occurring outside the experimental area in Arizona would be considered as endangered but could be captured for

genetic testing or removed and relocated upon the request of the affected landowner.''

Service Response: Any black-footed ferret occurring outside the AVEPA would be classified as endangered. The Service cannot delegate the decision to remove an endangered species to the owners of lands that would be potentially occupied by the species (see Service Response to Issues 22 and 25.)

Issue 38: The second and subsequent sentences of special rule (g)(12) should be changed to read as: ''Should the Service determine that a substantial modification to black-footed ferret management on non-Federal lands is required, any landowner who consented * * *.''

Service Response: The part of the special rule referred to relates to change in the designation or status of the nonessential experimental population. The Service has modified the language of the rule to clarify the applicability of this provision to all non-Federal landowners.

Issue 39: Part of Township 28 North, Range 7 West (south of the railroad tracks) is being developed as home sites, with road development, power lines and septic systems. It should be noted that the reintroduction area is in a developed or developing area.

Service Response: Township 28 North is not south of the railroad tracks at the southern boundary of the AVEPA. However Township 23 North is, and this may be the township to which the commenter intended to refer. The special rule, including (g)(5), which covers take of black-footed ferrets incidental to otherwise lawful activities, also would apply to any development within the AVEPA. In addition, that portion of Township 23 North that is south of the railroad tracks is at the edge of the AVEPA and in habitat that is marginal for ferrets. The actual reintroduction of ferrets will occur some distance away.

Issue 40: By Resolution No. RCF–030–94, the Navajo Nation supports the proposed black-footed ferret reintroduction in the Aubrey Valley. A representative of the Arizona Zoological Society and the Phoenix Zoo stated they have been actively involved in the propagation and rescue of the species for an extended period of time and encourage favorable consideration for active reintroduction in the State of Arizona. An employee of the Phoenix Zoo stated that the captive breeding program is very strong, but the point has been reached where more individuals need to be reintroduced to the wild. Reintroduction in Aubrey Valley, where reacclimation and preconditioning can teach these animals to behave more like wild ferrets than captives, is essential for the success of the program.

Service Response: The Service appreciates this support and agrees with these comments.

Issue 41: Imagine the cost to taxpayers to collar, track and survey these ferrets. In other reintroductions, 24 percent of the ferrets found were suspected of falling victim to coyote predation. Reintroduction is just another attempt to make unneeded work and complete an agenda for extremists.

Service Response: Surveys, monitoring, or any other management work deemed appropriate for specific releases are necessary to ensure black-footed ferret reintroduction success, and ultimately the recovery of the species. Much of the tracking and monitoring efforts will provide data needed to improve reintroduction efficacy, including how best to respond to such detriments as coyote predation. The Act directs all Federal agencies, and primarily the Service, to recover listed species. Unfortunately, the populations of some species are in such dire condition that reintroduction and other intensive management efforts are needed to achieve recovery.

National Environmental Policy Act

The Service has prepared an environmental assessment as defined under the authority of the National Environmental Policy Act of 1969. It is available from the Service office identified in the **ADDRESSES** section.

Required Determinations

The Department of the Interior has reviewed this rule under Executive Order 12866 and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the AVEPA, it will not cause significant economic impacts. This rule will impose no direct costs, enforcement costs, information collection, or record keeping requirements on small entities, and the rule contains no record keeping requirements as defined under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

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Author

The primary authors of this rule are William Austin and Mike Lockhart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, 50 CFR chapter I is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing entries for the ''Ferret, black-footed'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Ferret, black-footed	Mustela nigripes	Western U.S.A., Western Canada.	Entire, except where listed as an experiental population below..	E	1, 3, 433, 545, 546, 582.	NA	NA
Do	.....do	.....do	U.S.A. (specified portions of WY, MT, SD, and AZ)..	XN	433, 545, 546, 582.	NA	17.84(g)
*	*	*	*	*	*		*

3. Section 17.84 is amended by revising the text of paragraph (g) preceding the maps and by adding a new map following the existing maps at the end of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i), (g)(9)(ii), (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3),(4),(5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret from the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered ''knowing take'' for purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming, telephone (307) 772–2374.

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota, telephone (605) 224–8693).

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana, telephone (406) 449–5225.

(iv) Such taking in the Aubrey Valley experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona, telephone (602) 640–2720.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g) (2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map of Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the

Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to 9 black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will thereafter comprise the nonessential experimental population. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may be done in the following manner if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(iv) The Aubrey Valley Experimental Population Area is shown on the attached map for Arizona and will be considered the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area will be those parts of Coconino, Mohave, and Yavapai Counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey Cliffs to the Supai Road (State Route 18), southwest along the Supai Road to Township 26 North, then west to Range 11 West, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of Section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of Section 12, Township 24 North, Range 9 West; then southeast to SE corner Section 20, Township 24 West, Range 8 West; then south to the SE corner Section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 33, Township 24 North, Range 8 West; then northeast to the SE corner of Section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 12, Township 23 North, Range 8 West; then southeast to the SE corner of Section 8, Township 23 North, Range 7 West; then southeast to the SE corner of Section 16, Township 23 North, Range 7 West; then east to the half section point of the north boundary line of Section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of Section 26, Township 23 North, Range 7 West; then east along section line to route 66; then southeast along route 66 to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona would be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is determined to have originated from the experimental population, either genetically or through tagging devices, it may be returned to the reintroduction area or to a captive facility. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio-telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency or their agents and given appropriate care. Such an animal may be released back to its respective reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

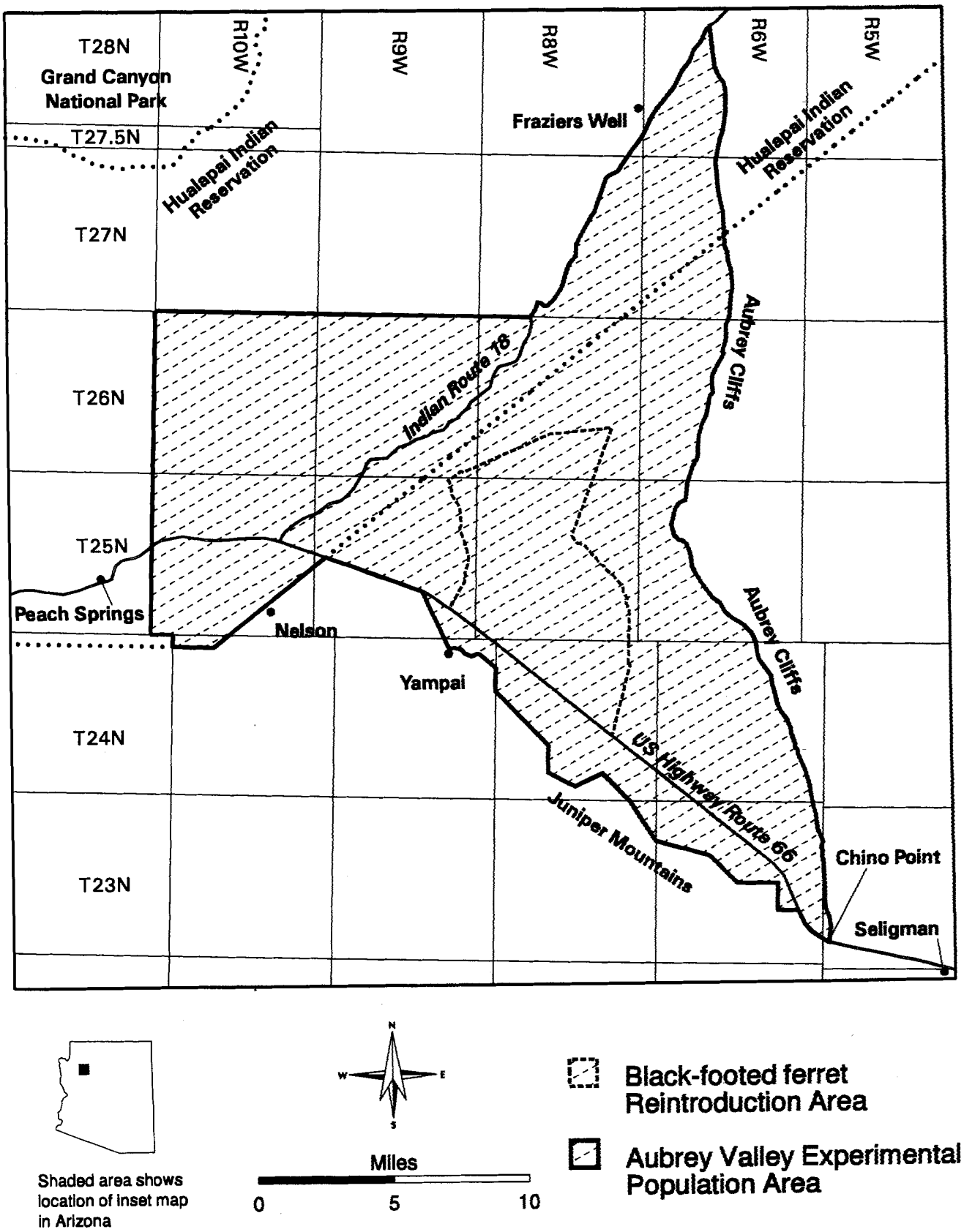
(11) The status of each experimental population will be reevaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a reevaluation of the ''nonessential experimental'' designation for these populations. The Service does not foresee any likely

situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any landowner who consented to the introduction of black-footed ferrets on their lands will be permitted to terminate their consent, and at their request, the ferrets will be relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

BILLING CODE 4310–55–P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R6W
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Hualapai Indian Reservation
Fraziers Well
Hualapai Indian Reservation
Aubrey Cliffs
Indian Route 18
Aubrey Cliffs
Peach Springs
Nelson
Yampai
US Highway Route 66
Juniper Mountains
Chino Point
Seligman
Shaded area shows location of inset map in Arizona
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Black-footed ferret Reintroduction Area
Aubrey Valley Experimental Population Area

* * * * *

Dated: March 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–6732 Filed 3–18–96; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 031296A]

Atlantic Tuna Fisheries; Closure

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

ACTION: Fishery closure.

SUMMARY: NMFS has determined that the 1996 Atlantic bluefin tuna (ABT) Angling category quota for fish between 47 inches (119 cm) and 73 inches (185 cm) has been reached. Therefore, landing large school and small medium ABT under the Angling category is prohibited effective at 11:30 p.m. on March 17, 1996. This action is being taken to prevent overharvest of this category.

EFFECTIVE DATE: The closure is effective 11:30 p.m., local time, March 17, 1996, through December 31, 1996, or until the effective date of any future adjustment, which will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2339.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of large school and small medium ABT to be harvested from the regulatory area. NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period.

Preliminary information on total angling effort and catch of ABT between 47 inches (119 cm) and 73 inches (185 cm) indicates that for January and February, 1996, landings may total nearly 100 mt. Information available to NMFS on fishing effort and catch rates since March 1, 1996, indicates that the remaining quota is likely to be taken by March 17, 1996. Therefore, fishing for, retention, possessing, or landing large school or small medium ABT must cease at 11:30 p.m., local time, March 17, 1996. This action is to prevent overharvest of the quota established for this category.

Anglers may continue to fish for and land school size ABT, measuring 27 inches (69 cm) to less than 47 inches (119 cm) total curved fork length. Retention of school ABT is subject to the revised bag limit of one fish per boat per day as set in a prior document (61 FR 8223, March 4, 1996). Anglers may also continue to fish for ABT 47 inches (119 cm) or greater under the NMFS tag and release program (50 CFR 285.27).

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: March 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6595 Filed 3–14–96; 3:56 pm]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 960111003–6068–03; I.D. 030796A]

RIN 0648–AI48

Pacific Halibut Fisheries; Catch Sharing Plans

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

ACTION: Final rule and approval of Catch Sharing Plans.

SUMMARY: NMFS, on behalf of the International Pacific Halibut Commission (IPHC), publishes regulations governing the Pacific halibut fishery that are recommended by the IPHC and approved by the Secretary of State. NMFS also approves regulations implementing Catch Sharing Plans (CSPs) for Areas 2A and 4, and makes several minor regulatory changes. This final rule is necessary to implement approved regulatory changes for the halibut fishery in 1996. The intended effect of this action is to enhance the conservation and growth of the Pacific halibut stock in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1996.

ADDRESSES: NMFS Alaska Region, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802–1668; or NMFS Northwest Region, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228, or Joe Scordino, 206–526–6150.

SUPPLEMENTARY INFORMATION: The IPHC has implemented regulations governing the Pacific halibut fishery in 1996, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Except for the changes described below, the approved regulations for the 1996 fishery are the same as those for the 1995 fishery (60 FR 14651, March 20, 1995). The catch limit for each of the IPHC regulatory areas remains unchanged. Substantive changes include: (1) New fishing periods in Area 2A, (2) revision of the prohibition on mutilating halibut, (3) revision of the logbook requirement, (4) new requirements for fishing in multiple regulatory areas, (5) new vessel clearance requirements for Area 4, and (6) a new possession limit in the Area 2B sport fishery.

In addition, this action implements the CSPs for regulatory Areas 2A and 4. These CSPs were developed respectively by the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention (Convention) between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC and NPFMC to allocate halibut catches should such allocation be necessary.

IPHC Regulations

On behalf of the IPHC, the approved IPHC regulations are published in the Federal Register to provide notice of

their effectiveness and to inform persons subject to the regulations of the restrictions and requirements. The IPHC held its Annual Meeting on January 22–25, 1996, in Bellevue, WA, and adopted regulations for 1996. The substantive changes to the IPHC regulations are discussed below.

Area 2A Fishing Periods

In Area 2A, six 10-hour fishing periods for the non-treaty directed commercial fishery are specified at § 301.7(b) for July 10, July 24, August 14, August 28, September 11, and September 25, 1996. All fishing periods will begin at 8 a.m. and end at 6 p.m. local time unless announced otherwise, and will be further restricted by fishing period limits announced by the IPHC.

Prohibition Against Mutilating Halibut

IPHC regulations at § 301.12 specify minimum size limits for halibut taken in the commercial fishery, and further prohibit the mutilation of halibut in a manner that prevents authorized officers from determining whether the halibut complies with those minimum size limits. To improve enforcement of the minimum size limits, the IPHC amended these regulations at § 301.12(b)(2) to prohibit possession of filleted halibut on board vessels. The IPHC also amended these regulations to address an industry request to remove and freeze halibut cheeks on board vessels. Paragraph 301.12(b)(1) now authorizes possession on board vessels of halibut cheeks cut from halibut caught by persons authorized to process that halibut on board in accordance with NMFS regulations implementing the individual fishing quota (IFQ) program for the halibut fishery in and off Alaska.

Logbooks

The commercial fishery logbook required by § 301.15 now may be kept in groundfish daily fishing logbooks provided by NMFS pursuant to 50 CFR parts 672 and 675. Before this change, IPHC regulations required commercial halibut fishermen to keep their halibut logbooks separate from other records maintained on board the vessel.

Fishing in Multiple Regulatory Areas

The IPHC collects halibut stock data, by regulatory area, from halibut landed in the commercial fishery to carry out its stock assessment and conservation responsibilities. Fishermen harvesting halibut in Areas 2C, 3, and 4 under the IFQ regulations increasingly are taking advantage of the longer, slower-paced fishery by fishing in more than one regulatory area during a single fishing trip. The IPHC is concerned that this practice eventually could degrade stock data collected at landing for each regulatory area. Consequently, the IPHC developed new regulations at § 301.17 restricting the practice of fishing in more than one regulatory area during a fishing trip. Halibut caught in Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time only if the operator of the vessel has a NMFS-certified observer aboard as required by the IFQ regulations published at 50 CFR part 676. Halibut caught in the more remote Areas 4A, 4B, 4C, and 4D may be possessed aboard a vessel at the same time only if the operator of the vessel has a NMFS-certified observer on board whenever halibut caught from more than one of those regulatory areas is on board. Moreover, halibut caught in more than one regulatory area may be possessed on board a vessel only if the operator can identify the regulatory area in which each halibut on board was caught. The regulations do not specify any single method of identifying the halibut by area, but suggest that identification may be accomplished by separating the catch in the hold or by tagging each fish according to the area of harvest.

Area 4 Vessel Clearances

IPHC regulations at § 301.14 implement some modifications in the vessel clearance requirements for vessels fishing in Area 4. Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from all clearance requirements. Any vessel that is used to fish for halibut only in Area 4B, 4C, or 4D/4E and lands its total annual halibut catch at a port within the area in which the vessel fished continues to be exempt from the clearance requirements. Vessel clearances required prior to fishing in Areas 4C and 4D may be obtained only in St. Paul or St. George. Vessel clearances required at the completion of fishing in Areas 4C and 4D may be obtained at St. Paul, St. George, Dutch Harbor, or Akutan. The clearances obtained at St. Paul or St. George may be obtained via VHF radio provided visual identification of the vessel can be confirmed from shore. Clearance requirements for Areas 4A and 4B are unchanged from 1995.

IPHC regulations at § 301.14(i) provide that vessels that fish in more than one regulatory area within Area 4 during the same trip, as authorized by § 301.17(c), are exempt from the general clearance requirements of § 301.14(a). However, before beginning to fish and before unloading halibut, these vessels must obtain clearances in Dutch Harbor, Akutan, St. George, St. Paul, or Nazan Bay on Atka Island.

Area 2B Sport Fishery Possession Limit

IPHC regulations at paragraphs 301.22 (h) and (i) are changed to increase the possession limit in waters off the coast of British Columbia from two to three halibut.

Catch Sharing Plan for Area 2A

The PFMC has prepared CSPs since 1988 to allocate the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. For 1995 and beyond, NMFS implemented a long-term CSP (60 FR 14651, March 20, 1995) recommended by the PFMC that was published at 50 CFR 301.23 (redesignated 301.24 by this notice). After reviewing the conduct of the halibut fisheries in Area 2A under the first year of the long term CSP, the PFMC recommended several revisions to the CSP affecting sport fishery subareas in Washington and management of incidental halibut harvest in the salmon troll fishery. Further, the long term CSP only provided sport fishery structuring for the area off Oregon for 1995, and the PFMC recommended provisions in the CSP to apply over the long term to Oregon sport fishery subareas. In addition, in accordance with the CSP, the PFMC made recommendations on the specific seasons, dates, and other management measures in the sport fisheries necessary to implement the CSP in 1996. A complete description of the PFMC recommendations and proposed changes to the CSP and implementing regulations were published at (61 FR 2782, January 29, 1996) with a request for public comments. No comments were received on the proposed changes to the CSP, and NMFS approves the changes to the CSP at §§ 301.24(e)(1), (3), and (f)(1) (i), (iii), (v) and (vi).

In accordance with the CSP, the Washington Department of Fish and Wildlife (WDFW) held a public workshop on February 1, 1996, (after the IPHC set the Area 2A quota) to develop recommendations on the opening dates and weekly structure of the sport fisheries in Washington. The WDFW sent NMFS a letter on February 12, 1996 advising on the outcome of the workshop and recommended only one change to the proposed regulations on sport fisheries. In the Puget Sound sport fishery subarea, WDFW recommends that the fishing season open on May 23 and continue through July 27. NMFS

agrees with this recommendation and the final regulation at § 301.22(d)(2)(i)(A) has been modified.

The CSP also stipulates that the treaty Indian tribes will estimate their ceremonial and subsistence (C&S) harvest expectations in January of each year, and the remainder of the tribal allocation will be for the tribal commercial fishery. On January 24, 1996, the tribes advised NMFS that the C&S harvest expectation for 1996 is 14,000 lb (6.35 mt). The regulations as shown herein at 50 CFR 301.21 (d) and (g) therefore have a tribal commercial quota of 168,000 lb (76.2 mt) and a year-round C&S fishery that is expected to harvest 14,000 lb (6.35 mt).

Catch Sharing Plan for Area 4

The NPFMC developed a CSP to apportion the IPHC's catch limit for Area 4 among subareas 4A, 4B, 4C, 4D, and 4E in and off the State of Alaska. NMFS published the proposed CSP for Area 4 on January 30, 1996 (61 FR 2992). The rationale for the CSP for Area 4 is discussed in the proposed CSP. No comments on the proposed CSP were received from the public or from other government agencies. No changes from the proposed CSP are made in the final CSP, which is adopted as follows:

Introduction: This CSP constitutes a framework that applies to the annual Area 4 catch limit established by the IPHC. The purpose of the CSP is to establish subareas within Area 4, and to provide for the apportionment of the Area 4 catch limit among the subareas as necessary to carry out the objectives of the IFQ and CDQ programs that allocate halibut among U.S. fishermen. The IPHC, consistent with its responsibilities, implemented the measures specified in this CSP at its annual meeting in January 1996, based on an assumption that the CSP would be approved by NMFS. This CSP will continue in effect until amended by the NPFMC or superseded by action of the IPHC.

Area 4 subareas: Regulatory Areas 4A, 4B, 4C, 4D, and 4E will be established as they are defined currently at paragraphs (f), (g), (h), (i), and (j), respectively, at § 301.6. For the convenience of the reader, definitions of these subareas are set out as follows:

Area 4A includes all waters in the Gulf of Alaska west of Area 3B defined in § 301.6(e) and in the Bering Sea west of the closed area, defined in § 301.9, that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.

Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. lat.

Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9, that are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.

Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.

Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

Catch limit apportionments: Apportionments of the Area 4 catch limit specified annually by the IPHC are as follows:

Subarea 4A	33 percent
Subarea 4B	39 percent
Subarea 4C	13 percent
Subarea 4D	13 percent
Subarea 4E	2 percent

An exception to this CSP apportionment schedule is provided when the Area 4 catch limit is greater than 5,920,000 lb (2,685.3 metric tons (mt)) and less than or equal to 6,000,000 lb (2,721.6 mt). In this event, the amount of the Area 4 catch limit that is greater than 5,920,000 lb (2,685.3 mt) but less than or equal to 6,000,000 lb (2,721.6 mt) would be assigned to subarea 4E. The amount of the Area 4 catch limit that is greater than 6,000,000 lb (2,721.6 mt) would be distributed among all Area 4 subareas according to the CSP apportionment schedule.

Example 1: If the IPHC specifies the Area 4 catch limit to be 5,980,000 lb (2,712.5 mt), then 5,920,000 lb (2,685.3 mt) would be distributed among the Area 4 subareas according to the CSP apportionment schedule, and 60,000 lb (27.2 mt) would be added to subarea 4E as follows:

Subarea			lb	mt
4A	.33×5,920,000	=	1,953,600	886.1
4B	.39×5,920,000	=	2,308,800	1,047.3
4C	.13×5,920,000	=	769,600	349.1
4D	.13×5,920,000	=	769,600	349.1
4E	.02×5,920,000+60,000	=	178,400	80.9
Totals	1.00	....	5,980,000	2,712.5

Example 2: If the IPHC specifies the Area 4 catch limit to be 6,100,000 lb (2,766.9 mt), then 5,920,000 lb (2,685.3 mt) plus the amount that is greater than 6,000,000 lb (2,721.6 mt) (i.e., 100,000 lb (45.4 mt)) would be distributed among the Area 4 subareas according to the CSP apportionment schedule, and the 80,000 lb (36.3 mt) remainder would be added to subarea 4E as follows:

Subarea			lb	mt
4A	.33×6,020,000	=	1,986,600	901.1
4B	.39×6,020,000	=	2,347,800	1,064.9
4C	.13×6,020,000	=	782,600	355.0
4D	.13×6,020,000	=	782,600	355.0
4E	.02×6,020,000+80,000	=	200,400	90.9
Totals	1.00	....	6,100,000	2,766.9

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service,* 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act (APA) does not apply to this notice of the effectiveness and content of the IPHC regulations. Because proposed rulemaking is not required, the preparation of a regulatory flexibility analysis is not required.

CSP for Area 2A

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

NMFS finds under 5 U.S.C. 553(d)(3) of the APA that good cause exists for waiving the 30-day delayed-effectiveness period for the implementation of the Area 2A CSP. It would be contrary to the public interest to disrupt the tribal halibut commercial fishery, which opens on March 15, 1996.

CSP for Area 4

Copies of the Environmental Assessment/Regulatory Impact Review prepared for the CSP are available (see **ADDRESSES**).

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

NMFS finds under 5 U.S.C. 553(d)(3) of the APA that good cause exists for waiving the 30-day delayed-effectiveness period for the implementation of the Area 4 CSP. It would be contrary to the public interest to disrupt the halibut commercial fishery, which open on March 15, 1996.

List of Subjects in 50 CFR Part 301

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: March 13, 1996.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for 50 CFR part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In § 301.3, paragraph (h) is revised, paragraphs (i), (j), (k), (l), (m), (n), and (o) are redesignated (j), (k), (l), (m), (n), (o), and (p), respectively, and new paragraph (i) is added, to read as follows:

§ 301.3 Licensing vessels.

* * * * *

(h) A vessel operating in the directed commercial fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on April 30, or the first weekday in May if April 30 is a Saturday or a Sunday.

(i) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

* * * * *

3. In § 301.5, paragraphs (b), (c), (d), (e), and (f) are revised to read as follows:

§ 301.5 Application.

* * * * *

(b) Section 301.6 through 301.20 apply to commercial fishing for halibut.

(c) Section 301.21 applies to the U.S. treaty Indian tribal fishery in Area 2A–1.

(d) Section 301.22 applies to sport fishing for halibut.

(e) Section 301.23 applies to non-Indian commercial and sport fishing for halibut in Area 2A.

(f) Section 301.24 applies to all fishing for halibut in Area 2A.

* * * * *

4. In § 301.7, paragraphs (b) and (c) are revised to read as follows:

§ 301.7 Fishing periods.

* * * * *

(b) Each fishing period in the Area 2A directed fishery south of 46°53′18″ N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 10, July 24, August 14, August 28, September 11, and September 25, unless the Commission specifies otherwise.

(c) Notwithstanding paragraph (b) of this section and § 301.10(g), an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Operators of vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the Federal Register. Halibut landing restrictions for the salmon troll fishery will be based on the expected number of incidental harvest permits, halibut allocation, and other pertinent information, and may include landing ratios, landing limits, or other means to control the rate of halibut harvest. Inseason changes to the halibut landing restrictions will be announced in accordance with § 301.22(d)(3)(iii).

* * * * *

5. In § 301.8, paragraph (c) is revised to read as follows:

§ 301.8 Closed periods.

* * * * *

(c) Subject to § 301.18 (g) and (h), fishing is not prohibited for any species of fish other than halibut during the closed periods.

* * * * *

6. In § 301.10, paragraphs (a) and (b) are revised to read as follows:

§ 301.10 Catch Limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 shall be limited to the weight expressed in pounds or metric tons shown in the following table.

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	107,120	49
2B	9,520,000	4,318
2C	9,000,000	4,082
3A	20,000,000	9,072
3B	3,700,000	1,678
4A	1,950,000	885
4B	2,310,000	1,048
4C	770,000	349
4D	770,000	349
4E	120,000	54

(b) Notwithstanding paragraph (a) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53′18″ N. lat. during the fishing periods set out in § 301.7(b) and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in § 301.7(c). Inseason actions to transfer catch between these fisheries may occur in conformance with § 301.24.

* * * * *

7. In § 301.12, paragraph (b) is revised to read as follows:

§ 301.12 Size limits.

* * * * *

(b) No person shall possess on board a vessel a halibut that has been mutilated or otherwise disfigured in any manner that prevents determination of whether the halibut complies with the size limits specified in this section, except that:

(1) This paragraph shall not prohibit the possession on board a vessel of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR part 676; and

(2) No person shall possess a filleted halibut on board a vessel.

* * * * *

8. Section 301.14 is revised to read as follows:

§ 301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the unloading of any halibut

caught in any of these areas, unless specifically exempted in paragraphs (i), (l), (m), (n), or (o) of this section.

(b) The vessel clearance required under paragraph (a) of this section prior to fishing in Area 4A may be obtained only at Dutch Harbor or Akutan, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(c) The vessel clearance required under paragraph (a) of this section prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(d) The vessel clearance required under paragraph (a) of this section prior to fishing in Areas 4C or 4D may be obtained only at St Paul or St. George, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(e) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(f) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (a) of this section only in Dutch Harbor or Akutan, AK, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(g) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (a) of this section only in Nazan Bay on Atka Island, AK, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(h) Before unloading any halibut caught in Areas 4C or 4D, a vessel operator may obtain the clearance required under paragraph (a) of this section only in St. Paul, St. George, Dutch Harbor, or Akutan, AK, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, AK, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(i) Any vessel operator who complies with the requirements in § 301.17 of this part for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (a) of this section, but must comply with the following requirements:

(1) The operator of the vessel must obtain a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the areas in which the vessel will fish; and

(2) Before unloading any halibut from Area 4, the vessel operator must obtain a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(j) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(k) No halibut shall be on board the vessel at the time of clearances required prior to fishing in Area 4.

(l) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (a) of this section.

(m) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(n) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(o) Any vessel that is used to fish for halibut only in Areas 4D and 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined at § 301.9 is exempt from the clearance requirements of paragraph (a) of this section.

9. In § 301.15, paragraph (b)(1) is revised to read as follows:

§ 301.15 Logs.

* * * * *

(b) * * *

(1) Separate from other records maintained on board the vessel or recorded in groundfish daily fishing logbooks provided by NMFS.

* * * * *

10. Sections 301.17 through 301.24 are redesignated as §§ 301.18 through 301.25, and a new § 301.17 is added to read as follows:

§ 301.17 Fishing multiple regulatory areas.

(a) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(b) Halibut caught in regulatory Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(1) Has a NMFS-certified observer aboard when required by NMFS regulations at 50 CFR part 676; and

(2) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(c) Halibut caught in regulatory areas 4A, 4B, 4C, and 4D may be possessed aboard a vessel at the same time providing the operator of the vessel:

(1) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(2) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

11. In newly redesignated § 301.21, paragraphs (d), (f), and (g) are revised to read as follows:

§ 301.21 Fishing by U.S. treaty Indian tribes.

* * * * *

(d) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear from March 15 through November 15, or until 168,000 lb (76.2 mt) are taken by treaty Indians, whichever occurs first.

* * * * *

(f) Commercial fishing for halibut by treaty Indians shall comply with the provisions of §§ 301.12, 301.13, 301.15, and 301.18, except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(g) Ceremonial and subsistence fishing for halibut by treaty Indians in

subarea 2A–1 is permitted with hook-and-line gear from January 1 through December 31, and is estimated to take 14,000 lb (6.35 mt).

* * * * *

12. In newly redesignated § 301.22, paragraphs (d)(2)(i) through (d)(2)(vii) are revised, paragraphs (i) through (o) are redesignated as paragraphs (j) through (p) respectively, new paragraph (i) is added, and paragraphs (h) through (p) are revised to read as follows:

§ 301.22 Sport fishing for halibut.

* * * * *

(d) * * *

(2) * * *

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), there is no quota. This area is managed by setting a season that is projected to result in a catch of 34,653 lb (15.7 mt).

(A) The fishing season is May 23 through July 27, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31′42″ N. lat.), the quota for landings into ports in this area is 71,410 lb (32.4 mt). Landings into Neah Bay of halibut caught in this area will count against this quota and are governed by the regulations in this paragraph (d)(2)(ii).

(A) The fishing season commences on May 1, and continues 5 days a week (Tuesday through Saturday) until 71,410 lb (32.4 mt) are estimated to have been taken and the season is closed by the Commission.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″ W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38′10″ N. lat.), the quota for landings into ports in this area is 15,222 lb (6.9 mt).

(A) The fishing season commences on May 1 and continues every day until 1,000 lb (0.45 mt) are projected to remain in the subarea quota of 15,222 lb (6.9 mt). Immediately following this closure, the area from the Queets River south to 47°00′00″ N. lat. and east of 124°40′00″ W. long. will reopen for 7 days per week until either 15,222 lb (6.9 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. is closed to sport fishing for halibut.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46′00″ N. lat.), the quota for landings into ports in this area is 4,617 lb (2.1 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 4,617 lb (2.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.), the quota for landings into ports in this area is 94,694 lb (43 mt).

(A) The fishing seasons are:

(*1*) Commencing May 16, and continuing 3 days a week (Thursday through Saturday) until 64,392 lb (29.2 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(v)(A)(*1*) of this section, and continuing every day through August 1, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 6,629 lb (3.0 mt) or the subarea quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 2, and continuing 2 days a week (Friday and Saturday) through September 30, or until the combined quotas for the subareas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and the California border (42°00′00″ N. lat.), the quota for landings into ports in this area is 7,499 lb (3.4 mt).

(A) The fishing seasons are:

(*1*) Commencing May 16 and continuing 3 days a week (Thursday through Saturday) until 5,999 lb (2.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(vi)(A)(*1*) of this section, and continuing every day through August 1, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 1,500 lb (0.7 mt) or the area quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 2 and continuing 2 days a week (Friday and Saturday) through September 30, or until the combined quotas for the subareas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vii) In the area off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 2,785 lb (1.3 mt).

(A) The fishing season will commence on May 1, and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

* * * * *

(h) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

(i) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(j) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(k) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(l) Any halibut brought on board a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(m) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(n) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(o) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish on board the said vessel are destined for commercial use, sale, trade, or barter.

(p) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

* * * * *

13. In newly redesignated § 301.23, paragraphs (a) and (b) are revised to read as follows:

§ 301.23 Fishing election in Area 2A.

(a) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(1) The recreational fishery under § 301.22;

(2) The commercial directed fishery for halibut during the fishing period(s) established in § 301.7(b); or

(3) The incidental catch fishery during the salmon troll fishery as authorized in § 301.7(c).

(b) No person shall fish for halibut in the recreational fishery in Area 2A under § 301.22 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

* * * * *

14. In newly redesignated § 301.24, paragraphs (a), (e)(1), (e)(3), (f)(1)(i), (iii), (v), (vi), and (g) are revised to read as follows:

§ 301.24 Catch sharing plan for Area 2A.

(a) This Plan constitutes a framework that shall be applied to the annual Area 2A total allowable catch (TAC) approved by the Commission each January. The framework shall be implemented in both Commission regulations and domestic regulations (implemented by NMFS) as published in the Federal Register as rulemaking in §§ 301.1 through 301.23.

* * * * *

(e) * * *

(1) *Incidental halibut catch in the salmon troll fishery.*

Fifteen percent of the non-Indian commercial fishery allocation is allocated to the salmon troll fishery in Area 2A as an incidental catch during salmon fisheries. The quota for this incidental catch fishery is 3.1 percent of the Area 2A TAC.

(i) The Pacific Fishery Management Council (Council) will recommend landing restrictions at its spring public meeting each year to control the amount of halibut caught incidentally in the troll fishery. The landing restrictions will be based on the number of incidental harvest license applications submitted to the Commission, halibut catch rates, the amount of allocation, and other pertinent factors, and may include catch or landing ratios, landing limits, or other means to control the rate of halibut harvest. NMFS will publish the landing restrictions annually in the Federal Register, along with the salmon management measures.

(ii) Inseason adjustments. (A) NMFS may make inseason adjustments to the landing restrictions, if requested by the Council Chairman, as necessary to assure that the incidental harvest rate is appropriate for salmon and halibut availability, does not encourage target fishing on halibut, and does not increase the likelihood of exceeding the quota for this fishery. In determining whether to make such inseason adjustments, NMFS will consult with the applicable state representative(s) on the Halibut Managers Group, a representative of the Council's Salmon Advisory Sub-Panel, and Council staff.

(B) Notice and effectiveness of inseason adjustments will be made by NMFS in accordance with § 301.22(d)(3)(iii) and (iv).

(iii) If the quota for this fishery is not harvested during the May/June salmon troll fishery, the remaining quota will be made available by the Commission to the directed halibut fishery on July 1.

(iv) If the quota for the non-Indian commercial fisheries specified at paragraph (e) of this section has not been harvested by July 31 and the quota for the salmon troll fishery was not harvested during the May/June fishery, landings of halibut caught incidentally during salmon troll fisheries will be allowed effective August 1 and will continue until the quota for the troll fishery is taken or the overall non-Indian commercial quota is estimated to have been achieved by the Commission. Landing restrictions implemented for the May/June salmon troll fishery will apply to this reopening of the fishery.

(v) A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not in both.

* * * * *

(3) *Commercial license restrictions/declarations.* Commercial fishers must choose either to operate in the directed commercial fishery in Area 2A, or to retain halibut caught incidentally during the salmon troll fishery. Commercial fishers operating in the directed halibut fishery must send their license application to the Commission postmarked no later than April 30, or the first weekday in May, if April 30 falls on a weekend, in order to obtain a license to fish for halibut in Area 2A. Commercial fishers operating in the salmon troll fishery who seek to retain incidentally caught halibut must send their application for a license to the Commission for the incidental catch of halibut in Area 2A postmarked no later than March 31, or the first weekday in April, if March 31 falls on a weekend. Fishing vessel operators who are issued licenses to fish commercially in Area 2A are prohibited from obtaining a Commission charterboat license for Area 2A. Sport fishing for halibut is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(f) * * *

(1) * * *

(i) *Washington inside waters subarea.* This sport fishery subarea is allocated 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. This subarea is defined as all U.S. waters east of the Bonilla-Tatoosh line, defined as follows: From Bonilla Point (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), including Puget Sound. The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the quota. No inseason adjustments will be made, and estimates of actual catch will be made postseason. The fishery will open in May and continue at least through July 4, or until a date established preseason (and published in the sport fishery regulations) when the quota is predicted to be taken, or until September 30, whichever is earlier. The Washington Department of Fish and Wildlife will

sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening date and weekly structure of the fishery each year. The daily bag limit is one fish per person, with no size limit.

* * * * *

(iii) *Washington south coast subarea.* This sport fishery subarea is allocated 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. This subarea is defined as waters south of the Queets River (47°31′42″ N. lat.) and north of Leadbetter Point (46°38′10″ N. lat.). The structuring objective for this subarea is to maximize the season length, while providing for a limited halibut fishery. The fishery opens on May 1, for 7 days per week and continues until 1,000 lb (.45 mt) are projected to remain in the subarea quota. Immediately following this closure, the area from the Queets River south to 47°00′00″ N. lat. and east of 124°40′00″ W. long. will reopen for 7 days per week until either the subarea quota is estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area south of the Queets River (47°31′42″ N. lat.), west of 124°40′00″ W. long. and north of 47°10′00″ N. lat.

* * * * *

(v) *Oregon central coast subarea.* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this sport fishery subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide one or two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in nearshore waters for small boat anglers. Any poundage remaining in this subarea quota from earlier seasons will be added to the last season in this subarea. This subarea has three seasons as set out in paragraphs (f)(1)(v) (A) through (C) of this section. The Council will recommend opening dates for these seasons annually at its fall public meeting. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-inch (81.3-cm) size limit and the second with a minimum 50-inch (127.0-cm) size limit.

(A) The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) until 68 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until 7 percent of the subarea quota is taken, or until early August, whichever is earlier.

(C) The last season begins in early August, with no depth restrictions, and continues at least 2 days per week, until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vi) *Oregon south coast subarea.* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) to the California border (42°00′00″ N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central sport fishery subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. This subarea has three seasons as set out in paragraphs (f)(1)(vi) (A) through (C) of this section. The Council will recommend opening dates for these seasons annually at its fall public meeting. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-inch (81.3-cm) size limit and the second with a minimum 50-inch (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) and continues at least 3 days per week until 80 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until the subarea quota is estimated to have been taken, or early August, whichever is earlier.

(C) The last season begins in early August, with no depth restrictions, and continues at least 3 days per week, until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

* * * * *

(g) *Procedures for implementation.* Each year, NMFS will publish a proposed rule with any regulatory modifications necessary to implement the Plan for the following year, with a request for public comments. The comment period will extend until after the Commission's annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments. After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS will implement final rules governing the sport fisheries. The final ratio of halibut to chinook to be allowed as incidental catch in the salmon troll fishery will be published with the annual salmon management measures. Inseason actions in the sport fisheries as stipulated in this Plan will be accomplished by NMFS in accordance with § 301.22(d)(3).

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50 CFR Part 625

[Docket No. 951116270–5038–02; I.D. 031396C]

Summer Flounder Fishery; Commercial Quota Harvested for North Carolina

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of North Carolina has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in North Carolina for the remainder of calendar year 1996, unless additional quota becomes available through a transfer from another state that has not reached its annual quota. Regulations governing the summer flounder fishery require publication of this notification to advise the State of North Carolina that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in North Carolina.

EFFECTIVE DATE: March 15, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Lucy Helvenston, 508–281–9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The total commercial quota for summer flounder for the 1996 calendar year is set equal to 11,111,298 lb (5,040,000 kg) (January 4, 1996, 61 FR 291). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, or 3,049,589 lb (1,383,270 kg).

Section 625.21(c) requires the Regional Director, Northeast Region, NMFS (Regional Director), to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Director is further required to publish a notice in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of North Carolina has attained its quota for 1996, the Regional Director has determined, based on dealer reports and other available information, that the State's commercial quota has been harvested.

The regulations at § 625.4(a)(3) provide that Federal permit holders agree as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, effective 0001 hours on March 15, 1996, further landings of summer flounder in North Carolina by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1996 calendar year, unless additional quota becomes available through a transfer from another state that has not reached its annual quota, and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through another state.

Classification

This action is required by 50 CFR part 625 and is exempt from review under E.O. 12286.

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

Dated: March 15, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6700 Filed 3–15–96; 2:22 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019-6019-01; I.D. 031496A]

Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock in the Aleutian Islands Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) amount specified for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 15, 1996, until 12 noon, A.l.t., March 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 675.

The directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea was closed on March 10, 1996 (March 13, 1996, 61 FR 10287), in order to provide amounts anticipated to be needed for incidental catch in other fisheries. NMFS has determined that as of March 2, 1996, 3,200 metric tons (mt) of pollock remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1996 TAC amount for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea has not been reached. Therefore, NMFS is terminating the previous closure and is opening the directed fishery for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea for a 24-hour period from 12 noon, A.l.t., March 15, 1996, until 12 noon, A.l.t., March 16, 1996. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the underharvest of the pollock TAC allocated to the inshore component as authorized by 675.20(e)(2)(iii).

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

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

Dated: March 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6629 Filed 3–14–96; 4:52 pm]

BILLING CODE 3510–22–F

50 CFR Part 642

[Docket No. 950725189–5260–02; I.D. 031496B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of king mackerel in the Florida east coast sub-zone to 25 per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 25–fish commercial trip limit is effective March 15, 1996, and remains in effect through March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the

Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida east coast sub-zone at 865,000 lb (392,357 kg). In accordance with 50 CFR 642.28(a), from the date that 75 percent of the sub-zone's commercial quota has been harvested, provided that the date occurs before March 1, until a closure of the Florida east coast sub-zone has been effected, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 25 per day. The 25–fish trip limit remains in effect through March 31, 1996, when the boundary of the Gulf migratory group of king mackerel shifts from the east coast to the west coast of Florida, unless 100 percent of the commercial quota is reached before March 31, in which case the commercial fishery for king mackerel in the Florida east coast sub-zone is closed by publication of a notification in the Federal Register.

NMFS has determined that 75 percent of the commercial quota for Gulf group king mackerel from the Florida east coast sub-zone was reached by March 1, 1996. Accordingly, a 25–fish trip limit applies to king mackerel in or from the EEZ in the Florida east coast sub-zone effective 12:01 a.m., local time, March 15, 1996.

The Florida east coast sub-zone extends from the Dade/Monroe County, FL boundary (25°20.4′ N. lat.) to the Volusia/Flagler County, FL boundary (29°25′ N. lat.) from November 1 through March 31.

Classification

This action is taken under 50 CFR 642.28(c) and is exempt from review under E.O. 12866.

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

Dated: March 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6596 Filed 3–14–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 55
Wednesday, March 20, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–234–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 and DC–10 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and DC–10 series airplanes, and KC–10A (military) airplanes. That AD currently requires functional testing to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary. This action would require installation of tethers on the electrical connectors to the engine generator and fire bell shutoff switches, which would terminate the requirement to perform functional tests repetitively. This proposal is prompted by the development of a modification that minimizes the possibility of improperly connecting (crossing) the electrical connectors to the fire extinguishing handles. The actions specified by the proposed AD are intended to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire warning.

DATES: Comments must be received by May 13, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–234–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5262.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 95–NM–234–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–234–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 7, 1994, the FAA issued AD 93–25–09 R1, amendment 39–9070 (59 FR 56383, November 14, 1994), applicable to certain McDonnell Douglas Model MD–11 and DC–10 series airplanes, and KC–10A (military) airplanes. That AD requires that operators perform repetitive functional tests to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary; and that operators submit a report to the FAA that details the findings of discrepancies identified during the accomplishment of the initial functional test. That action was prompted by a report indicating that the electrical connectors to the fire extinguishing handles were found to be connected incorrectly (crossed) on one airplane. The requirements of that AD are intended to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire warning.

Since the issuance of that AD, the manufacturer has developed a modification, which would eliminate the need for the functional tests required by AD 93–25–09 R1. This modification would minimize the possibility of improperly connecting (crossing) the electrical connectors to the fire extinguishing handles.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–26–018, dated August 24, 1995 (for Model MD–11 series airplanes), and McDonnell Douglas Service Bulletin DC10–26–047, dated May 4, 1995 [for Model DC–10 series airplanes and KC–10A (military) airplanes], which describe procedures for modification of the electrical connectors to the engine generator and fire bell shutoff switches. This modification entails installing tethers on the electrical connectors to the engine generator and of the fire bell shutoff switches located forward of the

overhead circuit breaker panel in the flight compartment.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–25–09 R1 to continue to require that operators perform functional tests following any maintenance performed on the fire extinguishing handle system to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary. This newly proposed AD requires installation of tethers on the electrical connectors to the engine generator and fire bell shutoff switches, which would terminate the requirement to perform functional tests repetitively. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

There are approximately 570 McDonnell Douglas Model MD–11 and DC–10 series airplanes, and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 airplanes of U.S. registry would be affected by this proposed AD.

The checks that are currently required by AD 93–25–09 R1 (and retained by this proposed action) take approximately 0.5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $8,100, or $30 per airplane.

The modification that is proposed by this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be nominal in cost. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $97,200, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9070 (59 FR 56383, November 14, 1994), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–234–AD. Supersedes AD 93–25–09 R1, Amendment 39–9070.

Applicability: Model MD–11 series airplanes as listed in McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993; and Model DC–10 series airplanes and KC–10A (military) airplanes as listed in McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire warning, accomplish the following:

(a) As of January 7, 1994 (the effective date of AD 93–25–09, amendment 39–8775), prior to further flight following any maintenance performed on the fire extinguishing handle system, perform a functional test to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993 (for Model MD–11 series airplanes); or McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993 [for Model DC–10 series airplanes, and KC–10A (military) airplanes]; as applicable.

(b) If the electrical connectors are found to be properly installed, repeat the functional test thereafter prior to further flight following any maintenance performed on the fire extinguishing handle system, until the requirements of paragraph (d) of this AD are accomplished.

(c) If the electrical connectors are found to be improperly installed, prior to further flight, correct the wiring installation and repeat the functional test, in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993 (for Model MD–11 series airplanes); or McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993 [for Model DC–10 series airplanes, and KC–10A (military) airplanes]; as applicable. Thereafter, repeat the functional test prior to further flight following any maintenance performed on the fire extinguishing handle system, until the requirements of paragraph (d) of this AD are accomplished.

(d) Within 24 months after the effective date of this AD, install tethers on the electrical connectors to the engine generator and fire bell shutoff switches in accordance with McDonnell Douglas Service Bulletin MD11–26–018, dated August 24, 1995 (for Model MD–11 series airplanes), or McDonnell Douglas Service Bulletin DC10–26–047, dated May 4, 1995 [for Model DC–10 series airplanes and KC–10A (military) airplanes], as applicable. This installation constitutes terminating action for the functional tests required by this AD.

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

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–6541 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 95N–0282, 95N–0347, 95N–0245]

Food Labeling; Extension of Comment Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rules; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is extending to April 11, 1996, the comment periods for certain proposed regulations regarding food labeling that appeared in the Federal Register of December 28, 1995. This action is being taken in response to several requests for brief extensions of the comment periods on these documents.

DATES: Comments by April 11, 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. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the appropriate 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.

FOR FURTHER INFORMATION CONTACT: Camille Brewer, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483, or Susan Thompson (address above), 202–205–5587.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 28, 1995, FDA published the following proposed rules:

(1) Food Labeling; Requirements for Nutrient Content Claims, Health Claims, and Statements of Nutritional Support for Dietary Supplements (Docket No. 95N–0282 (see 60 FR 67176));

(2) Food Labeling; Nutrient Content Claims: Definition for ''High Potency'' Claim for Dietary Supplements and Definition of ''Antioxidant'' for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods (Docket No. 95N–0347 (see 60 FR 67184)); and

(3) Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements (Docket No. 95N–0245 (see 60 FR 67194)).

Interested persons were given until March 13, 1996, to comment on the proposals. FDA received several requests for brief extensions of the comment periods to properly respond to the proposals. After careful consideration, FDA decided to extend the comment periods to April 11, 1996 (see 21 CFR 10.40(b)(3)). FDA has placed a memorandum, dated March 13, 1996, that reflects this decision in each of the referenced dockets.

Dated: March 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–6663 Filed 3–15–96; 12:08 pm]

BILLING CODE 4160–01–F

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products To Protect Children and Adolescents; Reopening of the Comment Period as to Specific Documents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period as to specific documents.

SUMMARY: The Food and Drug Administration (FDA) is reopening to April 19, 1996, as to specific documents, the comment period on its proposed regulations restricting the sale and distribution of nicotine-containing cigarettes and smokeless tobacco products to children and adolescents, which was published in the Federal Register of August 11, 1995 (60 FR 41314). FDA is reopening the comment period for 30 days for the sole purpose of inviting public comments on the information being added to the administrative record. Elsewhere in this issue of the Federal Register, FDA is reopening the comment period, as to specific documents, for a document entitled ''Analysis Regarding Food and Drug Administration Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products,'' which also was published in the Federal Register of August 11, 1995 (60 FR 41453).

DATES: Written comments must be received or postmarked on or before April 19, 1996. Comments postmarked after such date will not be considered.

ADDRESS: 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: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 11, 1995 (60 FR 41314), FDA issued a proposed rule that would restrict the sale and distribution of nicotine-containing cigarettes and smokeless tobacco products in order to protect children and adolescents. The proposed rule would reduce easy access to these products by children and adolescents and decrease the amount of imagery that makes these products attractive to children and adolescents. The proposed rule contains provisions stating that 18 years of age would be the Federal minimum age of purchase and that would prohibit cigarette vending machines, free samples, mail order sales, and self-service displays. The rule also proposed to require that retailers comply with certain conditions regarding tobacco sales, such as verifying the purchaser's age. In addition, the proposed rule contains provisions to limit advertising and labeling to which children and adolescents are exposed to a text-only format; to ban the sale or distribution of branded, non-tobacco items (such as hats and tee shirts); to restrict sponsorship of events to the corporate name only; and to require manufacturers to establish and maintain a national public education campaign.

By announcement in the Federal Register of October 16, 1995 (60 FR 53560), FDA extended to January 2, 1996, the comment period on the proposed rule. (By that extension, the agency provided a comment period of more than 140 days on the notice of

proposed rulemaking. FDA provided a comment period of more than 90 days from the date—September 29, 1995—that additional documents were placed on display.) FDA provided a similar extension for the notice that set forth the jurisdictional analysis (60 FR 53620). On December 1, 1995, FDA published in the Federal Register (60 FR 61670) the results of several focus group studies that it conducted and invited public comments by January 2, 1996.

FDA is adding two documents to the administrative record that further explain the basis for certain provisions of the proposed rule. The agency is providing the public an opportunity to comment on them.

FDA believes that 30 days to comment is ample in this case, as the agency is specifically limiting its reopening of the comment period to comments on the documents being added. Comments are invited, and will be considered, only to the extent they are focused on the information being newly added to the record and only to the extent the comments regarding such information raise new issues not already raised by the person submitting the comment.

The documents being added to the record are as follows:

1. Food and Drug Administration, Memorandum to the Record: Section 897.32—definition of adult publications, March 11, 1996.

2. Food and Drug Administration, Memorandum to the Record: Section 897.30(b)—billboards, March 11, 1996.

Interested persons may, on or before April 19, 1996, submit to the Dockets Management Branch (address above) written comments regarding the documents described above. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 15, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–6788 Filed 3–18–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

Training Policy Review

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its training policy.

DATES: Submit comments on or before May 24, 1996.

ADDRESSES: Send written comments to Frank R. Schwamberger, Acting Director, Educational Policy and Development, MSHA, 4015 Wilson Boulevard, Room 531, Arlington, Virginia 22203–1984. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Thomas W. MacLeod or Joseph M. Hoffman, Division of Policy and Program Coordination, Directorate of Educational Policy and Development, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 25, 1996, MSHA published a request for comments in the Federal Register (61 FR 2215) announcing its intention to review its training policy for the mining industry. The comment period was scheduled to close on March 25, 1996.

In response to requests from the public, MSHA is extending the comment period 60 days. All parties are encouraged to submit their comments within this time.

Dated: March 14, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–6563 Filed 3–19–96; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–033]

Utah Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to petitions to initiate rulemaking, backfilling and grading, and highwall retention. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., on April 19, 1996. If requested, a public hearing on the proposed amendment will be held on April 15, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on April 4, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202

James W. Carter, Director, Division of Oil, Gas & Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah 84180–1230

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, Federal Register (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 30, 1995, and March 11, 1996, Utah submitted to OSM rules that it had promulgated for its program (administrative record Nos. UT–1079 and UT–1081) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). With three exceptions, these rules are

substantively identical to rules that Utah had previously submitted to OSM and for which the Director made a decision in the May 30, 1995, Federal Register (60 FR 28040, administrative record No. UT–1057). The three exceptions are rules that Utah is revising response to required amendments and in response to a disapproval that OSM set forth in the May 30, 1995, notice.

In response to the required program amendments at 30 CFR 944.16(c) and (d) (May 30, 1995, 60 FR 28040, 28043–4, finding Nos. 4 and 5), Utah proposes to revise Utah Admin. R. 645–301–553.110 and Utah Admin. R. 534–301–553.120. Specifically, Utah proposes to revise Utah Admin. R. 645–301–553.110 to reference ''R645–301–*553*.500 through R645–301–*553*.540'' (emphasis added) instead of ''R645–301–500 through R645–301–540.'' It also proposes to revise Utah Admin. R. 645–301–553.120 to reference ''R645–301–553.500 through R645–301–*553*.540'' (emphasis added) instead of ''R645–301–553.500 through R645–301–540'' and to reference ''R645–301–553.650'' instead of ''R645–301–553.650 through R645–301–553.651.'' In both of the revised rules, Utah indicates that the referenced rules contain exceptions to the requirements for operators to backfill and grade disturbed areas to approximate original contour. The referenced rules pertain to previously mined areas, continuously mined areas, areas with remaining highwalls subject to the approximate original contour provisions, and highwall management under the approximate original contour provisions.

In response to the Director not approving proposed Utah Admin. R. 645–301–553.651 (May 30, 1995, 60 FR 28040, 28046–7, finding No. 15), Utah did not promulgate the rule. The rule concerned a proposed applicability date for the backfilling and grading of highwalls. Specifically, it would have provided that where an operator had completed final backfilling and grading and Utah had released the phase one bond prior to June 2, 1992, Utah would not require the operator to redisturb the reclaimed highwall to bring it into compliance with Utah Admin. R. 645–301–552.650.

In addition to the aforementioned revisions, Utah by letter dated December 4, 1995, submitted to OSM a proposed revision to one of its other rules (administrative record No. UT–1080). Utah submitted the proposed revision in response to a November 22, 1995, OSM letter (administrative record No. UT–1078) notifying Utah of a needed revision to Utah's rule pertaining to petitions to initiate rulemaking. Specifically, Utah proposes to revise Utah Admin. R. 645–100–500 to require that persons other than the Division or Board of Oil, Gas and Mining may petition to initiate rulemaking pursuant to Utah Admin. R. Part 641 and the Utah Administrative Rulemaking Act at Utah Code Annotated ''63–46a–1, *et seq.*'' instead of ''63–46a–8.''

Collectively, these revisions constitute a proposed amendment to Utah's program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

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

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under ''FOR FURTHER INFORMATION CONTACT'' by 4:00 p.m., m.s.t., on April 4, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under ''FOR FURTHER INFORMATION CONTACT.'' The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

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

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 13, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–6678 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–169]

RIN 2115–AE 46

Special Local Regulation: Provincetown Harbor Swim for Life, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for a swimming event known as the Provincetown Harbor Swim for Life. The event will be held annually, on the first Saturday following the Labor Day holiday weekend, in Cape Cod Bay, Provincetown Harbor, Provincetown, MA. This regulation is needed to protect the participants from transiting vessel traffic during the swimming event.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–169), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under ''**ADDRESSES**.'' The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Discussion of Proposed Amendments

The annual Provincetown Swim for Life benefit is a local, traditional event which has been held for several years in Provincetown Harbor, Provincetown, MA. In the past, the Coast Guard has promulgated individual regulations for each year's running of the race. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation. The proposed regulation would establish a regulated area in Provincetown Harbor of Cape Cod Bay and would provide specific guidance to control vessel movement during the event. This proposal restricts vessels from approaching within 200 feet of participating benefit swimmers.

The event will consist of approximately 150 swimmers traveling 1.4 miles from Long Point Lighthouse to a point 200 yards east of the Coast Guard pier. There will be approximately 25–30 support boats on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for vessels requiring transit within 200 feet of participating swimmers.

The proposed section will be effective annually on the first Saturday following the Labor Day holiday weekend, at a specific time published in a Coast Guard Notice to Mariners. A rain date may be established and published in a Coast Guard Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant

economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 59 FR 38654, July 29, 1994) this proposal is a regulation issued in conjunction with an annually issued regatta or marine parade permit and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

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

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

2. Section 100.113 is added to read as follows:

§ 100.113 Provincetown Swim for Life, Provincetown, MA.

(a) *Regulated area.* All waters of Provincetown Harbor within 200 feet of participating benefit swimmers.

(b) *Special local regulations.* (1) The Coat Guard patrol commander may delay modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is in effect annually on the first Saturday following the Labor Day holiday weekend at times published in a Coast Guard Notice to Mariners.

Dated: February 27, 1996.

J.L. Linnon,

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

[FR Doc. 96–6300 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD01–95–170]

RIN 2115–AE 46

Special Local Regulation: Swim the Bay, Narragansett Bay, Narragansett, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for a swimming competition known as Swim the Bay. The event will be held annually in the East Passage of Narragansett Bay, on the Saturday in July or August that has favorable tidal conditions. This regulation is needed to protect the participants from vessel traffic during the swimming competition.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (jg) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–170), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **"ADDRESSES"**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Discussion of Proposed Amendments

The annual Swim the Bay competition is a local, traditional event that has been held for many years in the East Passage of Narragansett Bay, Jamestown/Newport, RI. In the past, the Coast Guard has promulgated individual regulations for each year's running of the race. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation. The proposed regulation would establish a regulated area in the East Passage of Narragansett Bay and would provide specific guidance to control vessel movement during the race. This proposal restricts vessels from approaching within 200 feet of participating competition swimmers.

The event will consist of two heats of approximately 100 swimmers racing 1.7 miles from Coasters Harbor Island beach, Newport, RI, to Potters Cove, Jamestown, RI. There will be approximately 25–30 support boats on scene to augment a Coast Guard patrol to alert boating traffic of the presence of

the swimmers. The time period for the event is dictated by tidal conditions. Subject to Coast Guard approval, the sponsor selects a Saturday in July or August that most closely exhibits low tide 40 minutes after 8 a.m. Spectator craft are authorized to watch the race from any area as long as they remain 200 feet away from any participating swimmer. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for vessels requiring transit within 200 feet of participating swimmers.

The proposed section will be effective annually on a Saturday in July or August, at a specific date and time published in a Coast Guard Notice to Mariners. A rain date may be established and published in a Coast Guard Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the competition, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 59 FR 38654, July 29, 1994) this proposal is a regulation issued in conjunction with an annually issued regatta or marine parade permit and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

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

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

2. Section 100.112, is added to read as follows:

§ 100.112 Swim the Bay, Narragansett, RI.

(a) *Regulated area.* All waters of the East Passage of Narragansett Bay within 200 feet of participating competition swimmers.

(b) *Special local regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander many authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is in effect annually on a Saturday in July or August, at a specific date and times published in a Coast Guard Notice to Mariners.

Dated: February 27, 1996.

J.L. Linnon,

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

[FR Doc. 96–6297 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD07–96–005]

RIN 2115–AE46

Special Local Regulations: Fort Myers Beach Offshore Grand Prix; Fort Myers Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Fort Myers Beach Offshore Grand Prix. This event will be held annually during the first Saturday and Sunday of June, between 12 p.m. and 3 p.m. EDT (Eastern Daylight Time). Historically, there have been approximately 170 participant and spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group St. Petersburg, 600 8th Ave. S.E., St. Petersburg, Florida 33701–5099, or may be delivered to the

operations office at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (813) 824–7533. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG J.W. Nelson, Coast Guard Group St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–005) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during the Fort Myers Beach Offshore Grand Prix. These regulations are intended to promote safe navigation on the waters off Fort Myers beach during the races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and participant vessels associated with the Grand Prix poses a safety concern, which is addressed in these proposed special local regulations. The proposed regulations would not permit anchoring shoreward of the shoreside legs of the racecourse, from 11 a.m. to 3 p.m. on the first Saturday and Sunday of June. Approximately 75 to 100 spectator craft would be permitted near the race area but would be required to stay clear of the race lanes. The proposed regulations would permit anchoring for spectators seaward of the seaside legs of the racecourse, but only in the designated spectator area defined in paragraph (b) of the proposed regulations. All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Matanzas Pass between 11 a.m. and 3 p.m. would exit the marked channel at Matanzas Pass Channel daybeacon #3 (26°25.9′ N, 82°58.2′ W, LLNR 16365) And #4 (26°26.1′ N, 82°57.8′ W, LLNR 16370), and would proceed in a southwesterly direction seaward of the designated spectator area defined in paragraph (b) of the proposed regulations, taking action to avoid a close-quarters situation until the vessel finally is past and clear of the racecourse. All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Big Carlos Pass between 11 a.m. and 3 p.m. would proceed in a southwesterly direction seaward of the designated spectator area defined in paragraph (b) of the proposed regulation, taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 4 hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations independently owned and operated that are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard finds that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying where indicated under ''**ADDRESSES.**'' The Coast Guard has concluded that this proposed action would not significantly affect the quality of the human environment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, the Coast Guard is proposing to amend as follows:

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

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 46 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.717 is added to read as follows:

§ 100.717 Fort Myers Beach Offshore Grand Prix; Fort Myers, FL.

(a) *Regulated Area.* The regulated area is formed by a line drawn from the start/finish position, at the Fort Myers Beach Pier (20°28.07′ N, 81°58.30′ W), thence to position 26°26.08′ N, 81°55.29′ W, thence to position 26°24.75′ N, 81°54.68′ W, thence to position 26°23.74′N, 81°55.10′ W, thence to position 26°23.91′ N, 81°55.40′ W, thence to position 26°24.94′ N, 81°55.24′ W, thence to position 26°26.93′ N, 81°58.53′ W, thence to position 26°27.32′ N, 81°58.16′ W, thence back to the start/finish position, at the Fort Myers Beach Pier (26°28.07, 81°58.30′ W). All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) No vessel may anchor shoreward of the shoreside boundaries of the regulated area, from 11 a.m. to 3 p.m.

(2) Spectator craft would be permitted to anchor seaward of the seaside boundaries of the regulated area, in the

spectator area formed by a line drawn from the position 29°26.54′ N, 81°58.12′ W, thence to position 28°25.06′ N, 81°55.42′ W, thence to position 26°24.45′ N, 81°55.50′ W, thence to position 26°26.54′ N, 81°58.30′ W, thence back to position 29°26.54′ N, 81°58.12′ W, and in the spectator area formed by a line drawn from the position 26°25.06′ N, 81°54.18′ W, thence to position 26°23.47′ N, 81°54.00′ W, thence to position 25°24.05′N, 81°54.47′W, thence back to position 26°25.06′ N, 81°54.18′ W.

(3) All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Matanzas Pass Between 11 a.m. and 3 p.m. would exit the marked channel at Matanzas Pass Channel daybeacon #3 (26°25.9′ N, 82°58.2′ W, LLNR 16365) and #4 (26°26.1′ N, 82°57.8′ W, LLNR 16370), and would proceed in a southwesterly direction seaward of the spectator area defined in paragraph (b) of these regulations, taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(4) All vessel traffic, not involved with the Fort Myers Beach Offshore Grand Prix, exiting Big Carlos Pass between 11 a.m. and 3 p.m. will exit the pass in a southwesterly direction seaward of the spectator area defined in paragraph (b) of these regulations, taking action to avoid a close-quarters situation with the spectator craft until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(5) Entry into the regulated area shall be in accordance with this regulation. Spectator vessels will stay seaward of the seaside legs of the racecourse at all times in the spectator areas defined in paragraph (b) of these regulations.

(c) *Effective Dates:* This section is effective at 11 a.m. and terminates at 3 p.m. annually during the first Saturday and Sunday of June.

Dated: February 29, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–6542 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 110

[CGD01–96–012]

RIN 2115–AA98

Special Anchorage Area: Special Anchorage Great Kills Harbor, Staten Island, NY; Special Anchorage Sheepshead Bay, Brooklyn, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the special anchorage regulations for Great Kills Harbor, Staten Island, New York, and Sheepshead Bay, Brooklyn, New York. Due to a desire to eliminate unnecessary federal procedures, the Coast Guard Captain of the Port New York has decided to no longer issue permits for moorings within these anchorages. The proposed rule would amend these regulations to reflect the Captain of the Port's decision to no longer administer individual recreational mooring locations in the Port of New York.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Captain of the Port New York, Bldg. 108, Governors Island, New York 10004–5096, Attn: LCDR R. Trabocchi, or be delivered to her at the Planning and Readiness Division, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments received, and any documents referenced herein, are available for inspection at this address. Any person wishing to visit this office must contact the Planning and Readiness Division at (212) 668–7906 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. Trabocchi, Chief, Planning and Readiness Division, Captain of the Port New York (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–012) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Planning and Readiness Division at the address under ''ADDRESS''. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Backgound and Purpose

An area designated as a special anchorage allows vessels 65 feet and under to anchor within specified boundaries without exhibiting anchorage lights. Approximately a decade ago, the Captain of the Port New York administered approximately 2,500 mooring locations annually in approximately nine special anchorages. As the size of the boating public grew, the burden of administering these mooring locations became increasingly difficult. Several years ago, Captain of the Port New York Discontinued the administration of individual recreational mooring locations in all special anchorages, except for anchorages in Great Kills Harbor and Sheepshead Bay. Due to budget constraints and the Presidential mandate to streamline the federal government, Captain of the Port New York has decided to discontinue entirely the discretionary administrative procedure of issuing permits for mooring locations. This proposal would modify the existing regulations to reflect that anchorage permits are no longer issued by the Coast Guard for Great Kills Harbor and Sheepshead Bay anchorages. Although mooring permits will no longer be issued by the Captain of the Port, vessels may still anchor or use a mooring buoy without displaying lights. Should a State or local agency decide to issue permits in these special anchorages, the Coast Guard will include that information in the final rule.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard

expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal does not affect the status of the special anchorage areas in Great Kills Harbor or Sheepshead Bay, but merely reflects that the Captain of the Port New York mooring permit procedures are no longer applicable and that mooring permits will no longer be issued. This proposal will not be significant because the boating public retains the ability to use the anchorages, and will be able to do so without obtaining a Federal mooring permit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their field and (2) government jurisdictions with populations of less than 50,000.

For reasons set forth in the above Regulatory Evaluation, the Coast Guard finds that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see ''**ADDRESSES**'') explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that it is an action that is categorically excluded from further analysis and documentation requirements under the National Environmental Policy Act (NEPA). This determination was made in accordance with agency procedures and policy for categorical exclusions published in Federal Register July 29, 1994 (59 FR 38654) under section 2.B.2.e.(34)(a). A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR 110.60 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.60 is amended by revising the note in paragraph (r–1) and paragraph (x)(4) to read as follows (the table following paragraph (x)(4) remains unchanged):

§ 110.60 Port of New York and vicinity.

* * * * *

(r–1) * * *

Note: The special anchorage area is principally for use by yachts and other recreational craft. A temporary float or buoy for marking the location of the anchor of a vessel at anchor may be used. Fixed mooring piles or stakes are prohibited. Vessels shall be anchored so that no part of the vessel comes within 50 feet of the marked channel.

* * * * *

(x) * * *

(4) Captain of the Port Regulations. In Sheepshead Bay, New York, Western, Northern, and Southern Special Anchorage Area, the following applies:

(i) Two anchors shall be used. The anchor minimum weight and minimum chain size shall be as shown in table 110.60(x)(4) and the anchor shall be placed in figure 110.60(x)(4).

(ii) The area is principally for vessels used for a recreational purpose.

* * * * *

Dated: March 4, 1996.

J.L. Linnon,

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

[FR Doc. 96–6299 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[PP 4E4419/P647; FRL–5356–2]

RIN 2070–AB18

Avermectin B_1 and its Delta-8,9 Isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to extend a time-limited tolerance for the Combined residues of the insecticide avermectin B_1 and its delta 8,9-isomer in or on the raw agricultural commodity dried hops. This rule, which would extend the effective date for the avermectin tolerance on dried hops to December 31, 1996, was requested by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 4E4419/P647], must be received on or before April 19, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 222(92. Comments and data may also be submitted to OPP by sending electronic mall (e-mail) to: opp-docke@pamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4419/P647]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information''(CBI) . CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, 703–308-8783, jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a time-limited tolerance in the Federal Register of February 7, 1996 (61 FR 4593) under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), for combined residues of the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_l and less than or equal to 20% avermectin B_{lb} (5*O* demethyl-25-de(l-methylpropyl)-25-(1-methylethyl) avermectin A_l)] and its delta-8,9-isomer in or on the raw agricultural commodities dried hops at 0.5 parts per million (ppm) and cattle fat at 0.015 ppm. These tolerances were requested in pesticide petition (PP) 4E4419, which was submitted by the Interregional Research Project eat No . 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. EPA established the tolerance for dried hops with an expiration date to allow IR-4 additional time to submit residue data in support of a permanent tolerance, and to allow EPA time to complete its evaluation of the enforcement method for dried hops. In addition, when the time-limited tolerance for dried hops was requested by IR-4, the established tolerances for secondary residues of avermectin in meat, meat byproducts, and milk were also time-limited and were established to expire on April 30, 1996. The time-limited tolerances for meat, meat byproducts, and milk were established in conjunction with the Conditional registration for use of avermectin on cotton and citrus. The time-limited tolerance for cattle fat, which is required for the cotton and citrus uses, was inadvertently omitted when the other time-limited tolerances were established. EPA intends to make a decision on the avermectin registrations for cotton and citrus prior to April 30, 1996. If full registration is issued, the time-limited restriction will be removed from the tolerances for meat, meat byproducts, cattle fat, and milk. The time-limited tolerances for secondary residues of avermectin B_1 and its delta-8,9-isomer, however, are no longer relevant to the use on hops, since tolerances for secondary residues are no longer required in conjunction with pesticide registrations for hops. In response to comments received relating to ''Table II (June 1994): Raw Agricultural and Processed Commodities and Feedstuff Derived from Field Crops,ll the Agency has concluded that spent hops are not a significant livestock feed commodity. This means that pesticide tolerances are not required for spent hops and that tolerances for meat and milk will not be established in support of registration for pesticide use on hops.

After submitting PP 4E4419, IR-4 submitted a second petition (PP 5E4566) for dried hops, which proposes a permanent tolerance for residues of avermectin Be and its delta-8,9-isomer in or on the raw agricultural commodity dried hops. EPA's evaluation of PP 5E4566 will not be completed in time to establish a permanent tolerance, prior to the expiration date for the time-limited tolerance. EPA, therefore, proposes that the expiration date for the time-limited tolerance for dried hops be extended to December 31, 1996, to allow EPA additional time to review IR-4's petition for a permanent tolerance for residues of avermectin on dried hops.

The data considered in support of the time-limited tolerance is discussed in the proposed rule, which was published in a Federal Register notice of September 13, 1995 (59 FR 49826).

There are presently no actions pending against the continued registration of this chemical. EPA has completed an evaluation of the analytical method and has concluded that it is a valid enforcement method. Several minor modifications to the method have been suggested by EPA, and IR-4 is in the process of rewriting the method to include these modifications.

Prior to its publication in the Pesticide Analytical Manual, Volume II (PAM II), the enforcement method is being made available in the Interim to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. office location and telephone number: Crystal Mall #2, Rm 1128, 192S Jefferson Davis Hwy., Arlington, VA 22202 (703)305-5805.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [PP 4E4419/P647].

A record has been established for this rulemaking under docket number [PP 4E4419/P647] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore

subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 11, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.449, by revising paragraph (a) to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9 isomer; tolerances for residues.

(a) Tolerances are established for the combined residues of the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*- demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)] and its delta-8,9-isomer in or on the following commodities:

Commodity	Parts per million	Expiration date
Cattle, fat	0.015	Apr.30, 1996
Cattle, meat	0.02	Do
Cattle, mbyp ...	0.02	Do
Citrus whole fruit	0.02	Do
Cotton-seed	0.005	Do
Hops, dried	0.5	Dec. 31, 1996
Milk	0.005	Apr. 30, 1996

* * * * *

[FR Doc. 96–6447 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185 and 186

[OPP–300413; FRL–5347–6]

RIN 2070–AB18

Hexakis (2-methyl-2-phenylpropyl)distannoxane; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has completed the reregistration process and issued a Reregistration Eligibility Decision (RED) for hexakis (2-methyl-2 phenylpropyl)distannoxane, also known as and hereafter referred to in this document as fenbutatin oxide. In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide fenbutatin oxide, EPA is proposing to revoke certain individual tolerances, establish group tolerances, correct some commodity definitions and divide food crop and animal tolerances into two separate tables, so that only animal tolerance expressions include both the parent compound and metabolites. Since the publication of the RED, the Agency has revised Table II of the Subdivision O, Residue Chemistry Pesticide Assessment Guidelines for raw agricultural and processed commodities. Consequently, revocations are proposed for commodities which are not considered significant food or feed commodities. In addition, the food additive regulation for citrus oil is being proposed for revocation, and the establishment of a maximum residue level (MRL) for citrus oil is proposed.

DATES: Written comments should be submitted to EPA by May 20, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300413]. No CBI should be submitted through e–mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone number: (703) 308–8016; e-mail: andreasen.jude@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered ''adulterated'' under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would ''protect the public health'' [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration or whether any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, based on more recent data, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or revoking tolerances or exemptions from the requirement of tolerances is set forth in 40 CFR parts 177 through 180. The Administrator or EPA, or any person by petition, may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical—Specific Information and Proposed Actions

A. Fenbutatin oxide

1. *Regulatory background.* Fenbutatin oxide is a miticide/acaricide first registered under FIFRA in 1974; a Registration Standard was issued in March, 1987. The Reregistration Eligibility Decision document (RED) was issued in November 1994. The RED required that all fenbutatin oxide products be classified as restricted use due to very high toxicity to aquatic organisms, and imposed other label changes regarding restricted entry intervals (REI), personal protective equipment (PPE), toxicity statements, drift reductions and geographical restrictions. The RED required the following generic data to confirm EPA's regulatory assessments and conclusions: discussion of formulation impurities, pH, bioaccumulation in fish, droplet size spectrum, and drift field evaluation. The RED also required product-specific data including product chemistry and acute toxicity studies, revised Confidential Statements of Formula (CSFs) and revised labeling for reregistration.

2. *Current proposal.* Tolerances for fenbutatin oxide listed in 40 CFR 180.362(a), (b), (c), 185.3550, and 186.3550. Tolerances listed under 40 CFR 180.362(a) will be separated into paragraph (a) for food crop tolerances and paragraph (b) for animal tolerances. Tolerances with regional registrations, currently listed under 40 CFR 180.362(b) will be redesignated as 40 CFR 180.362(c). Based on the available residue data and to better harmonize with CODEX, the Agency has concluded that the tolerance expression for plants should include the parent compound only, and for meat, milk, poultry and eggs the tolerance expression should include fenbutatin oxide and its organotin metabolites dihydroxybis(2-methyl-2-phenylpropyl)stannane (SD–31723) and 2-methyl-2-phenylpropylstannoic acid (SD–33608). These changes will be incorporated into the tables.

Individual tolerances for almonds, pecans, and walnuts will be deleted and a combined tolerance for residues in or on ''tree nuts group'' will be established. The available residue data support this crop group tolerance.

The separate tolerances for cherries, sour and cherries, sweet will be combined into a single tolerance for residues in or on cherries.

Certain commodity definitions listed in these sections will be revised to conform to the definitions listed in the Commodity Index Report dated October 28, 1992.

The RED inadvertently attributed a feed additive tolerance for ''citrus, oil, refined'' under § 186.3550. The correct designation is under § 185.3550 as a food additive tolerance. In 40 CFR (July 1, 1994 edition), citrus oil is correctly listed as a food additive tolerance under § 185.3550. However, EPA is proposing to revoke this food additive regulation because EPA has determined that it is no longer necessary to prevent the adulteration of food.

In June, 1995, EPA issued a revised policy concerning when section 409 food and feed additive regulations were needed to prevent the adulteration of foods and animal feeds. (60 FR 31300, June 14, 1995). Under EPA's revised policy, a section 409 regulation is necessary for pesticide residues in processed food when it is likely that the level of some residues of the pesticide will exceed the section 408 regulation level in ''ready to eat'' processed food. Of particular relevance to the citrus oil food additive regulation, is EPA's decision to interpret the term ''ready-to-eat'' processed food as food ready for consumption as is without further preparation. For foods that are found to be not ''ready-to-eat,'' EPA takes into account the dilution of residues that occurs in preparing a ''ready-to-eat'' food.

EPA has determined that citrus oil is not a ''ready-to-eat'' food. EPA has found no evidence that citrus oil is consumed ''as is.'' Rather, citrus oil is used as a flavoring ingredient in other foods. As such, citrus oil can comprise up to 4,000 ppm (0.4 percent) of human foods such as chewing gum, which corresponds to a dilution factor of 250. Since the dilution factor in ready-to-eat foods far exceeds the concentration factor resulting from citrus processing, a food additive regulation for fenbutatin oxide on citrus oil is not necessary. Accordingly, EPA is proposing to revoke the fenbutatin oxide food additive regulation for citrus oil.

To aid in the efficient enforcement of the Act, EPA is proposing to establish a maximum residue limit (MRL) for fenbutatin oxide residues in citrus oil. The MRL will reflect the maximum residue of fenbutatin oxide in processed food consistent with a legal level of such residues being present on citrus and the use of good manufacturing practices. See 60 FR 11302, December 6, 1995, regarding imidacloprid. Processed foods not in compliance with an applicable MRL will be deemed adulterated under section 402. Taking into account the degree to which fenbutatin oxide may concentrate during processing using good manufacturing processes (6.9 times) and the level of residues expected in citrus (20 ppm), EPA proposes a MRL of 140 ppm. For purposes of enforcement of the MRL, the same analytical method used for enforcement of the section 408 regulations should be used.

Since the RED was published, the Agency has revised Table II of the Subdivision O, Residue Chemistry Pesticide Assessment Guidelines for raw agricultural and processed commodities. Consequently, revocations are proposed for fresh and dried marigolds, as well as for dried grape pomace and raisin waste, which are not considered significant food or feed commodities.

III. Public Comment Procedures

EPA invites interested parties to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by May 20, 1996. Comments must bear a notation indicating the docket number. Three copies of the comments should be submitted to either location listed under ''ADDRESSES.''

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as ''Confidential Business Information'' (CBI). EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, must also be submitted for inclusion in the public record. EPA may publically disclose without prior notice information not marked confidential.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, that contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

EPA has established a record for this proposed rule under docket number [OPP–300413] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

The official record for this proposed rule, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official proposed rule record which will also include all comments submitted directly in writing. The official proposed rule record is the paper record maintained at the ''ADDRESSES'' listed at the beginning of this document.

IV. References

1. U.S. Environmental Protection Agency. 60 FR 4912, Reregistration Eligibility Decision Documents for Hexadecadienol, et al. and Notice to Remove Benzocaine; Availability for Comment, January 25, 1995.

2. U.S. Environmental Protection Agency. Reregistration Eligibility Decision: Fenbutatin Oxide, November 1994, EPA Case 0245.

V. Regulatory Assessment Requirements

To satisfy requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act, EPA has considered the impacts of this proposal.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal tribal governments or communities (also referred to as ''economically significant''; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. The nature of the revisions as proposed will not cause significant impacts. For example, combining the individual tolerances for almonds, pecans and walnuts into a single ''tree nuts group'' will not affect the use of fenbutatin oxide on these sites. It simply reclassifies the sites to a crop grouping.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not a ''significant regulatory action,'' because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

EPA has reviewed this proposed rule under the Regulatory Flexibility Act of 1980 [Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*], and has determined that it will not have a significant economic impact on any small businesses, governments, or organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This proposed action is not expected to have a significant impact on entities of any size.

D. Unfunded Mandates

This proposed rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and Recordkeeping requirements.

Dated: February 28, 1996.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185 and 186 be amended as follows:

1. In part 180:

PART 180—[AMENDED]

a. The authority citation for part 180 would continue to read as follows:

Authority: 15 U.S.C. 346a and 371.

b. Section 180.362 is revised to read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

(a) Tolerances are established for residues of hexakis (2-methyl-2-phenylpropyl)distannoxane in or on raw agricultural commodities as follows:

Commodity	Parts per million
Almonds, hulls	80.0
Apples	15.0
Cherries	6.0
Citrus fruits group	20.0
Cucumbers	4.0
Eggplant	6.0
Grapes	5.0
Papayas	2.0
Peaches	10.0
Pears	15.0
Plums (fresh prunes)	4.0
Strawberries	10.0
Tree nuts group	0.5

(b) Tolerances are established for the combined residues of hexakis (2-methyl-2-phenylpropyl)distannoxane and its metabolites dihydroxybis(2-methyl-2-phenylpropyl)stannane (SD-31723) and 2-methyl-2-phenylpropylstannoic acid (SD–33608) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Eggs	0.1
Goats, fat	0.5
Goats, mbyp	0.5
Goats, meat	0.5
Hogs, fat	0.5
Hogs, mbyp	0.5
Hogs, meat	0.5
Horses, fat	0.5
Horses, mbyp	0.5
Horses, meat	0.5
Milk, fat	0.1
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5

(c) Tolerances with regional registrations are established for residues of hexakis (2-methyl-2-phenyl-propyl) distannoxane in or on raw agricultural commodities as follows:

Commodity	Parts per million
Raspberries	10.0

2. In part 185:

a. The authority citation for part 185 would continue to read as follows:

Authority: 15 U.S.C. 346a and 348.

b. Section 185.3550 is revised to read as follows:

§ 185.3550 Hexakis.

(a) A regulation is established permitting residues of hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the following food items:

Commodity	Parts per million
Prunes	20.0
Grapes, raisins	20.0

(b) A maximum residue level regulation is established permitting residues of hexakis (2-methyl-2-phenylpropyl)distannoxane in or on the following food resulting from application to citrus:

Commodity	Parts per million
Citrus oil	140.0

This regulation reflects the maximum level of residues in citrus oil consistent with use of hexakis (2-methyl-2-phenylpropyl)distannoxane on citrus in conformity with 40 CFR 180.362 and with the use of good manufacturing practices.

3. In part 186

PART 186—[AMENDED]

a. The authority citation for part 186 would continue to read as follows:

Authority: 15 U.S.C. 348

b. Section 186.3550 is revised to read as follows:

§ 186.3550 Hexakis (2-methyl-2-phenylpropyl)distannoxane.

Regulations are established for residues of exakis (2-methyl-2-phenylpropyl)distannoxane in or on the following processed feeds when present therein as a result of application to growing crops:

Commodity	Parts per million
Apples, pomace, wet	30
Citrus, pulp, dried	100

[FR Doc. 96–6727 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7172]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Valley Head (Town) De Kalb County.	Big Willis Creek (With Southern Railway).	At upstream side of southern Railway	*1015	*1014
			Approximately 1,175 feet upstream of State Highway 117.	*1048	*1049
		Big Willis Creek (Without Southern Railway).	Approximately 1,500 feet downstream of City Park Bridge.	*978	*977
			Approximately 1,625 feet upstream of State Highway 117.	*1054	*1053
Maps available for inspection at the Valley Head Town Hall, 41 Anderson Avenue, Valley Head, Alabama.					
Send comments to The Honorable R. E. Ringer, Mayor of the Town of Valley Head, P.O. Box 144, Valley Head, Alabama 35989.					
Connecticut	East Granby (Town), Hartford County.	South Tibutary of Austin Brook.	At confluence with Austin Brook	*161	*169
			Approximately 1.7 miles upstream of Ridge Road.	None	*189
		Austin Brook	Approximately 800 feet downstream of State Route 187.	*161	*162
			At upstream corporate limits	*161	*170
		Muddy Brook	Approximately 0.9 mile upstream of confluence of Marsh Pond Brook.	*163	*164
			Approximately 1.3 miles upstream of confluence with Marsh Pond Brook.	None	*172
		Marsh Pond Brook	Approximately 700 feet upstream of confluence with Muddy Brook.	*163	*164
			Approximately 450 feet upstream of Hatchett Hill Road.	None	*253
		West Brook	At downstream corporate limits	None	*165
			Approximately 270 feet upstream of Sweetbriar Road.	None	*176
		DeGrayes Brook	At downstream corporate limits	*None	*136

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 500 feet upstream of Nicholson Road.	None	*169
		Creamery Brook	Approximately 50 feet upstream of the confluence with Sanborn and Sheldens Brooks.	None	*162
			Approximately 1 mile upstream of Hillcrest Drive.	None	*221
		Sheldens Brook	At upstream side of School Street	None	*169
			Approximately 1.4 miles upstream of School Street.	None	*184

Maps available for inspection at the Planning and Zoning Office, 9 Center Street, East Granby, Connecticut.

Send comments to Mr. David Kilbon, First Selectman of the Town of East Granby, Town Hall, 9 Center Street, P.O. Box 1858, East Granby, Connecticut 06026.

Connecticut	Ellington (Town), Tolland County.	Pecks Brook	At corporate limits	None	*192
			Approximately 0.7 mile upstream of upstream Middle Road crossing.	None	*246
		Ketch Brook	Approximately 2,300 feet downstream of Tripp Road.	None	*188
			Approximately 900 feet upstream of Tripp Road.	None	*197
		Broad Brook	At corporate limits	None	*145
			Approximately 1 mile upstream of Bridge Street.	None	*239
		Charters Brook	At corporate limits	None	*557
			At downstream side of the upstream crossing of Webster Road.	None	*713
		Abbey Brook	At corporate limits	None	*222
			Approximately 1,600 feet upstream of Strawberry Road.	None	*230

Maps available for inspection at the Ellington Town Hall, 55 Main Street, Elllington, Connecticut.

Send comments to Mrs. Michael Stupinski, First Selectman of the Town of Ellington, 55 Main Street, P.O. Box 187, Ellington, Connecticut 06029.

Florida	Destin (City), Okaloosa County.	Gulf of Mexico	Approximately 1,000 feet east northeast of the intersection of Gulf Shore Drive and Moreno Point Road.	None	*4
			Approximately 400 feet south of the intersection of Mathew Boulevard.	*8	*12

Maps available for inspection at the City Hall, P.O. Box 399, Destin, Florida

Send comments to The Honorable Bill Bradley, Mayor Pro-Tem of the City of Destin, P.O. Box 1876, Destin, Florida 32540.

Illinois	Seneca (Village), LaSalle and Grundy Counties.	Rat Run Creek	At downstream corporate limits	None	*492
			At upstream corporate limits	None	*501
		Crotty Creek	Approximately 100 feet upstream of Illinois and Michigan Canal.	None	*507
			At downstream side of U.S. Route 6	None	*524

Maps available for inspection at the Seneca Village Hall, 116 West Williams Street, Seneca, Illinois.

Send comments to The Honorable William Steep, Mayor of the Village of Seneca, 116 West Williams Street, Box 27, Seneca, Illinois 61360–0027.

Indiana	Lebanon (City), Boone County.	New Reynolds Ditch	Approximately 1,000 feet upstream of confluence with Prairie Creek.	*920	*919
			Limit of study, approximately 80 feet upstream of Grant Drive.	*940	*939

Maps available for inspection at the Lebanon City Building, Inspector's Office, 201 East Main Street, Lebanon, Indiana

Send comments to The Honorable James Acton, Mayor of the City of Lebanon, 201 East Main Street, Lebanon, Indiana.

Maryland	Cecil County (Unincorporated Areas).	Christina River	Approximately 200 feet upstream of Wedgewood Road.	None	*160
			At the upstream county coiundary	None	*268
		West Branch Christina River.	Approximately 200 feet upstream of the downstream county boundary.	*108	*107

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 250 feet upstream of Jackson Hall School Road.	None	*196

Maps available for inspection at the Cecil County Office of Planning and Zoning, 129 East Main Street, Room 300, Elkton, Maryland.

Send comments to Mr. Oakley A. Sumpter, Jr., President of the Cecil County Board of Commissioners, 129 East Main Street, Room 101, Elkton, Maryland 21921.

Michigan	Frankenlust (Township), Bay County.	Saginaw Bay	The area west of Grand Trunk Western Railroad and north of county boundary.	*585	*586

Maps available for inspection at the Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan.

Send comments to Ms. Hilda M. Dijak, Supervisor of the Township of Frankenlust, Bay County, Frankenlust Township Hall, 2401 delta Road, Bay City, Michigan 48706.

New Jersey	Clinton (Town), Hunterdon County.	Beaver Brook	Upstream of interstate 78	None	*205
			At upstream corporate limits	None	*207

Maps available for inspection at the Clinton Town Hall, 43 Leigh Street, Clinton, New Jersey.

Send comments to The Honorable Allie McGaheran, Mayor of the Town of Clinton, P.O. Box 5194, Clinton, New Jersey.

New York	Andover (Town), Allegany County.	Dyke Creek	Approximately 1,200 feet downstream of CONRAIL.	None	*1573
			Approximately 0.9 mile above Old Route 417.	None	*1638
		Dyke Creek Split Flow	At confluence with Dyke Creek	None	*1580
			At divergence from Dyke Creek	None	*1587

Maps available for inspection at the Andover Town Hall, Main and West Center Streets, Andover, New York.

Send comments to Mr. Karl E. Graves, Supervisor of the Town of Andover, 25 Elm Street, Andover, New York 14806–0793.

New York	Trenton (Town), Oneida County.	West Canada Creek	Approximately 500 feet downstream of State Route 28.	*712	*715
			Approximately 6,000 feet upstream of State Route 28.	*719	*720

Maps available for inspection at the Town Municipal Center, Old Poland Road, Barneveld, New York.

Send comments to Mr. Mark Schneidelman, Supervisor of the Town of Trenton, P.O. Box 206, Barneveld, New York 13304.

North Carolina	Blowing Rock (Town), Watauga County.	Middle Fork	At downstream corporate limits approximately 250 feet upstream of Shoppes on the Parkway Entrance.	None	*3480
			Approximately 700 feet upstream of U.S. Route 321.	None	*3517

Maps available for inspection at the Blowing Rock Town Hall, 1036 Main Street, Blowing Rock, North Carolina.

Send comments to The Honorable Rufus E. Hallmark, Mayor of the Town of Blowing Rock, P.O. Box 47, Blowing Rock, North Carolina 28605.

North Carolina	Boone (Town), Watauga County.	Winkler Creek	At confluence with South Fork New River	*3102	*3113
			Approximately 300 feet downstream of Blowing Rock Road.	*3112	*3113
		Hodges Creek	Approximately 200 feet downstream of State Route 105.	*3147	*3148
			Approximately 640 feet upstream of State Route 105 and Highland Commons Shopping Center.	None	*3285
		Middle Fork	At confluence with South Fork New River	*3102	*3113
			Approximately 0.2 mile upstream of State Route 321/221.	None	*3297
		Rocky Knob	At confluence with South Fork New River	None	*3105
			At upstream side of State Route 194/U.S. Route 421/221.	*3142	*3141
		East Fork	At confluence with South Fork New River	*3102	*3113
			Approximately 1,500 feet upstream of Bamboo Road.	*3126	*3127
		South Ford New River	Approximately 350 feet downstream of U.S. Routes 421/321.	None	*3089
			At confluence of Middle Fork and East Fork.	*3102	*3113

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Mutton Creek	At confluence with South Fork New River	*3087	*3096
			Approximately 900 feet downstream of Wilson's Ridge Road.	*3115	*3114

Maps available for inspection at the Department of Planning and Inspections, 1510 Blowing Rock Road, Boone, North Carolina.

Send comments to The Honorable Velma Burnley, Mayor of the Town of Boone, P.O. Box 192, Boone, North Carolina 28607.

North Carolina	Mecklenburg (County), (Unincorporated Areas).	Blankmanship Branch	Approximately 210 feet downstream of county boundary with York County, South Carolina.	*611	*617
			Approximately 190 feet upstream of Smith-Boyd Road.	*616	*617
		Steele Creek	At State boundary	*565	*571
			At approximately 1,900 feet upstream of Red Hickory Lane.	*619	*622
		Polk Ditch	At confluence with Walker Branch	*567	*571
			At approximately 600 feet upstream of Choate Circle.	*570	*571
		Walker Branch	At confluence with Steele Creek	*566	*571
			At approximately 0.4 mile upstream of confluence of Polk Ditch.	*570	*571

Maps available for inspection at the Mecklenburg County Engineering Building, 700 North Tyron, Charlotte, North Carolina.

Send comments to Mr. Gerald G. Fox, Mecklenburg County Manager, 600 East 4th Street, Charlotte, North Carolina, 28202–2831.

North Carolina	Watauga County (Unincorporated Areas).	East Fork	At the upstream side of Bamboo Road	*3121	*3123
			At the upstream side of Bamboo Road/ State Route 1514.	*3198	*3204
		Howard Creek	At the confluence with South Fork New River.	None	*3064
			Approximately 480 feet upstream of the dam at Howard Creek Pumping Station.	None	*3213
		Middle Fork	At confluence with South Fork New River	*3102	*3113
			Approximately 250 feet upstream of Shoppes on the Parkway Entrance.	None	*3480
		Mutton Creek	Approximately 900 feet downstream of Wilson's Ridge Road.	*3115	*3114
			Approximately 60 feet upstream of Wilson's Ridge Road.	None	*3138
		South Fork New River	At the downstream corporate limit	None	*2920
			Approximately 350 feet downstream of U.S. Routes 421/321.	None	*3089
		Watauga River	Approximately 700 feet downstream of Greer Bridge.	None	*2596
			Approximately 890 feet upstream of State Route 1598 (Grandfather Road).	None	*3598
		Aho Branch	At confluence with Middle Fork	None	*3366
			At State Route 1533 (Aho Road)	None	*3632
		Laurel Fork	At confluence with Watauga River	None	*2740
			Approximately 1.1 miles upstream of State Route 1114.	None	*3074
		Dutch Creek	At confluence with Watauga River	None	*2666
			Approximately 425 feet upstream of State Route 1134.	None	*2741

Maps available for inspection at the Department of Planning and Inspections, 331 Queen Street, Boone, North Carolina.

Send comments to Mr. James Ratchford, Watauga County Manager, Courthouse-Box 1, 842 West King Street, Boone, North Carolina 28607.

Pennsylvania	Alsace (Township) Berks County.	Bernhart Creek	Approximately 200 feet upstream of corporate limits.	None	*486
			At Crystal Rock Road	None	*462

Maps available for inspection at the Alsace Township Office, 65 Woodside Avenue, Temple, Pennsylvania.

Send comments to Mr. Joseph E. Williams, Chairman of the Township of Alsace Board of Supervisors, 65 Woodside Avenue, Temple, Pennsylvania 19560.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Amity (Township), Berks County.	Schuylkill River	Approximately 1,300 feet downstream of Legislative Route 147 (Douglassville Road).	*153	*150
			Approximately 1,200 feet downstream of the confluence of Hay Creek.	*164	*161

Maps available for inspection at the Amity Township Municipal Office, 2004 Weavertown Road, Douglassville, Pennsylvania.

Send comments to Mr. Myron S. Wheeler, Chairman of the Township of Amity Board of Supervisors, 2004 Weavertown Road, Douglassville, Pennsylvania 19518.

Pennsylvania	Auburn (Borough), Schuylkill County.	Schuylkill River	Approximately 40 feet downstream of Deer Creek Drive.	None	*454
			At a point approximately 0.47 mile upstream at Market St./State Route 895.	None	*462
		Bear Creek	At confluence with Schuylkill River	*449	*455
			Approximately 475 feet upstream of Bear Creek Street.	*454	*455

Maps available for inspection at the Auburn Borough Secretary's Home, 530 Bear Creek Street, Auburn, Pennsylvania.

Send comments to Mr. John D. Eckert, President of the Auburn Borough Council, 232 Orchard Street, Auburn, Pennsylvania 17922.

Pennsylvania	Bern (Township), Berks County.	Schuylkill River	Approximately 900 feet upstream of Warren Street (U.S. Route 222).	*226	*225
			Approximately 1,200 feet upstream of East Wall Street.	*286	*285
		Tulpehocken Creek	Approximately 1,250 feet upstream of U.S. Route 422.	*216	*214
			Just downstream of Greyrock Road	*217	*215

Maps available for inspection at the Bern Township Building, Route 183, Reading, Pennsylvania.

Send comments to Mr. Richard Longlett, Chairman of the Township of Bern Board of Supervisors, R.D. 9, Box 9276, Reading, Pennsylvania 19605.

Pennsylvania	Birdsboro (Borough), Berks County.	Hay Creek	At confluence with Schuylkill River	*166	*162
			Approximately 425 feet downstream of Armorcast Road bridge.	*167	*166
		Schuylkill River	Approximately 1,200 feet downstream of confluence of Hay Creek.	*164	*161
			Approximately 3,300 feet upstream of State Route 82.	*170	*166

Maps available for inspection at the Birdsboro Borough Hall, 113 East Main Street, Birdsboro, Pennsylvania.

Send comments to The Honorable Donald R. Lebo, Mayor of the Borough of Birdsboro, 113 East Main Street, Birdsboro, Pennsylvania 19508.

Pennsylvania	Centre (Township), Berks County.	Schuylkill River	Approximately 1,050 feet upstream of East Wall Street.	None	*285
			Approximately 1,200 feet downstream of confluence of Mill Creek No. 4.	None	*325

Maps available for inspection at the Centre Township Building, 449 Bucks Hill Road, Mohrsville, Pennsylvania.

Send comments to Mr. Albert W. Burkevage, Sr., Chairman of the Township of Centre Board of Supervisors, 449 Bucks Hill Road, Morhsville, Pennsylvania 19541.

Pennsylvania	Colebrookdale (Township), Berks County.	Swamp Creek	At a point approximately 175 feet downstream of State Route 100.	None	*360
			At a point approximately 325 feet upstream of State Route 100.	None	*365

Maps available for inspection at Colebrookdale Township Building, 765 West Philadelphia Avenue, Boyertown, Pennsylvania.

Send comments to Ms. Cynthia B. Clemmer, Colebrookdale Township Manager, P.O. Box 194, New Berlinville, Pennsylvania 19545.

Pennsylvania	Conshohocken (Borough), Montgomery County.	Plymouth Creek	At confluence with the Schuylkill River	*68	*66
			Approximately 100 feet downstream of West Elm Street.	*68	*66
		Schuylkill River	Approximately 0.9 mile downstream of Fayette Street.	*63	*61

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 250 feet upstream of Plymouth Dam.	*70	*66

Maps available for inspection at the Borough Hall, 8th and Fayette Streets, Conshohocken, Pennsylvania.

Send comments to The Honorable Daniel McGinley, Mayor of the Borough of Conshohocken, Borough Hall, 8th and Fayette Streets, Conshohocken, Pennsylvania 19428.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Cumru (Township), Berks County.	Angelica Creek/Angelica Lake.	Approximately 800 feet upstream of Morgantown Road.	*219	*222
			Approximately 1,300 feet upstream of Morgantown Road.	*219	*222
		Schuylkill River	Approximately 1,650 feet upstream of confluence of Trout Run.	*177	*178
			Approximately 650 feet upstream of confluence of Wyomissing Creek.	None	*208
		Wyomissing Creek	At confluence with Schuylkill River	None	*208
			Approximately 800 feet upstream of the confluence with the Schuylkill River.	None	*208
		Angelica Creek	At Angelica Lake	*219	*222
			At a point approximately 0.66 mile upstream of St. Bernadine Street.	*249	*248

Maps available for inspection at the Cumru Township Building, 1775 Welsh Road, Mohnton, Pennsylvania.

Send comments to Mr. Brian K. Kobularcik, Director of the Cumru Township Public Services, 1775 Welsh Road, Mohnton, Pennsylvania 19540.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Douglas (Township), Berks County.	Schuylkill River	At downstream county boundary	*151	*148
			Approximately 1,300 feet downstream of Legislative Route 147 (Douglassvile Road).	*153	*150

Maps available for inspection at the Douglass Township Building, 1068 Douglass Drive, Boyertown, Pennsylvania.

Send comments to Mr. G. Jeffrey Bealer, Chairman of the Township of Douglass Board of Supervisors, 1068 Douglass Drive, Boyertown, Pennsylvania 19512.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Exeter (Township), Berks County.	Tributary B to Antietam Creek.	Approximately 750 feet downstream of Butter Lane Road (second crossing.	None	*500
			Approximately 550 feet downstream of Five Point Road.	None	*540
		Antietam Creek	At confluence with Schuylkill River	*173	*172
			At downstream side of Loraine Road	*173	*172
		Tributary No. 3 to Schuylkill River.	At confluence with Schuylkill River	*171	*168
			Approximately 525 feet upstream of Lincoln Road.	*171	*170
		Schuylkill River	Approximately 1,200 feet downstream of confluence of Hay Creek.	*164	*161
			Approximately 1,500 feet upstream of U.S. Route 422.	*180	*181

Maps available for inspection at the Township of Exeter Engineering Office, 4975 DeMoss Road, Reading, Pennsylvania.

Send comments to Ms. Linda Buler, Chairperson of the Township of Exeter Board of Supervisors, P.O. Box 4068, Reading, Pennsylvania 19606.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Hamburg (Borough), Berks County.	Kaercher Creek	Approximately 400 feet upstream of confluence with Schuylkill River.	*345	*346
			At State Route 61	*347	*348
		Mill Creek No. 1	Approximately 400 feet upstream of confluence with Schuylkill River.	*350	*351
			Approximately 50 feet downstream of Front Street.	*354	*355
		Unnamed Tributary to Schuylkill River.	At confluence with Schuylkill River	*338	*342
			Approximately 340 feet upstream of confluence with Schuylkill River.	*341	*342
		Schuylkill River	Approximately 200 feet downstream of confluence of Unnamed Tributary to Schuylkill River.	*341	*342

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 450 feet downstream of Kernsville Dam.	*378	*379

Maps available for inspection at the Hamburg Municipal Center, 61 North Third Street, Hamburg, Pennsylvania.

Send comments to Ms. Lynda G. Albright, Hamburg Borough Manager, 61 North Third Street, Hamburg, Pennsylvania 19526.

Pennsylvania	Kenhorst (Borough), Berks County.	Angelica Creek	Approximately 1,775 feet upstream of St. Bernadine Street.	*236	*238
			Approximately 2,325 feet upstream of St. Bernadine Street.	*240	*241

Maps available for inspection at the Kenhorst Borough Hall, 339 South Kenhorst Boulevard, Reading, Pennsylvania.

Send comments to Mr. Frank Garbini, Kenhorst Borough Manager, 339 South Kenhorst Boulevard, Reading, Pennsylvania 19607.

Pennsylvania	Landingville (Borough), Schuylkill County.	Schuylkill River	Approximately 750 feet downstream of Conrail.	None	*476
			Approximately 1,830 feet upstream of Main Street.	*489	*490

Maps available for inspection at the Landingville Borough Secretary's Home, Firehouse Road, Landingville, Pennsylvania.

Send comments to The Honorable Keith Trumbo, Mayor of the Borough of Landingville, Main Street, Landingville, Pennsylvania 17942.

Pennsylvania	Leesport (Borough), Berks County.	Schuylkill River	Approximately 2,400 feet downstream of East Wall Street.	*281	*280
			Approximately 1,050 feet downstream of confluence of Irish Creek.	*287	*288

Maps available for inspection at the Leesport Borough Municipal Building, 27 South Canal Street, Leesport, Pennsylvania.

Send comments to The Honorable Robert Hoffmaster, Mayor of the Borough of Leesport, Box T, Leesport, Pennsylvania 19533.

Pennsylvania	Longswamp (Township), Berks County.	Toad Creek	Approximately 380 feet upstream of School Lane.	None	*515
			Approximately 900 feet upstream of School Lane.	None	*527

Maps available for inspection at the Longswamp Township Municipal Building, 1112 State Street, Mertztown, Pennsylvania.

Send comments to Mr. Nevin M. Behm, Chairman of the Longswamp Township Board of Supervisors, P.O. Box 37, Mertztown, Pennsylvania 19539.

Pennsylvania	Lower Alsace (Township), Berks County.	Schuylkill River	Approximately 2,850 feet upstream of U.S. Route 422 in Township of Exeter.	*182	*181
			Approximately 1 mile upstream of U.S. Route 422 in Township of Exeter.	*183	*184

Maps available for inspection at the Lower Alsace Township Building, 750 North 25th Street, Reading, Pennsylvania.

Send comments to Mr. Neil C. Hill, Chairman of the Lower Alsace Township Board of Supervisors, 24 Myrtle Avenue, Reading Pennsylvania 19604.

Pennsylvania	Marion (Township), Berks County.	Tulpehocken Creek	Just upstream of Legislative Route 06050	None	*345
			Approximately 0.42 mile upstream of Mill Road (T–502).	None	*362

Maps available for inspection at the Marion Township Municipal Building, 20 South Water Street, Womelsdorf, Pennsylvania.

Send comments to Mr. Richard A. Webber, Chairman of the Marion Township Board of Supervisors, 20 South Water Street, Womelsdorf, Pennsylvania 19567.

Pennsylvania	Maxatawny (Township), Berks County.	Sacony Creek	Approximately 300 feet west of Hartman Drive and State Route 737.	None	*397

Maps available for inspection at the Maxatawny Township Building, 663 Noble Street, Kutztown, Pennsylvania.

Send comments to Mr. K. Ray Stauffer, Maxatawny Township Manager, 663 Noble Street, Kutztown, Pennsylvania 19530.

Pennsylvania	Muhlenberg (Township) Berks County.	Laurel Run	At confluence with Schuylkill River	*234	*233

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 250 feet downstream of Leizes Bridge Road.	*234	*233
		Schuylkill River	Appoximately 3,600 feet upstream of Warren Street (U.S. Route 222).	*226	*227
			Approximately 850 feet downstream of Cross Keys Road.	*261	*262

Maps available for inspection at the Muhlenberg Township Municipal Building, Engineering Department, 1 st Floor, 555 Raymond Street, Reading, Pennsylvania.

Send comments to Mr. Stephen J. Geras, President of the Township of Muhlenberg, 555 Raymond Street, Reading, Pennsylvania 19605.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	North Manheim (Township), Schuylkill County.	Schuylkill River	Approximately 1.7 miles downstream of Conrail.	*487	*490
			Approximately 2.5 miles upstream of State Route 183.	None	*591
		West Branch Schuylkill River.	Approximately 400 feet upstream of confluence with Schuylkill River.	None	*525
			Approximately 1,900 feet upstream of confluence with Schuylkill River (Borough of Cressona corporate limits).	None	*525
		Panther Creek	At a point approximately 800 feet downstream of L.R. 53079 (Beckville Road).	None	*555
			At a point approximately 200 feet upstream of L.R. 53079 (Beckville Road).	None	*590

Maps available for inspection at the North Manheim Township Municipal Building, Manheim Road, Pottsville, Pennsylvania.

Send comments to Mr. Gary L. Brensinger, Chairman of the North Manheim Board of Supervisors, R.D. #4, Box 4453–A, Pottsville, Pennsylvania 17901.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Ontelaunee (Township), Berks County.	Schuylkill River	Approximately 1,300 feet downstream of Cross Keys Road.	*260	*261
			Approximately 2,150 feet downstream of Legislative Route 06031 (Tiny Road).	*294	*295

Maps available for inspection at the Ontelaunee Township Municipal Building, Route 61, Leesport, Pennsylvania.

Send comments to Ms. Marlene E. Ernest, Ontelaunee Township Secretary, P.O. Box Q, Leesport, Pennyslvania 19533.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Perry (Township), Berks County.	Schuylkill River	Approximately 2,800 feet downstream of Legislative Route 06031 (Tiny Road).	None	*294
			Approximately 1 mile upstream of Township Route 558 (Fisher Dam Road).	None	*338
		Tributary No. 2 to Schuylkill River.	At Water Street (T–952)	None	*329
			Approximately 1,000 feet upstream of Water Street (T–952).	None	*334
		Maiden Creek	Approximately 175 feet downstream of State Route 143.	None	*327
			Approximately 5,500 feet upstream of State Route 143.	None	*335
		Pigeon Creek	Approximately 500 feet downstream of State Route 61.	None	*328
			At State Route 61	None	*328

Maps available for inspection at the Shoemakersville Zoning Office, 15 Paradise Avenue, Shoemakersville, Pennsylvania.

Send comments to Mr. Ronald L. O'Neill, Chairman of the Township of Perry Board of Supervisors, 680 Moselem Springs Road, Shoemakersville, Pennsylvania 19555.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Pennsylvania	Port Clinton (Borough), Schuylkill County.	Schuylkill River	Approximately 550 feet downstream of confluence of Little Schuylkill River.	*405	*406
			Approximately 0.7 mile upstream of Conrail.	*415	*412
		Little Schuylkill River	At confluence with Schuylkill River	*406	*407
			Approximately 600 feet upstream of Broad Street.	*406	*407

Maps available for inspection at the Port Clinton Borough Fire Hall, Broad Street, Port Clinton, Pennsylvania.

Send comments to Mr. Herman Baver, President of the Borough of Port Clinton, Box 65, Port Clinton, Pennsylvania 19549.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Reading (City), Berks County.	Wyomissing Creek	At confluence with Schuylkill River	*209	*208
			Approximately 2,150 feet upstream of Museum Road.	*225	*227
		Schuylkill River	Approximately 4,500 feet downstream of confluence of Angelica Creek.	*195	*196
			Approximately 3,600 feet upstream of Warren Street (U.S. Route 222).	*227	*228
		Bernhart Creek	Approximately 150 feet downstream of Warren Street Bypass.	None	*290
			At Richmond Street	None	*282
		Angelica Creek	Approximately 640 feet upstream of St. Bernadine Street.	*228	*227
			Approximately 0.34 mile upstream of St. Bernadine Street.	*237	*229

Maps available for inspection at the Reading City Hall, 815 Washington Street, Reading, Pennsylvania.

Send comments to The Honorable Warrent H. Haggerty, Jr., Mayor of the City of Reading, City Hall, 815 Washington Street, Reading, Pennsylvania 19601.

Pennsylvania	Robeson (Township), Berks County.	Allegheny Creek	At the confluence with Schuylkill River	*176	*175
			At downstream side of Schuylkill Canal ...	*176	*175
		Seidel Creek	At confluence with Schuylkill River	*174	*173
			Approximately 50 feet downstream of State Route 724.	*174	*173
		Schuylkill River	Approximately 3,300 feet upstream of State Route 82.	*168	*166
			Approximately 1,200 feet upstream of confluence of Trout Run.	*177	*178

Maps available for inspection at the Robeson Township Municipal Building, Route 724, Birdsboro, Pennsylvania.

Send comments to Mr. Charles E. Lyon, Robeson Township Manager, R.D. 4, Box 3, Birdsboro, Pennsylvania 19508.

Pennsylvania	Shoemakersville (Borough), Berks County.	Schuylkill River	Approximately 1,050 feet downstream of confluence of Plum Creek No. 2.	*307	*308
			Approximately 3,580 feet upstream of Miller Street.	*313	*315
		Tributary No. 2 to Schuylkill River.	At Schuylkill Avenue	None	*314
			Approximately 290 feet upstream of Schuylkill Avenue.	None	*314

Maps available for inspection at the Shoemakersville Borough Office, 242 Main Street, Shoemakersville, Pennsylvania.

Send comments to The Honorable Ronald Anthony, Mayor of the Borough of Shoemakersville, 522 Water Street, Shoemakersville, Pennsylvania 19555.

Pennsylvania	South Manheim (Township), Schuylkill County.	Schuylkill River	Approximately 1,350 feet downstream of confluence of Stony Creek.	None	*432
			Approximately 4.4 miles upstream of confluence of Red Creek.	None	*508

Maps available for inspection at the south Manheim Township Municipal Building, 3089 Fair Road, Auburn, Pennsylvania.

Send comments to Mr. Chris Ingaglio, Chairman of the South Mainheim Township Board of Supervisors, 432 West Deer View Drive, Auburn, Pennsylvania 17922.

Pennsylvania	Spring (Township), Berks County.	Tributary No. 2 to Lauers Run.	Approximately 1,550 feet upstream of Logan Avenue.	None	*291
			Approximately 1,659 feet upstream of Logan Avenue.	None	*292

Maps available for inspection at the Spring Township Municipal Building, 2800 Shillington Road, Sinking Spring, Pennsylvania.

Send comments to Mr. Kevin G. Bitz, Chairman of the Spring Board of Supervisors, 2800 Shillington Road, Sinking Spring, Pennsylvania 19608.

Pennsylvania	Tilden (Township), Berks County.	Schuylkill River	Approximately 1,100 feet downstream of confluence of Mill Creek No. 4.	*325	*326
			At upstream county boundary	*437	*433

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Tilden Township Office, 772 Hex Highway, Hamburg, Pennsylvania.					
Send comments to Mr. Gary L. Wilhelm, Chairman of the Township of Tilden Board of Supervisors, 10 Lincoln Drive, Hamburg, Pennsylvania 19526.					
Pennsylvania	Township of Heidelberg, Berks County.	Furnace Creek No. 2	At downstream corporate limits	None	*508
			Approximately 50 feet upstream of the downstream corporate limits.	None	*508
Maps available for inspection at the Heidelberg Township Zoning Office, 7911 Kings Highway, Lynnport, Pennsylvania.					
Send comments to Mr. Ronald E. Leah, Chairman of the Heidelberg Township Board of Supervisors, 5832 Labrador Road, Schecksville, Pennsylvania 18078.					
Pennsylvania	Union (Township), Berks County.	Sixpenny Creek	At confluence with Schuylkill River	*160	*157
			Approximately 400 feet upstream of CONRAIL.	*160	*159
		Schuylkill River	At downstream county boundary	*151	*148
			Approximately 1,200 feet downstream of confluence of Hay Creek.	*164	*161
Maps available for inspection at the Union Township Municipal Building, 177 Center Road, Douglassville, Pennsylvania.					
Send comments to Mr. Robert J. Kretzman Sr., Chairman of the Union Township Board of Supervisors, 177 Center Road, Douglassville, Pennsylvania 19518.					
Pennsylvania	Washington (Township), Berks County.	West Branch Perkiomen Creek.	At a point approximately 0.6 mile downstream of Airport Road.	None	*589
			At a point approximately 0.5 mile downstream of Airport Road.	None	*592
Maps available for inspection at the Washington Township Municipal Building, 128 Barto Road, Barto, Pennsylvania.					
Send comments to Ms. Sandra S. Moser, Washington Township Manager, P.O. Box 52, Barto, Pennsylvania 19504.					
Pennsylvania	West Brunswick (Township), Schuylkill County.	Schuylkill River	Approximately 0.47 mile downstream of State Route 61.	*393	*392
			Approximately 800 feet upstream of the confluence of Red Creek.	None	*477
		Pine Creek	At confluence with Schuylkill River	None	*458
			Approximately 0.4 mile downstream of Fork Mountain Road (T–713).	*457	*458
Maps available for inspection at the Argal Federal Credit Union Building (Second Floor), 250 Parkway Avenue, Schuylkill Haven, Pennsylvania.					
Send comments to Mr. Samuel J. Boyer, Chairman of the West Brunswick Township Board of Supervisors, R.D. 1, Block 1363, Orwigsburg, Pennsylvania 17961.					
Pennsylvania	West Conshohocken (Borough), Montgomery County.	Schuylkill River	Approximately 0.2 mile downstream of Fayette Street (Matsonford Bridge).	*65	*63
			Approximately 900 feet upstream of Interstate Route 476 (Mid County Expressway).	*71	*68
Maps available for inspection at the Borough Hall, 112 Ford Street, Conshohocken, Pennsylvania.					
Send comments to Mr. William Saunders, Manager of the Borough of West Conshohocken, 112 Ford Street, Conshohocken, Pennsylvania 19428.					
Pennsylvania	West Reading (Borough), Berks County.	Schuylkill River	Approximately 1,550 feet downstream of Penn Street.	*212	*209
			Approximately 1,200 feet upstream of Buttonwood Street.	*216	*212
		Wyomissing Creek	Approximately 150 feet upstream of CONRAIL.	*212	*208
			Approximately 1,500 feet upstream of Museum Road.	*214	*223
Maps available for inspection at the West Reading Borough Hall, 500 Chestnut Street, West Reading, Pennsylvania.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable E. David Wenger, Mayor of the Borough of West Reading, 502 Chestnut Street, West Reading, Pennsylvania 19611–1291.					
Pennsylvania	Windsor (Township), Berks County.	Schuylkill River	Approximately 3,900 feet downstream of confluence of Kaercher Creek.	*337	*338
			Approximately 3,550 feet upstream of Kernsville Dam.	*393	*392
		Maiden Creek	Approximately 1 mile upstream of State Route 143.	None	*334
			At Township Route 745	None	*345
Maps available for inspection at the Windsor Township Building, 862 Haas Road, Hamburg, Pennsylvania.					
Send comments to Mr. Carl E. Schlegel, Chairman of the Township of Windsor Board of Supervisors, 2312 Old 22, Hamburg, Pennsylvania 19526					
Pennsylvania	Womelsdorf (Borough), Berks County.	Tulpehocken Creek	Approximately 0.37 mile upstream of Mill Road (T–502).	None	*361
			Approximately 0.42 mile upstream of Mill Road (T–502).	None	*362
Maps available for inspection at the Womelsdorf Borough Hall, 101 West High Street, Womelsdorf, Pennsylvania.					
Send comments to Mr. Vincent Balistrieri, President of the Womelsdorf Borough Council, 101 West High Street, Womelsdorf, Pennsylvania 19567.					
Pennsylvania	Wyomissing (Borough), Berks County.	Schuylkill River	Approximately 1,200 feet upstream of Buttonwood Street.	*213	*212
			Approximately 40 feet downstream of confluence of Tulpehocken Creek.	*214	*213
		Lauers Run	At downstream side of Old Mill Road	*253	*254
			Approximately 25 feet downstream of downstream end of Lauer's Lane culvert.	*266	*265
		Tributary No. 1 to Lauers Run.	At confluence with Lauers Run	*262	*261
		Tributary No. 2 to Lauers Run.	At confluence with Lauers Run	*263	*262
		Wyomissing Creek	Approximately 0.22 mile upstream of Museum Road.	*220	*219
			Approximately 0.35 mile upstream of Museum Road.	*225	*226
Maps available for inspection at the Wyomissing Borough Hall, 22 Reading Boulevard, Wyomissing, Pennsylvania.					
Send comments to Mr. Paul H. Edelman, President of the Borough of Wyomissing, 22 Reading Boulevard, Wyomissiong, Pennsylvania 19610.					
Pennsylvania	York Springs (Borough), Adams County.	Gardner Run	At corporate limits	*586	*585
			Approximately 235 feet upstream of Business U.S. Route 15.	#2	*588
		Tributary 1	Approximately 440 feet downstream of Latimore Street.	*599	*598
			Approximately 320 feet upstream of Latimore Street.	None	*606
		Tributary 2	At confluence with Tributary 1	*606	*605
			At corporate limits	*638	*639
Maps available for inspection at the York Springs Borough Office, 311 Main Street, York Springs, Pennsylvania.					
Send comments to Mr. Jeffrey L. Shull, President of the York Springs Borough Council, P.O. Box 222, 311 Main Street, York Springs, Pennsylvania 17372.					
Tennessee	Sevierville (City), Sevier County.	Dumplin Creek	Approximately 350 feet upstream of State Route 139.	None	*878
			Approximately 0.8 mile upstream of South Snyder Road.	None	*893
Maps available for inspection at the Sevierville City Hall, 120 Church Street, Sevierville, Tennessee.					
Send comments to The Honorable Bryan Atchley, Mayor of the City of Sevierville, P.O. Box 5500, Sevierville, Tennessee 37864–5500.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Vermont	Londonderry (Town), Windham County.	Cook Brook	At confluence with Windhall River	None	*1021
			At upstream corporate limits	None	*1266
		Lowell Lake Brook	At confluence with West River	None	*1021
			At Lowell Lake Dam	None	*1344
		Utley Brook	At confluence with West River	None	*1135
			At upstream corporate limit	None	*1370
		West River	At downstream corporate limits	None	*1021
			At upstream corporate limits	None	*1171
		Windhall River	At confluence with West River	None	*1021
			At upstream corporate limits	None	*1070
		Lowell Lake	Entire shoreline	None	*1355
Maps available for inspection at the Londonderry Town Office Building, Old School Street, South Londonderry, Vermont.					
Send comments to Mr. Clyde Prouty, Chairman of the Town of Londonderry Board of Selectmen, P.O. Box 118, South Londonderry, Vermont 05155.					
West Virginia	Martinsburg (City), Berkeley County.	Tuscarora Creek	Approximately 80 feet downstream of CONRAIL.	*452	*451
			Approximately 50 feet upstream of Rockcliff Drive.	*458	*457
Maps available for inspection at the Martinsburg City Hall, Planning Office, 232 North Queen Street, Martinsburg, West Virginia					
Send comments to The Honorable Ernest L. Sparks, Mayor of the City of Martinsburg, 232 North Queen Street, Martinsburg, West Virginia 25401.					
Wisconsin	Kenosha (City), Kenosha County.	Pike River	At confluence with Lake Michigan	*584	*585
			At downstream side of State Route 32	*584	*585
		Lake Michigan	Entire shoreline within the community	*584	*585
Maps available for inspection at the Kenosha City Hall, 625 52nd Street, Kenosha, Wisconsin.					
Send comments to The Honorable John Antaramian, Mayor of the City of Kenosha, 625 52nd Street, Kenosha, Wisconsin 53140.					
Wisconsin	Kenosha County (Unincorporated Areas).	Lake Michigan	Entire shoreline within community	*584	*585
		Camp Lake	Entire shoreline within community	None	*743
		Center Lake	Entire shoreline within community	None	*744
		Unnamed Tributary	At the State boundary	None	*742
			At Camp Lake dam	None	*743
		Unnamed Tributary to Center Lake.	At Center Lake inlet	None	*744
			Approximately 0.3 mile upstream of County Highway AH (89th Street).	None	*763
Maps available for inspection at the Kenosha County Administration Building, 1010 56th Street, Kenosha, Wisconsin.					
Send comments to Mr. John R. Collins, Kenosha County Executive, 1010 56th Street, Kenosha, Wisconsin 53140.					
Wisconsin	Platteville (City), Wisconsin County.	Roundtree Branch	Approximately 0.95 mile downstream of Southwest Road.	None	*830
			Approximately 0.12 mile downstream of Southwest Bridge.	None	*852
Maps available for inspection at the Department of Community Planning and Development, 75 North Bonson, P.O. Box 780, Platteville, Wisconsin.					
Send comments to Ms. Rosemarie E. Kulow, Platteville City Manager, 75 North Bonson Street, P.O. Box 780, Platteville, Wisconsin 53818–0780.					
Wisconsin	Pleasant Prairie (Village), Kenosha County.	Lake Michigan	Entire shoreline within community	*584	*585
		Barnes Creek North Outlet	At the confluence with Lake Michigan	*584	*585
			Approximately 100 feet downstream of First Avenue.	*585	*586
		Barnes Creek South Outlet.	At the confluence with Lake Michigan	*584	*585
			Approximately 200 feet upstream of Third Avenue.	*584	*585

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Pleasant Prairie Village Hall, 9915 39th Avenue, Kenosha, Wisconsin.
Send comments to Mr. Michael Pollocoff, Pleasant Prairie Village Administrator, 9915 39th Avenue, Kenosha, Wisconsin 53142.

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

Dated: March 11, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–6690 Filed 3–19–96; 8:45 am]

BILLING CODE 6718–04–P–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1152 and 1201

[Ex Parte No. 274 (Sub-No. 26)]

Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period

AGENCY: Surface Transportation Board.

ACTION: Proposed rule; discontinuance of proceeding.

SUMMARY: This proceeding is being discontinued, because its subject matter is being addressed in another (broader) pending rulemaking proceeding.

DATES: This proceeding is discontinued on March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, and effective on January 1, 1996, abolished the Interstate Commerce Commission (ICC) but transferred certain rail regulatory functions previously performed by the ICC to the Surface Transportation Board (Board). *See* ICCTA section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of the Board); and new 49 U.S.C. 10101–11908 (regulatory provisions applicable to rail carriers).

For abandonments and discontinuances, the new law (the law in effect on and after January 1, 1996) differs in several important respects from the old law. *Compare* new 49 U.S.C. 10903–10905 *with* old 49 U.S.C. 10903–10906. To implement the changes in the law and to streamline and update the pertinent abandonment and discontinuance regulations, we recently issued a notice of proposed rulemaking (NPR), proposing a substantial revision of those regulations codified at 49 CFR part 1152. *See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537 (Mar. 15, 1996). Comments in that proceeding are due 45 days from the date of publication in the Federal Register.

Previously, by NPR published in Ex Parte No. 274 (Sub-No. 26) on November 9, 1992 (57 FR 53307), the ICC proposed to modify its part 1152 regulations by eliminating the requirement that applications for abandonment or discontinuance include revenue and cost data for the 2 calendar years and that part of the current year occurring prior to the filing of the application. The ICC also proposed a conforming amendment to 49 CFR part 1201. Because the subject matter addressed in the NPR issued in the Ex Parte No. 274 (Sub-No. 26) proceeding is being addressed in the more comprehensive proceeding instituted by the NPR issued in the STB Ex Parte No. 537 proceeding, we are discontinuing the proceeding in Ex Parte No. 274 (Sub-No. 26).

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant economic impact on a substantial number of small entities.

It is ordered:

This proceeding is discontinued.

Decided: March 14, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary

[FR Doc. 96–6662 Filed 3–19–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[I.D. 022396A]

Groundfish of the Gulf of Alaska; Pollock Seasonal Allowances; Correction

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

ACTION: Correction to a Notice of Availability of an amendment to a fishery management plan; request for comments.

SUMMARY: This document contains a correction to a Notice of Availability (I.D. 022396A), which was published Friday, March 1, 1996 (61 FR 8023).

DATES: Comments on Amendment 45 should be submitted on or before April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–271–2809.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson Act also requires that NMFS, upon receiving a fishery management plan or amendment, immediately publish a document that the fishery management plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Need for correction

The Notice of Availability that is the subject of this correction pertains to a completely different fishery.

Correction of Publication

Accordingly, the publication on Friday, March 1, 1996, the Notice of

Availability (I.D. 022396A), which was the subject of FR Doc 96–4748, is corrected as follows:

1. On page 8023, in the second column, in the Part Heading 50 CFR Part ''675'' is corrected to read 50 CFR Part ''672''.

2. On page 8023, under the **SUMMARY**, on the fourth line, ''the Groundfish Fishery of the Bering Sea and Aleutian Islands'' is corrected to read ''Groundfish of the Gulf of Alaska''.

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

Dated: March 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6714 Filed 3–19–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 676

[I.D. 031396B]

RIN 0648–AG41

Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 33 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 37 to the FMP for Groundfish of the Gulf of Alaska (GOA). These amendments are necessary to assist persons to fully utilize the fishery resources in and off of Alaska. This will be accomplished by allowing persons using individual fishing quota (IFQ) resulting from sablefish quota share (QS) assigned to vessel categories B and C to process non-IFQ species. The Council intends that amendments promote management and conservation of IFQ species and further the goals and objectives contained in the FMPs that govern their management. Comments are requested from the public.

DATES: Comments on the FMP amendments must be received by May 14, 1996.

ADDRESSES: Comments on the proposed FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the proposed amendments and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment.

Amendments 33 and 37 would allow a category of persons using IFQ resulting from sablefish QS assigned to either vessel category B or C to process non-IFQ species. Several changes to the regulatory text implementing the IFQ program are necessary to accomplish this task. First, the definitions of ''freezer vessel'' and ''catcher vessel'' are eliminated and the definition of ''processing'' is added. Second, references to the eliminated definitions are removed and replaced with alternative language. Third, a provision is added that specifically prescribes who may, and when they may, process non-IFQ species.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. The proposed regulations are scheduled to be published within 15 days of this document.

Dated: March 14, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6630 Filed 3–15–96; 2:22 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 55
Wednesday, March 20, 1996

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council on Historic Preservation

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, March 22, 1996. The meeting will be held in the Abrams & Chaffee Room, Fort Myer Officers' Club, 214 Jackson Avenue, Fort Myer, Virginia, beginning at 10:00 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Report of the Chairman
III. Building Partnerships with Federal Agencies
IV. Policy Development
V. Report of the Task Force on Regulations
VI. New Business
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: March 14, 1996.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 96–6605 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN–96–005]

Cotton Research and Promotion Program: Request for comments To Be Used in a Review of 1990 Amendments to Authorizing Legislation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing its intentions to conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of amendments to the Cotton Research and Promotion Order as provided for by the Cotton Research Promotion Act Amendments of 1990. This notice invites all interested parties to submit written comments to the Department of Agriculture (USDA). These comments will be considered by USDA in determining whether a referendum is warranted. USDA should announce review results some time during the latter part of September 1996.

DATES: Comments must be received by May 6, 1996.

ADDRESSES: Comments and inquiries should be addressed to Craig Shackelford, Chief, Cotton Division, AMS, USDA, Research and Promotion Staff, P.O. Box 96456, Room 2641–S., Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2641–S., 14th & Independence Avenue, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford on (202) 720–2259.

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 authorized a national free-standing Cotton Research and Promotion Program which is both industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance, and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for, cotton.

The program became effective on December 31, 1966, when the Cotton Research and Promotion Order was issued. Assessments began with the 1967 cotton crop. The Order was amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale, effective January 26, 1977.

The program is currently financed through assessments levied on domestic and imported cotton and cotton-containing products. Assessments under this program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, international marketing, cotton production and processing, and textile research and implementation.

The program is administered by the Cotton Board, which has 25 members. The Cotton Board is composed of representatives of cotton producers and cotton importers, each of whom has an alternate selected by the Secretary, from nominations submitted by eligible producer and importer organizations. All members and their alternates serve terms of three years. The Cotton Board's responsibility is to administer the provisions of the Cotton Research and Promotion Order issued pursuant to the Act. These responsibilities include collecting, holding, and safeguarding funds; making refunds when refunds are a provision of the Order; contracting with an organization for the development and implementation of programs of research and promotion; reviewing and making recommendations to the Secretary of Agriculture on proposed programs and budgets; and making funds available for such programs when approved. The objective of the Cotton Research and Promotion Program is to strengthen

cotton's competitive position and to maintain and expand domestic and foreign markets and uses for U.S. cotton. The Cotton Board is prohibited from participating in any matters influencing governmental policies or action except recommendations for amendments to the Order.

Amendments to the Act were enacted on November 28, 1990, by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990. These amendments provided for: (1) importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) increasing the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments. The Act Amendments of 1990 were approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26, 1991, as required by the Act. Results of this referendum were announced in a nationally distributed press release dated August 2, 1991.

The Cotton Research and Promotion Act Amendment of 1990, Section 8(c) provides that once every five years after the July 1991, referendum, the Secretary of Agriculture shall conduct a review to ascertain whether a referendum is needed. In this referendum, producers and importers would determine whether they favor continuation of the amendments to the Order provided for in the Cotton Research and Promotion Act Amendments of 1990. In accordance with the provisions of the Act, the Secretary of Agriculture should make a public announcement of the results of the review on September 24, 1996, (60 days after each fifth anniversary date of the referendum). If the Secretary of Agriculture determines that a referendum is needed, the Secretary of Agriculture should conduct the referendum by September 24, 1997, (within 12 months after a public announcement of the determination to conduct the referendum).

If the Secretary determines that a referendum is not warranted, a sign-up period to request such a referendum will be made available to cotton producers and importers. A referendum will be held if requested by 10 percent or more of those voting in the most recent referendum as long as not more than 20 percent are from any one State or importers of cotton. This sign-up period would begin approximately November 25, 1996. A separate Federal Register notice addressing the sign-up period's exact date, time frame, and instructions will be provided. If a referendum is requested by the requisite number of persons, the referendum would be held by approximately February 23, 1998.

Authority: 7 U.S.C. 2101–2118.

Dated: March 13, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–6697 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–02–P

Rural Business-Cooperative Service

Inviting Preapplications for Rural Technology and Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.33 million in competing Rural Technology and Cooperative Development Grant (RTCDG) funds for fiscal year (FY) 1996. The intended effect of this notice is to solicit preapplications for FY 1996, notify applicants of RBS objectives and scoring system for FY 1996, and award grants before August 15, 1996.

DATES: The deadline for receipt of a preapplication is May 10, 1996. Preapplications received after that date will not be considered for FY 1996 funding.

ADDRESSES: Entities wishing to apply for assistance should contact Rural Economic and Community Development mission area (RECD) State Offices to receive further information and copies of the preapplication package. The program will be operated primarily by RECD at the State level.

FOR FURTHER INFORMATION CONTACT: Aurora Argueta, Acting Director, Specialty Lenders Division, Room 2245, South Agriculture Building, Ag Box 1521, 14th and Independence Avenue, SW, Washington, DC 20250–1521, Telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION: Refer to 7 CFR part 4284, subpart F, published in the Federal Register on February 2, 1996 (61 FR 3779–87), for the information collection requirements of the RTCDG program. This subpart provides details on what information must be contained in the preapplication package and eligibility information. It is essential that prospective applicants refer to this information before developing a proposal.

The RTCDG program is authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). The primary objective of the program is to improve the economic condition of rural areas. The RTCDG program will achieve this objective by enabling program recipients to establish and operate centers for rural technology or cooperative development for promoting the development and commercialization of:

(i)new services and products that can be produced or provided in rural areas;

(ii) new processes that can be utilized in the production of products in rural areas; and

(iii) new enterprises that can add value to on-farm production through processing or marketing.

The program is administered through RECD State Offices acting on behalf of RBS. RBS, formerly known as the Rural Business and Cooperative Development Service, is one of the successor agencies to the Rural Development Administration pursuant to the Department of Agriculture Reorganization Act of 1994 (Public Law 103–354).

RTCDG grants are competitive and will be awarded to nonprofit institutions and public bodies based on specific selection criteria, as required by law. Consistent with public comment, RBS has decided to emphasize certain policy themes each funding cycle. For FY 1996 funds, RBS desires to select projects that promote the theme of improved telecommunications capability in rural America. Administrator's points will be used for projects reflecting this policy theme as well as geographical distribution and interagency cooperation. Any project meeting the intent of the law and regulations for RTCDG will be considered, however.

The selection criteria, as outlined in 7 CFR part 4284, subpart F, and assigned weights for FY 1996 are as follows:

a. Likelihood of project being effective in achieving one or more of the following: technological innovation, adaptation of existing technology, cooperative development, commercialization of new services and products, and promotion of new processes and enterprises. (15 Points)

b. Innovativeness or originality of project in addressing authorized grant purposes. (15 Points)

c. Experience, organizational skill, and background that are needed for

applicant to successfully carry out project. (15 Points)

d. Transferability or demonstrated value of project to help rural areas outside of project area. (20 Points)

e. Ability of project to contribute to the improvement of economic conditions in rural areas with one or more of the following: few rural businesses and agribusinesses; high levels of unemployment or underemployment; high rates of out-migration of people, businesses, industries; and low levels of per capita income. (20 Points) *Applicants must provide data compiled by an independent party to support these conclusions. Applicants may use their choice of data as long as they reflect the intent of serving economically distressed communities and the data are from established official (or recognized) independent sources.*

f. Administrator's discretionary points to focus on telecommunications, geographical distribution, and interagency cooperation. (15 Points)

Fiscal Year 1996 Preapplication Submission

Due to the short preapplication period for FY 1996 funds, qualified applicants should begin the preapplication process as soon as possible. Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State Office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. The data provided by the applicant will be reviewed and a tentative score sheet prepared by the State Office based on published selection criteria and weights. Preapplications without supportive data to address selection criteria will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the RECD State Office or RBS National Office.

All eligible preapplications, along with tentative scoring sheets and the State Director's recommendation, will be referred to the National Office within 30 days following receipt of preapplication, and in no case later than June 10, 1996, for final scoring and selection for award. The State Director or his or her designee will provide comments on each preapplication forwarded to the National Office documenting whether the proposal promotes any of the policies set forth in this issuance. Any other comments helpful to the National Office review are also welcome. The National Office will score applicants based on the grant selection criteria set forth in 7 CFR part 4284, subpart F and weights published in this notice, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with this subpart. Entities submitting preapplications that are selected for award will be invited by the State Office to submit a formal application. It is anticipated that grant awardees will be selected by August 15, 1996. All applicants will be notified by the RECD State Office of the Agency decision on awards, and non-selectees will be provided appeal rights in accordance with 7 CFR part 1900, subpart B.

Dated: March 12, 1996.

Jill Long Thompson,

Under Secretary Rural Economic and Community Development.

[FR Doc. 96–6627 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–32–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 8:00 p.m. on Tuesday, April 9, 1996, at the Coffeyville Community College, 400 West 11th Street, Coffeyville, Kansas 67337. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, March 11, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–6608 Filed 3–19–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, April 17, 1996, at the State House, Room 222, Beacon Street, Boston, Massachusetts 02133. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dorothy Jones, 617–623–5610, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, March 11, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–6609 Filed 3–19–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a Closed Meeting.

SUMMARY: The President's Export Council (PEC) will hold a Full Council Meeting to discuss topics related to export expansion. The meeting will include briefings on foreign competitive practices, barriers to trade and other sensitive matters properly classified under Executive Order 12958. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed on September 29, 1995, by Executive Order 12974.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 5522b (c)(1) has been approved

in acccordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6204, U.S. Department of Commerce, 202–482–4115.

DATES: March 28, 1996.

TIME: 9:00 A.M.–1:00 P.M.

ADDRESSES: The Indian Treaty Room, Old Executive Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sylvia Lino Prosak, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: March 13, 1996.

Sylvia Lino Prosak,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 96–6651 Filed 3–19–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 031296G]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Surfclam and Ocean Quahog Committee (with Industry Advisors) and Demersal Species Committee (with the Atlantic States Marine Fisheries Commission's (ASFMC) Summer Flounder Board) will hold public meetings.

DATES: The meetings will be held on April 2–4,1996. On April 2, the Surfclam and Ocean Quahog Committee (with Industry Advisors) will meet from 1:00 p.m. until 4:00 p.m. On April 3, the Council will meet from 8:00 a.m. until noon, with the Demersal Species Committee (with ASMFC Summer Flounder Board) from 1:00 p.m. until 5:00 p.m. On April 4, the Council will meet from 8:00 a.m. until approximately 1:00 p.m.

ADDRESSES: The meetings will be held at the Doubletree Inn (at airport), 4101 Island Avenue, Philadelphia, PA; telephone 1–800–222–TREE.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to discuss alternatives, and possible adoption of, Amendment 10 to the Surfclam and Ocean Quahog Plan, discuss alternatives for Amendment 9 to the Summer Flounder Plan, possible Council action on the resubmitted portion of Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, and recommendations to NMFS on tunafish, swordfish, and sharks.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting dates.

Dated: March 13, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6654 Filed 3–19–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031296F]

North Pacific Fishery Management Council; Committee Meetings

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

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's Bering Sea/Aleutian Islands (BSAI) Crab Plan Team and its Crab Rebuilding Committee will hold meetings.

DATES: The Crab Plan Team will meet on April 3, 1996, beginning at 8:00 a.m. and concluding by 5:00 p.m. The Crab Rebuilding Committee will meet April 4–5, beginning at 8:00 a.m. on April 4, and concluding by 5:00 p.m. on April 5.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Plan Team and Rebuilding Committee will review analyses being prepared for a suite of management measures to facilitate rebuilding of the BSAI king crab stocks.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 13, 1996.

Richard W. Surdi,

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

[FR Doc. 96–6653 Filed 3–19–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

[Docket No. 950921236–6049–03]

RIN 0651–XX04

Guidelines for Examination of Design Patent Applications For Computer-Generated Icons

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office (PTO) is publishing the final version of guidelines to be used by Office personnel in their review of design patent applications for computer-generated icons. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: John Kittle by telephone at (703) 308–1495, by telefax at (703) 305–3600, by electronic mail through the INTERNET to ''iconpat@uspto.gov,'' or by mail addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, Attn: John Kittle, Director, Group 1100/2900, Crystal Plaza 3, 8D19.

SUPPLEMENTARY INFORMATION:

I. Discussion of Public Comments

Comments were received by the PTO from eleven different individuals in response to the request for comments on the interim guidelines for examination of design patent applications for computer-generated icons published October 5, 1995 (60 FR 52170). All comments have been carefully considered.

Two comments suggested the adoption of the interim guidelines as proposed. However, a number of changes have been made to the interim guidelines in response to the other comments.

One comment suggested that computer-generated icons are not ''ornamental'' designs within the meaning of 35 U.S.C. 171 because they are dictated by purely functional considerations. These guidelines do not address the procedures to be used by PTO personnel in assessing design ornamentality. Compliance with the ornamentality requirement of 35 U.S.C. 171 will be addressed on a case-by-case basis pursuant to prevailing laws, rules, and regulations. In this regard, prevailing case law, such as *Avia Group Int'l, Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1563 (Fed. Cir. 1988), indicates that a distinction exists between the functionality of an article and the functionality of the design of the article that performs the function. Based on this distinction, the design of a computer-generated icon may not be dictated by the function associated with the computer-generated icon.

Many of the comments suggested that the PTO delete the requirement for a solid line depiction of the article of manufacture on the ground that it is not legally required. The PTO has adopted this suggestion. The final guidelines simply require a depiction of an article of manufacture in either solid or broken lines.

Two comments suggested that the PTO delete any requirement to depict an article of manufacture on the ground that indication of an article of manufacture in the title should be sufficient. This suggestion was not adopted. The depiction of an article of manufacture is necessary to ensure that any design patent covers more than mere abstract, two-dimensional, surface ornamentation.

One comment suggested that the language in the guidelines be amended to clarify that the guidelines satisfy the ''design for an article of manufacture'' requirement of 35 U.S.C. 171. This suggestion has not been followed. Computer-generated icons are designs within the meaning of 35 U.S.C. 171, but must be embodied in an article of manufacture to satisfy the statute. These guidelines are directed to determining whether the icon is embodied in an article of manufacture, not whether it is a design.

One comment suggested that the guidelines be amended to clarify that the drawing must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article as required by 37 CFR 1.152. This suggestion was based on the language in the interim guidelines that a computer-generated icon may be embodied in a portion of computer screen, monitor, or other display panel. This suggestion has been adopted. See footnote 6.

One comment suggested that the interim guidelines be modified to require the depiction of a central processing unit (CPU). This suggestion has not been adopted. The dependence of a computer-generated icon on a CPU for its existence is not a reason for requiring depiction of a CPU.

One comment suggested deleting the rejection under 35 U.S.C. 112, second paragraph for failure to depict the article of manufacture in solid lines. This suggestion has been adopted. Compliance with 35 U.S.C. 112, second paragraph, will be addressed on a case-by-case basis under the usual laws, rules, and regulations applied to such questions.

One comment suggested that the guidelines include a statement that a portion of a computer screen can be represented by a breakout of a screen portion without screen borders, and some shade lines adjacent to the icon in the breakout portion to indicate a glass surface. The suggestion for a statement regarding a breakout portion was not specifically adopted. However, a statement was added to footnote 6 indicating that the design drawing must meet the requirements of 37 CFR 1.84 which provides for exploded, partial, and sectional views.

One comment suggested that the guidelines include a statement that the characteristic feature statement can be an appropriate invention title and that the title could be repeated as the characteristic feature statement. This suggestion has not been adopted. The characteristic feature statement should describe a particular feature of the design that is considered a feature of novelty or non-obviousness over the prior art. The guidelines already suggest appropriate titles.

One comment suggested that some other form of intellectual property protection would be a more appropriate method of protecting rights in computer-generated icons. The availability of other forms of protection is not grounds for denying design patent protection to computer-generated icons which meet the requirements of section 171.

One comment suggested that the interim guidelines may be construed as substantive rulemaking. The final guidelines have been amended to indicate that they govern the internal operations of the PTO. The guidelines have been developed to assist PTO personnel in their review of design patent applications covering computer-generated icons for compliance with the ''article of manufacture'' requirement of 35 U.S.C. 171.

II. Guidelines for Examination of Design Patent Applications for Computer-Generated Icons

The following guidelines have been developed to assist PTO personnel in determining whether design patent applications for computer-generated icons comply with the ''article of manufacture'' requirement of 35 U.S.C. 171.[1]

A. General Principle Governing Compliance with the ''Article of Manufacture'' Requirement

The PTO considers designs for computer-generated icons[2] embodied in articles of manufacture to be statutory subject matter eligible for design patent protection under section 171. Thus, if an application claims a computer-generated icon shown on a computer screen, monitor, other display panel, or a portion thereof,[3] the claim complies with the ''article of manufacture'' requirement of section 171.[4]

B. Procedures for Evaluating Whether Design Patent Applications Drawn to Computer-Generated Icons Comply With the ''Article of Manufacture'' Requirement

PTO personnel shall adhere to the following procedures when reviewing design patent applications drawn to computer-generated icons for compliance with the ''article of manufacture'' requirement of section 171.

1. Read the entire disclosure to determine what the applicant claims as the design[5] and to determine whether the design is embodied in an article of manufacture. 37 CFR 1.71 and 1.152–54.

a. Review the drawing to determine whether a computer screen, monitor, other display panel, or portion thereof, is shown. 37 CFR 1.152.[6]

b. Review the title to determine whether it clearly describes the claimed subject matter.[7] 37 CFR 1.153.

c. Review the specification to determine whether a characteristic feature statement is present. 37 CFR 1.71. If a characteristic feature statement is present, determine whether it describes the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof.[8]

2. If the drawing does not depict a computer-generated icon embodied in a computer screen, monitor, other display panel, or a portion thereof, in either solid or broken lines, reject the claimed design under section 171 for failing to

comply with the article of manufacture requirement.

a. If the disclosure as a whole does not suggest or describe the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that: (i) the claim is fatally defective under section 171; and (ii) amendments to the written description, drawings and/or claim attempting to overcome the rejection will not be entered because they would lack a written descriptive basis under 35 U.S.C. 112, first paragraph, and would constitute new matter under 35 U.S.C. 132.

b. If the disclosure as a whole suggests or describes the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that the drawing may be amended to overcome the rejection under section 171. Suggest amendments which would bring the claim into compliance with section 171.

3. Indicate all objections to the disclosure for failure to comply with the formal requirements of the Rules of Practice in Patent Cases. 37 CFR 1.71, 1.81–85, and 1.152–154. Suggest amendments which would bring the disclosure into compliance with the formal requirements of the Rules of Practice in Patent Cases.

4. Upon response by applicant:

a. Approve entry of any amendments which have support in the original disclosure; and

b. Review all arguments and the entire record, including any amendments, to determine whether the drawing, title, and specification clearly disclose a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof.

5. If, by a preponderance of the evidence,[9] the applicant has established that the computer-generated icon is embodied in a computer screen, monitor, other display panel, or portion thereof, withdraw the rejection under section 171.

III. Effect of the Guidelines on Pending Design Applications Drawn to Computer-Generated Icons

PTO personnel shall follow the procedures set forth in this Notice when examining design patent applications for computer-generated icons pending in the PTO as of the effective date of these Guidelines.

IV. Treatment of Type Fonts

Traditionally, type fonts have been generated by solid blocks from which each letter or symbol was produced. Consequently, the PTO has historically granted design patents drawn to type fonts. PTO personnel should not reject claims for type fonts under Section 171 for failure to comply with the ''article of manufacture'' requirement on the basis that more modern methods of typesetting, including computer-generation, do not require solid printing blocks.

V. Notes

1. Further procedures for search and examination of design patent applications to ensure compliance with all other conditions of patentability are found in the Manual of Patent Examining Procedure, Chapter 1500.

2. Computer-generated icons, such as full screen displays and individual icons, are two-dimensional images which alone are surface ornamentation. *See, e.g., Ex parte Strijland*, 26 USPQ2d 1259, 1262 (Bd. Pat App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation).

3. Since a patentable ''design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation,'' a computer-generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy section 171. MPEP 1502; 1504.01.A.

4. ''We do not see that the dependence of the existence of a design on something outside itself is a reason for holding it is not a design 'for an article of manufacture.' '' *In re Hruby*, 153 USPQ 61, 66 (CCPA 1967) (design of water fountain patentable design for an article of manufacture). The dependence of a computer-generated icon on a central processing unit and computer program for its existence itself is not a reason for holding that the design is not for an article of manufacture.

5. Since the claim must be in formal terms to the design ''as shown, or as shown and described,'' the drawing provides the best description of the claim. 37 CFR 1.153.

6. Although a computer-generated icon may be embodied in only a portion of a computer screen, monitor, or other display panel, the drawing ''must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article.'' 37 CFR 1.152. In addition, the drawing must comply with 37 CFR 1.84.

7. The following titles do not adequately describe a design for an article of manufacture under section 171: ''computer icon;'' or ''icon.'' On the other hand, the following titles do adequately describe a design for an article of manufacture under section 171: ''computer screen with an icon;'' ''display panel with a computer icon;'' ''portion of a computer screen with an icon image;'' ''portion of a display panel with a computer icon image;'' or ''portion of a monitor displayed with a computer icon image.''

8. *See McGrady v. Aspenglas Corp.*, 487 F. Supp. 859, 861, 208 USPQ 242, 244 (S.D.N.Y. 1980) (descriptive statement in design patent application narrows claim scope).

9. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (''After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.'').

Dated: March 14, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–6655 Filed 3–19–96; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 96–C00014]

SKR Resources, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with SKR Resources, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 4, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 15, 1996.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. SKR Resources, Inc. (hereinafter, ''SKR''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission,

and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staffs allegations that SKR knowingly introduced or caused the introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export Noncomplying Products, the ''Ghost Blaster,'' a banned hazardous toy, in violation of sections 4(a), (c), and (i) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1263(a), (c), and (i).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. SKR is a corporation organized and existing under the laws of the State of New York, since 1989, with its principal corporate offices located at 307 Fifth Avenue, New York, NY 10016. SKR is a media buying service and barter company.

II. Allegations of the Staff

4. The Ghost Blaster toy is a small plastic box which is capable of making two unique electronic sounds when the user presses one of two buttons. The Ghost Blaster toy is available in white, black, red, and gray. Each unit makes its own unique sound. Each Ghost Blaster toy has an insignia (''logo'') which represents the logo used in the motion picture ''Ghost Busters.'' The insignia is of a ghost inside a red circle with a red line through it.

5. The Ghost Blaster toy identified in paragraph 4 above is intended for use by children under three years of age.

6. The Ghost Blaster, is subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 C.F.R. Part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 C.F.R. 1500.51 and 1500.52, (a) one or more parts of the toy separated and (b) one or more of the separated parts from the toy fit completely within the small parts cylinder when tested using the procedures set forth in 16 C.F.R. 1501.4.

7. Because the separated parts fit completely within the test cylinders as described in paragraph 6 above, the Ghost Blaster toy identified in paragraph 4 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. § 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. The Ghost Blaster toy identified in paragraph 4 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. § 1261(f)(1)(D).

9. The Ghost Blaster toy identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. § 1261(q)(1)(A) and 16 C.F.R. 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance and because it presents a mechanical hazard as described in paragraph 7 above.

10. On or about July 11, 1990, SKR learned that the Ghost Blaster toy failed to comply with the Commission's Small Parts Regulation at 16 C.F.R. Part 1501 and before a firm could export the product, it had to notify the Commission under the Commission's Procedures For Export of Noncomplying Products at section 14(d) of the FHSA, 15 U.S.C. § 1273(d) and 16 C.F.R. Part 1019.

11. On or about March 17, 1993, Premier Promotions and Marketing, Inc. (hereinafter, ''Premier'') and SKR entered into a contract whereby SKR agreed to purchase from Premier approximately 2.5 million Ghost Blaster toys identified in paragraph 4 above. The contract provided no restrictions on the resale of the Ghost Blaster toys by SKR ''with the exception that the units shall only be offered for resale by SKR for export in accordance with the requirements of the Consumer Product Safety Commission (CPSC).''

12. In March, 1993, SKR asked Premier to deliver all the Ghost Blaster toys identified in paragraph 4 above to Brooklyn Closeout Corporation (hereinafter ''Brooklyn Closeout''), 167 Clymer Street, Brooklyn, NY 12111.

13. On or about June 7, 1993, SKR sold 2.5 million Ghost Blaster toys identified in paragraph 4 above to The Biggest A, 899 Howard Street, San Francisco, CA 94103 on the condition The Biggest A export all the Ghost Blaster toys.

14. The Biggest A failed to purchase all of the Ghost Blaster toys. In August, 1993, SKR sold Brooklyn Closeout approximately 400,000 Ghost Blaster toys.

15. The Biggest A distributed the Ghost Blaster toys in interstate commerce and to U.S. firms who exported the product without filing the required notification informing the Commission of their intent to export the product and/or distributed the product in domestic commerce.

16. Brooklyn Closeout distributed the Ghost Blaster toys in interstate commerce and to U.S. firms who exported the product without filing the required notification informing the Commission of their intent to export the product and/or distributed the product in domestic commerce. Ultimately, some of these products were sold to American consumers because of these actions.

17. SKR knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivery or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export of Noncomplying Products, the Ghost Blaster toy, a banned hazardous toy, in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

III. Response of SKR

18. SKR denies it knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Export of Noncomplying Products, the Ghost Buster, a banned hazardous toy, identified in paragraph 4 above, in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

19. SKR maintains that Premier intentionally and/or recklessly and/or carelessly failed to disclose material matters to SKR before March 1993 agreement was entered into. SKR maintains that had there been appropriate disclosure, SKR would not have entered into the contract with Premier. SKR maintains that Premier breached the representation contained within the contract. SKR maintains that it was knowingly and willingly mislead by Premier to believe that SKR's purchase of the Ghost Busters was lawful. Therefore, it is SKR's position that Premier was responsible for the products' introduction into commerce within the United States and that Premier was kept fully informed of all developments by SKR with third parties.

IV. Agreement of the Parties

20. The Consumer Product Safety Commission has jurisdiction over SKR and the subject matter of this Settlement Agreement and Order under the

following acts: Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. § 1261 *et seq.*

21. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by this reference.

22. The Commission does not make any determination that SKR knowingly violated the FHSA and/or the CPSA. This Agreement is entered into for the purposes of settlement only.

23. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, SKR knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether SKR failed to comply with the FHSA and/or the CPSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

24. SKR agrees to cooperate fully with the Commission and the U.S. Department of Justice in investigations of any other firms involving Ghost Blaster toys, including but not limited to testifying truthfully in any litigation arising from such investigations.

25. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of this Settlement Agreement and Order.

26. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 C.F.R. §§ 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register.

27. The parties further agree that the Commission shall issue the attached Order; and that a violation of the Order shall subject SKR to appropriate legal action.

28. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

29. The provisions of the Settlement Agreement and Order shall apply to SKR and each of its successors and assigns.

Dated: January 30, 1996.

Robert J. Richards,

President, SKR Resources, Inc., 307 Fifth Avenue, New York, NY 10016.

Commission Staff:

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: February 7, 1996.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent SKR Resources, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and SKR Resources, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further ordered, that upon final acceptance of the Settlement Agreement and Order, SKR Resources, Inc. shall pay the Commission a civil penalty in the amount of forty thousand and 00/100 dollars ($40,000.00) in two (2) payments. The first payment of twenty thousand and 00/100 dollars ($20,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the Settlement Agreement. The second payment of twenty thousand and 00/100 dollars ($20,000.00) shall be made within one year after service of the Final Order upon Respondent. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 17 of the Settlement Agreement that SKR Resources, Inc. knowingly violated the FHSA. Upon the failure by SKR Resources, Inc. to make a payment or upon the making of a late payment by SKR Resources, Inc. the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 15th day of March, 1996.

By Order of the Commission:

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission.

[FR Doc. 96–6733 Filed 3–19–96; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 96–C0003]

Taito America Corporation, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. Section 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Taito America Corporation, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 4, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 14, 1996.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Taito America Corporation, a corporation (hereinafter, ''Taito''), and the staff of the Consumer Product Safety Commission (hereinafter, ''staff''), pursuant to the procedures set forth in 16 C.F.R. § 1118.20, is a compromise resolution of the matter described

herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The ''Staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, ''CPSA''), as amended, 15 U.S.C. § 2053.

3. Respondent Taito is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located in Buffalo Grove, Illinois.

II. Jurisdiction

4. Taito manufactured certain Super Sonic Blastman Arcade Boxing Games, (hereinafter, ''Blastman(men)'' or ''the game(s)''). The Blastman is a ''consumer product'' within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. § 2052(a)(1).

5. Taito manufactured and distributed these games to arcades, amusement parks, and other similar locations nationwide. Taito is a ''manufacturer'' of a ''consumer product'' which is ''distributed in commerce'', as those terms are defined in sections 3(a)(1), (4), and (11) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (4) and (11).

III. The Product

6. The Blastman is a coin operated video arcade boxing game consisting of a video screen, a punching pad and a pair of boxing gloves. The objective of the game is to punch a foam filled circular pad which is attached to a three foot metal arm as hard as possible in an attempt to knock the pad/arm back to a flat position. Taito manufactured approximately 320 Blastmen in the United States between 1991 and 1992.

IV. Staff Allegations Concerning the Blastman and of a Failure by Taito to Comply With the Reporting Requirements of Section 15(b) of the CPSA

7. The Blastman contains a defect which could create a substantial product hazard and creates an unreasonable risk of serious injury in that the potential for serious injury is inherent in the use of the game and users are unlikely to perceive this risk.

8. On or about October 21, 1991, Taito first became aware of an injury involving the Blastman. In succeeding years, Taito learned of many other Blastman incidents with resulting injuries.

9. Between 1991 and 1994, Taito learned of a total of approximately seventy incidents involving the game, the majority of which resulted in fractured arms and wrists.

10. Both prior to and during the period in which Taito received notice of the Blastman injuries, the company implemented several design and material changes involving the Blastman.

11. Although Taito obtained sufficient information to reasonably support the conclusion that the Blastman, described in paragraph 6 above, contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

12. Taito knowingly failed to report to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

V. Response of Taito

13. Taito denies that its Blastman contains a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. § 2064(a), or creates an unreasonable risk of serious injury or death.

14. Taito initially imported approximately fifty Blastman to test the market in the United States. When the test units received a favorable response, Taito implemented certain design changes to improve the safety of the gloves and the pad. Subsequently, Taito manufactured and distributed approximately 320 games in the United States.

15. Between 1991 and 1994, Taito learned of a total of approximately sixty incidents involving the Blastman.

16. Taito denies that the information it received as to these incidents reasonably supported the conclusion that the Blastman contained a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death, and therefore, denies it had an obligation to report this information to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

17. Since Taito believes that it had no obligation to report the incidents of injury regarding the Blastman to the Commission, it did not knowingly fail to report these incidents to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and thus denies it is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

18. Based upon the Commission's preliminary determination that the Blastman presents a substantial product hazard, Taito agreed to conduct a voluntary recall of the Blastman to avoid incurring legal costs and adverse publicity.

19. By entering into this Settlement Agreement and Order, Taito does not admit any liability or wrongdoing, and this Settlement Agreement and Order does not constitute, and is not evidence of, or an admission of, any liability or wrongdoing by Taito.

VI. Agreement of the Parties

20. The Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

21. Taito knowingly, voluntarily and completely waives, in this section 15(b) matter only, any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), has occurred, (4) to a statement of finding of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

22. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated order upon Respondent.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it is the Federal Register in accordance with the procedure set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the Federal Register, in accordance with 16 C.F.R. § 1118.20(f).

24. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order.

25. The provisions of this Settlement Agreement and Order shall apply to Taito and its successors and assigns.

26. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

27. Taito agrees to inform the Commission if it learns of any additional Blastman incidents or any other relevant information affecting the safety of the Blastman.

28. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and order may not be used to vary or to contradict its terms.

TAITO America Corporation.

Dated: February 6, 1996.

By:

Reginald Winter,

Secretary, Taito America Corporation.

The Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: February 9, 1996.

By:

Ronald G. Yelenik,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Taito America Corporation, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and Taito America Corporation, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below, and it is

Further ordered, that within ten days of the service of the Final Order upon Respondent, Taito America Corporation shall pay to the order of the U.S. Treasury a civil penalty in the amount of fifty thousand dollars ($50,000).

Provisionally accepted and Provisional Order issued on the 14th day of March, 1996.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–6736 Filed 3–19–96; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 25 March 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: March 15, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–6684 Filed 3–19–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, March 28, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: March 15, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–6685 Filed 3–19–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the Semiconductor

Technology Council will hold forth its fourth meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster pre-competitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c) (3) and (4), Title 5, U.S.C. There will be an open session from 11:15 to 11:45 a.m. for a discussion of the Advanced Research Projects Agency (ARPA) Advanced Lithography Project strategy. Registration is required prior to this session.

DATES: March 29, 1996.

ADDRESSES: Hyatt Regency, Room 411, 1325 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Lance Glasser, Director, ARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: March 15, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–6682 Filed 3–19–96; 8:45 am]

BILLING CODE 5000–04–M

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on April 18 and 19, 1996. The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: March 15, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–6686 Filed 3–19–96; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on April 2, 1996; April 9, 1996; April 16, 1996; April 23, 1996; and April 30, 1996, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from official of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: March 15, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–6683 Filed 3–19–96; 8:45 am]

BILLING CODE 5000–04–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, March 26, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10:30 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Hanover Foods Corporation D–85–70 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 75 million gallons (mg)/30 days of water to the applicant's food processing facility from Well Nos. 3, 4, 5 and 6. Commission approval on November 26, 1985 was limited to ten years. The applicant requests that the total withdrawal from all wells remain limited to 75 mg/30 days. The project is located near the Town of Clayton, Kent County, Delaware.

2. *Town of Frederica D–89–73 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 3.9 mg/30 days of water to the applicant's distribution system from Well Nos. 3 and 4. Commission approval on January 12, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 3.9 mg/30 days. The project is located in the Town of Frederica, Kent County, Delaware.

3. *Honey Brook Borough Authority D–91–99 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from new Well No. 8, and to retain the existing withdrawal limit from all wells of 12 mg/30 days. The project is located in Honey Brook Township, Chester County, Pennsylvania.

4. *Heidelberg Heights Sewage Company D–94–9.* A project to upgrade and expand the applicant's existing 35,000 gallons per day (gpd) sewage treatment facility by providing a new advanced secondary biological treatment system capable of providing 60,000 gpd of treatment. The project is located just south of Heidelberg Heights Road in Heidelberg Township, Lehigh County, Pennsylvania. Treated effluent will continue to discharge to an unnamed tributary of Mill Creek, which is a tributary of Jordan Creek.

5. *Lansford-Coaldale Joint Water Authority D–95–13 CP.* An application for approval of a ground water

withdrawal project to supply water to the applicant's distribution system from existing Well Nos. 1 and 2; from new Well Nos. 5, 6, 7, 8, A, B, C, D and F; and to limit the withdrawal from all wells to 33 mg/30 days. The project is located in Nesquehoning Borough, Carbon County, Pennsylvania.

6. *Borough of Berlin D–95–24 CP.* An application for approval of a ground water withdrawal project to supply up to 40 mg/30 days of water to the applicant's distribution system from new Well Nos. 12 and 14, and to limit the withdrawal from all wells to 92.3 mg/30 days. The project is located in Berlin Borough and Berlin Township, Camden County, New Jersey.

7. *B & B Poultry Company D–95–33.* An application for approval of a ground water withdrawal project to continue to supply water to the applicant's poultry processing facility from new Well No. 7 and existing Well Nos. 4, 5 and 6, and to increase the existing withdrawal limit from all wells of 9.3 mg/30 days to 14.19 mg/30 days. The project is located in Pittsgrove Township, Salem County, New Jersey.

8. *City of Vineland D–95–47 CP.* An application for approval of a ground water withdrawal project to supply up to 5.6 mg/30 days of water to the applicant's distribution system from new Well No. 14, and to increase the existing withdrawal limit of 400 mg/30 days from all wells to 494.5 mg/30 days. The project is located in the City of Vineland, Cumberland County, New Jersey.

9. *Texaco Refining & Marketing, Inc. D–96–2.* A project to construct a ground water remediation treatment plant with the capacity to treat up to 47,520 gpd of ground water recovered from two extraction Well Nos. RW–1 and MW–5. The applicant will provide an air stripper for removal of Volatile Organic Compounds (VOCs), a particle filter to remove suspended solids, and a liquid phase granular-activated carbon filtration system for final polishing prior to discharge to the Westfall Town shopping center storm drainage system which outfalls to the Delaware River in the Special Protection Waters designated as Significant Resource Waters. The remediation system will serve only the applicant's former Texaco Service Station site (now a Mobil gas station) at Route 209/6 and Kokolias Lane in Westfall Township, approximately one mile downstream of Matamoras Borough, Pike County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 11, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–6610 Filed 3–19–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Delivery of the Canadian Entitlement

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The United States Entity (the Administrator of the Bonneville Power Administration and the Division Engineer, North Pacific Division of the US Army Corps of Engineers) has decided to fulfill its obligation under the Columbia River Treaty (Treaty) between the United States and Canada by delivering Canada's Entitlement under the Treaty to a point on the United States/Canada border near Oliver, British Columbia (BC). Delivering the Entitlement at that location will require BPA to construct and operate a new single-circuit 500-kV transmission line from Grand Coulee or Chief Joseph Substation to the United States/Canada border, a distance of 135 to 155 kilometers (85 to 95 miles), depending on the alignment selected.

The Treaty, signed in 1961, led to the construction of three storage dams on the Columbia River system in Canada and one in the United States. Under the Treaty, Canada and the United States equally share the benefits of the additional power that can be generated at dams downstream in the United States because of the storage at the upstream Treaty reservoirs. Canada's half of the downstream power benefits, known as the Canadian Entitlement, is estimated to be approximately 1,200 to 1,500 megawatts (MW) of capacity and 550 to 600 average megawatts (aMW) of energy. Canada sold its share of the power benefits for 30-year periods to a consortium of US utilities. The 30-year sale will begin to expire in 1998, when the first installment of the Canadian Entitlement must be delivered to Canada. The Treaty specifies that the Entitlement must be delivered to Canada at a point on the border near Oliver unless other arrangements are agreed upon by the Entities. An interim agreement allows the Entitlement to be delivered over existing facilities between 1998 and 2003.

Over a period of several years, the United States and Canadian Entities made a concerted effort to find a mutually agreeable alternative at commercially acceptable terms to delivery at Oliver. In the Delivery of the Canadian Entitlement Final Environmental Impact Statement (DOE/EIS–0197, issued in January 1996), the United States Entity evaluated the potential environmental impacts of a range of alternatives for delivering the Entitlement to Canada, including various combinations of delivery points, power purchases, resource development, and use of the Intertie System. This decision to deliver the full Entitlement to Oliver reflects the inability of the United States and Canadian Entities to agree to an alternative arrangement to the delivery point specified in the Treaty.

To comply with the Treaty, the United States Entity must be able to deliver the full Entitlement to Canada by April 1, 2003. In order to meet that schedule and to provide time for environmental analysis, public involvement, planning, and construction of a transmission line, BPA will issue a Notice of Intent to prepare the Oliver Delivery Project EIS, and begin scoping activities to support that EIS. The Oliver Delivery Project EIS will address the construction and operation of the transmission line required to implement the United States Entity's decision to deliver the full Entitlement at Oliver.

The United States Entity continues to be open to discussion with the Canadian Entity regarding commercially acceptable alternative delivery arrangements to full delivery at Oliver. In the event the United States Entity and the Canadian Entity mutually agree on an alternative disposition of the Canadian Entitlement, within a timeframe that allows the United States Entity to timely fulfill its obligation to Canada, the United States Entity will revisit its decision to deliver the full Canadian Entitlement to Oliver. The Delivery of the Canadian Entitlement EIS will be evaluated to determine whether it adequately covers the environmental inputs of that alternative, or whether a supplement to the EIS needs to be prepared.

ADDRESSES: Copies of the ROD and Environmental Impact Statement may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Pierce—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5699.

Public Availability: This ROD will be distributed to all interested and affected persons and agencies.

Issued in Portland, Oregon, on March 12, 1996.

Randall W. Hardy,

Chair, United States Entity.

Major General Russell L. Fuhrman,

Member, United States Entity.

[FR Doc. 96–6708 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Publication of the Insufficiency and Allocations Exhibit for the Power Sales Contract

AGENCY: Bonneville Power Administration (BPA), DOE,

ACTION: Publication of BPA's Insufficiency and Allocations Exhibit.

SUMMARY: Section 5(b)(5) of the Northwest Power Act requires BPA to include a provision in its requirements contracts establishing how BPA would distribute its power if there is not enough power to meet the demand. The provisions published below satisfy this statute. Customers that negotiate a *new* requirements contract with BPA will have the choice of referencing the provisions containing the formula below or incorporating the same language as an exhibit to their contract.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Latham, Power Contracts—MPSD, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–5260, fax number (503) 230–4973.

SUPPLEMENTARY INFORMATION:

I. Purpose of Insufficiency and Allocation Provisions

The purpose of these provisions is to comply with the requirements of the Northwest Power Act regarding insufficiency by describing the methodology that BPA will use to establish each Customer's share of available Requirements Power during a period of insufficiency as determined by BPA. This methodology will be referenced in new power sales contracts which BPA is currently negotiating with its preference utility customers.

II. Provisions

If and when BPA forecasts, on a planning basis, an inability to acquire resources to meet its Requirements obligation to supply demand and diurnal energy quantities to its public body and cooperative, Federal agency, direct-service industrial, and investor-owned utility customers, BPA will issue a written notice to limit its supply obligation. BPA's resulting obligation will be no less than an amount equal to the Federal Base System (FBS) firm peak capability and firm energy capability.

Notwithstanding any insufficiency notice issued based on planning criteria specified in the paragraph above, BPA's obligation to supply demand and diurnal energy amounts in an operating year must equal or exceed the firm peak capability or firm energy capability of the FBS before BPA implements an insufficiency restriction.

III. Insufficiency Notices

The insufficiency notice will specify BPA's best estimate of each month's demand and diurnal energy capability of the FBS, and the associated allocation to each customer class. Such allocation is to be based on BPA's estimate of the anticipated loads that each such class will place on BPA for the month. In making its estimate, BPA will sum: the then-current Requirements Power purchase amounts for the month for all customers in the affected class that have established purchase amounts for Requirements Power; and for all other customers in the class, BPA's forecast of the customers' Requirements Power load on BPA for the month.

IV. Notice of Insufficiency Calculation

At least 3 months prior to any month in which BPA has an insufficiency, BPA will calculate each customer's share of available Federal resources and make such calculations available to its customers.

V. Retraction of Insufficiency Notice

When BPA is able to meet its supply obligations based on the amount of Requirements Power that the customers would purchase absent the restriction, BPA may cancel the restriction.

VI. Formula Allocations

The following definitions are used in the allocation formulas: Class 1 = public body, cooperative class; Class 2=Federal agency class; Class 3=direct-service industry class; Class 4=investor-owned utility class.

VII. Allocation Formula Variables Defined

The following variables are used in the allocations formulas: S1–Requirements Service for a Class 1 customer; S2–Requirements Service for a Class 2 customer; S3–Requirements Service for a Class 3 customer; S4–Requirements Service for a Class 4 customer; SM-A Montana customer's Requirements Service purchases; M-Montana Reservation Resource amount as determined by BPA; RBPA-Total FBS and non-FBS Resources available to BPA to serve Requirements Service loads. Includes RT: R1–Resources sold to BPA by a Class 1 customer plus in-lieu power sold by BPA to a Class 1 customer; R2–Resources sold to BPA by a Class 2 customer; R3–Resources sold to BPA by a Class 3 customer; R4–Resources sold to BPA by a Class 4 customer plus in-lieu power sold by BPA to a Class 4 customer; RT-Total of R1, R2, R3 and R4.

VIII. Firm Energy and Peak Demand Allocation Formulas

BPA will use the following formulas to determine each Customer's monthly right to power during a period of insufficiency. BPA will calculate the Customer's monthly right to demand and energy during each of BPA's established diurnal energy periods. The Customer's right to purchase Requirements Power from BPA is limited to the calculated quantities.

Formula 1: If $RBPA - (\Sigma R3+\Sigma R4) \geq (\Sigma S1+\Sigma S2)$, all Class 1 and Class 2 Customers receive allocations equal to their respective Requirements Power purchases. Go to Formula 2.

Otherwise: If $M/\Sigma SM > (RBPA - RT)/(\Sigma S1+\Sigma S2)$ then: Each Montana Customer's allocation=$SM/\Sigma SM * M$. Other Class 1 and Class 2 Customer's allocation is as follows: Allocate R1 to eligible Class 1 Customers and R2 to eligible Class 2 Customers. Allocate excess R1 proportionally to remaining Class 1 Requirements Power purchases and excess R2 proportionally to remaining Class 2 Requirements Power purchases. Iterate until all R1 and R2 is used. Use $S1/(\Sigma S1+\Sigma S2-\Sigma SM) * (RBPA - \Sigma RT - M)$ for allocating to remaining Class 1 Requirements Power purchases. Use $S2/(\Sigma S1+\Sigma S2-\Sigma SM) * (RBPA - \Sigma RT - M)$ for allocating to remaining Class 2 Requirements Power purchases. Class 3 and Class 4 customer's allocation is as follows: Allocate R3 to eligible Class 3 Customers and R4 to eligible Class 4 Customers. Allocate excess R3 proportionally to remaining Class 3 Requirements Power purchases and excess R4 proportionally to remaining Class 4 Requirements Power purchases. Iterate until all R3 and R4 is used. Finished calculation for 1 month. Return to Formula 1 to proceed with monthly calculation.

If $M/\Sigma SM < (RBPA - RT)/(\Sigma S1+\Sigma S2)$ then: All Class 1 and Class 2 customers'

allocation is as follows: Allocate R1 to eligible Class 1 customers and R2 to eligible Class 2 customers. Allocate excess R1 proportionally to remaining Class 1 Requirements Power purchases and excess R2 proportionally to remaining Class 2 Requirements Power purchases. Iterate until all R1 and R2 is used. Use $S1/(\Sigma S1+\Sigma S2) * (RBPA-\Sigma RT)$ for allocating to remaining Class 1 Requirements Power purchases. Use $S2/(\Sigma S1+\Sigma S2) * (RBPA-\Sigma RT)$ for allocating to remaining Class 2 Requirements Power purchases. Follow steps for Class 3 and Class 4 in sections 2(d)(3)(C) and 2(d)(3)(D).

Formula 2: If $RBPA-(\Sigma S1+\Sigma S2+\Sigma R4)\geq\Sigma S3$, all Class 3 customers receive an allocation equal to their respective Requirements Power purchases. Go to Formula 3. Otherwise: Class 3 customers' allocation is as follows: $S3/\Sigma S3 * (RBPA-\Sigma S1-\Sigma S2-\Sigma R3-\Sigma R4)+R3$. Allocate excess R3 proportionally to remaining Class 3 Requirements Power purchases. Iterate until all R3 is used. Class 4 customers' allocation is as follows: Allocate R4 to eligible Class 4 customers. Allocate excess R4 proportionally to remaining Class 4 Requirements Power purchases. Iterate until all R4 is used. Finished calculation for 1 month. Return to Formula 1 to proceed with monthly calculation.

Formula 3: If $RBPA-(\Sigma S1+\Sigma S2+\Sigma S3)\geq\Sigma S4$, there is no insufficiency in this month. All customers receive an allocation equal to their Requirements Power purchases. Finished calculation for 1 month. Return to Formula 1 to proceed with monthly calculation. Otherwise: Class 4 customer's allocation is as follows: $S4/\Sigma S4 * (RBPA-\Sigma S1-\Sigma S2-\Sigma S3-\Sigma R4)+R4$. Allocate excess R4 proportionally to remaining Class 4 loads. Iterate until all R4 is used. Finished calculation for 1 month. Return to Formula 1 to proceed with monthly calculation.

These provisions will be revised only if BPA secures the agreement of all affected customers.

Issued in Portland, Oregon on February 27, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–6709 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Yakima Fisheries Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement Alternative 2 of the proposed Yakima Fisheries Project to undertake fishery research and mitigation activities in the Yakima River Basin in south-central Washington. The project responds directly to a need for knowledge of viable means to rebuild and maintain naturally spawning anadromous fish stocks in the Yakima Basin. Alternative 2 would experimentally supplement depressed populations of upper Yakima spring chinook salmon that spawn naturally, as well as undertake a study to determine the feasibility of re-establishing a naturally spawning population and significant fall fishery for coho salmon (now eliminated in the basin). The following facilities would be built: a central hatchery at Cle Elum; and three sites with six raceways each for acclimation and release of spring chinook smolts at Clark Flat, Easton, and Jack Creek. Alternative 2 was selected for its potential for increasing knowledge of supplementation, while increasing the number of upper Yakima spring chinook returning to the basin. Anadromous fish populations should also increase more quickly, and harvest opportunities should increase.

ADDRESSES: Copies of the Yakima Fisheries Project Environmental Impact Statement (EIS), the Yakima Fisheries Project EIS Summary, and the ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Nancy Weintraub, Environmental Project Lead-ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–5373, fax number (503) 230–5699.

Issued in Portland, Oregon, on March 13, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–6707 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01-P

Energy Information Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the extension of EIA–882(T), ''Generic Clearance for Testing, Evaluation, and Research.''

DATES: Written comments must be submitted on or before May 20, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Herbert T. Miller, Office of Statistical Standards, FAX: 202 426–1083, e:mail: hmiller@EIA.DOE.GOV, Energy Information Administration, EI–73, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 426–1103.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Public Law No. 93–275) and the Department of Energy Organization Act (Public Law No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Public Law 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing information collections. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

On June 21, 1993, the EIA–882(T), ''Generic Clearance for Questionnaire

Testing, Evaluation, and Research'' (OMB No. 1905–0185) was approved by the Office of Management and Budget (OMB) for three years. OMB stipulated that reports be submitted indicating the work that was conducted under the clearance. Six studies were conducted (or proposed to be conducted). The testing activities included several methods: a focus group, mail questionnaire, telephone questionnaires, and personal interviews. The total number of burden hours that were used in conducting these activities was 126 hours.

The main focus of these efforts was pretesting activities to improve questionnaires. Two activities were undertaken to improve a vehicle fleet survey, and two were used to develop customer satisfaction questionnaires. A methodological study of fuelwood use was conducted. There was a wide variety of uses of the data obtained through the use of this generic clearance.

These projects represent significant strides in our efforts to improve the pretesting of EIA surveys. As we gain more experience, we hope to broaden involvement in testing, evaluation, and research that meet the criteria for the clearance.

II. Current Actions

EIA plans on requesting a 3-year extension of the OMB approval for this collection. For each study that EIA undertakes under this generic clearance, OMB is notified, at least two weeks in advance, and provided with an information copy of the questionnaire (if one is used), and all other materials describing the testing activity.

III. Request for Comments

Comments are invited on:

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of EIA's estimate of the burden of the collection of the information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected, and

(d) Ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Public Law No. 104–13).

Issued in Washington, DC, March 7, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration

[FR Doc. 96–6710 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2612–005–ME]

Central Maine Power Company; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

March 14, 1996.

The license for the Flagstaff Hydro Project No. 2610, located on the Dead River, in Somerset and Franklin Counties, Maine, expires on December 31, 1997. The statutory deadline for filing an application for new license is December 31, 1995. An application for new license has been filed by the applicant on December 28, 1995, as follows:

Project No.	Applicant	Contact
P–2612–005	Central Maine Power Company	Mr. F. A. Wiley, 41 Anthony Avenue, Augusta, ME 04330. (207) 621–4412

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
March 30, 1996	Commission notifies applicant that its application has been accepted.
March 30, 1996	Commission issues a public notice of the accepted application establishing dates for filing motions to intervene and protests.
April 30, 1996	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219–2809.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6617 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–172–000]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

March 14, 1996.

Take notice that on March 12, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective April 12, 1996:

First Revised Sheet No. 800
Second Revised Sheet No. 801
First Revised Sheet No. 1408
Third Revised Sheet No. 1409
First Revised Sheet No. 1410
Second Revised Sheet No. 1411
Second Revised Sheet No. 1412
First Revised Sheet No. 3601
Third Revised Sheet No. 3603
Second Revised Sheet No. 3605
Second Revised Sheet No. 3610
First Revised Sheet No. 3700
Second Revised Sheet No. 3703
Second Revised Sheet No. 4101
Second Revised Sheet No. 4201

Koch states that the above referenced tariff sheets are being submitted to streamline certain posting requirements, clarifying what firm transportation transactions must be posted, and eliminating the notice of contract termination for contracts with a term less than one year.

In connection with the change to notice requirement, Koch states that it also proposes to change its Firm Transportation Service Agreements to reflect that contracts will terminate on the date set forth in the contract, all as more fully described in the filing which is on file with the Commission.

Koch also states that the revised tariff sheets are being served upon all its

customers, State Commissions and other interested parties.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 96–6620 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1096–002]

PacifiCorp Power Marketing, Inc.; Notice of Filing

March 14, 1996.

Take notice that on February 26, 1996, PacifiCorp Power Marketing, Inc. filed a revision to its Rate Schedule FERC No. 1 as required by the Commission's February 14, 1996, order in Docket No. ER95–1096–000.

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, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 22, 1996. 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. 96–6619 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–7–008]

PanEnergy Power Services, Inc.; Notice of Succession

March 14, 1996.

On January 30, 1996, PanEnergy Power Services, Inc. filed a notice of succession changing its name from Associated Power Services, Inc. to PanEnergy Power Services, Inc.

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, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 22, 1996. 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. 96–6680 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–009]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 14, 1996.

Take notice that on March 8, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Volume No. 1, the following tariff sheets, to become effective February 17, 1996:

Substitute First Revised Sheet No. 314A
Substitute First Revised Sheet No. 314B

Tennessee states that, on February 29, 1996, it filed tariff sheets to conform its tariff to reflect Commission's approved notifications of filings Tennessee made on January 18 and 31, 1996. On March 8, 1996, Tennessee states, it filed to amend the tariff sheets to include language regarding mid-day and intra-day nominations that was inadvertently omitted from the February 29, 1996, tariff filing. Tennessee further states that the tendered tariff sheets do not effect any substantive change to the Stipulation and Agreement filed on July 25, 1995.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6618 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1226–000, et al.]

Washington Water Power, et al. Electric Rate and Corporate Regulation Filings

March 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power

[Docket No. ER96–1226–000]

Take notice that on February 29, 1996, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Entergy Power Marketing Corporation. A Certificate of Concurrence with respect to exchanges is included.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER96–1228–000]

Take notice that on March 1, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company (AP&L), tendered for filing a 1996 Wholesale Formula Rate Update (Update) in accordance with the Power Coordination, Interchange and Transmission Service Agreements between AP&L and Conway, West Memphis and Osceola, Arkansas (Arkansas Cities); Campbell and Thayer, Missouri (Missouri Cities); City Water & Light Plant of Jonesboro, Arkansas (Jonesboro); and Arkansas Electric Cooperative Corporation (AEC); the Transmission Service Agreement between AP&L and the Louisiana Power and Energy Authority (LEPA); the Transmission Service Agreement between AP&L and the City of Hope,

Arkansas (Hope); the Hydroelectric Power Transmission and Distribution Service Agreement between AP&L and the City of North Little Rock, Arkansas (North Little Rock); and the Interchange Agreement between AP&L and Oglethorpe Power Corporation (Oglethorpe). Entergy Services states that the Update revises the rates and Transmission Loss Factor in accordance with: (1) the above agreements, (2) the 1994 Joint Stipulation between AP&L and AECC accepted by the Commission in Docket No. ER95–49–000, as revised by the 24th Amendment to the AECC Agreement filed with the Commission on February 20, 1996 in Docket No. ER96–1116–000, and (3) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95–363–000 as applicable to the Arkansas Cities, Missouri Cities, Jonesboro, Hope and North Little Rock.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER96–1230–000]

Take notice that on March 1, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for KCS Power Marketing, Inc. (KCS). Boston Edison requests that the Service Agreement become effective as of February 12, 1996.

Edison states that it has served a copy of this filing on KCS and the Massachusetts Department of Public Utilities.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Potomac Electric Power Company

[Docket No. ER96–1231–000]

Take notice that on March 1, 1996, Potomac Edison Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Sonat Power Marketing, Global Petroleum, Aquila Power Corporation, Phibro Incorporated, and Cinergy Corporation as agent for Cincinnati Gas & Electric Company and PSI Energy. An effective date of February 1, 1996 for these service agreements, with waiver of notice, is requested.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER96–1233–000]

Take notice that on March 1, 1996, American Electric Power Corporation (AEPSC), tendered for filing on behalf of Appalachian Power Company (APCO): 1) transmission service agreements (TSAs), and 2) amendments to electric service agreements (ESAs) between APCO and the City of Bedford, Virginia (Bedford), and APCO and the City of Danville, Virginia, Department of Power & Light (Danville), previously designated as APCO Rate Schedule FERC No. 121 for Bedford and APCO Rate Schedule FERC No. 124 for Danville. The TSAs provide for transmission service to be made available to Bedford and Danville pursuant to the AEPSC FERC Electric Tariff Original Volume No. 1. The ESAs accommodate the power and energy to be transmitted pursuant to the TSAs. Waiver of Notice requirements was requested to accommodate an effective date of February 1, 1996.

A copy of the filing was served upon Bedford, Danville, and the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER96–1234–000]

Take notice that on March 1, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for System Power Transactions with Heartland Energy Services, Inc. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms of the Agreement.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas and Electric Company

[Docket No. ER96–1235–000]

Take notice that on March 1, 1996, Oklahoma Gas and Electric Company, tendered for filing a proposed Electric Service Agreement for the Municipal Energy Agency of Mississippi, to sell electric capacity and energy under OG&E's WM–1 Firm Power Rate Schedule which is part of OG&E's FERC Electric Tariff 1st Revised Volume No. 1, and also tendered charges to FERC Electric Tariff.

Copies of this filing have been sent to the affected customer, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Energy Corporation

[Docket No. ER96–1236–000]

Take notice that on March 1, 1996, pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's Regulations, IES Utilities Inc. (IES), Interstate Power Company (IPC), Wisconsin Power & Light Company (WPL) and South Beloit Water, Gas & Electric Company (South Beloit) (collectively, the Applicants), submitted for filing two transmission service tariffs: a Network Integration Service Transmission Tariff and a Point-to-Point Transmission Service Tariff. These two tariffs are based on the pro forma tariffs included by the Commission in its Open Access Notice of Proposed Rulemaking (Open Access NOPR) in Docket No. ER95–800.

The Applicants state that they are making this filing in connection with the proposed merger of WPL Holdings, Inc. (the holding company parent of WPL and, indirectly, South Beloit), IES Industries Inc. (Industries) (the holding company parent of IES) and IPC. The transmission service will be provided on the combined transmission systems of the Applicants under a single-system rate. The Applicants are filing these tariffs on behalf of the proposed new holding company, Interstate Energy Corporation. The Applicants request that the Commission waive the 120-day notice requirement contained in § 35.3 of the Commission's Regulations to allow the tariffs to be accepted for filing and put into effect on the date that the merger transactions are consummated.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Company

[Docket No. ER96–1237–000]

Take notice that on February 29, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during February 1, 1996 through February 15, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000. KU also tendered for filing an executed copy of a Service Agreement for Power Services with Sonat Power Marketing, Inc.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER96–1238–000]

Take notice that on February 29, 1996, Carolina Power & Light Company

(Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities: Coastal Electric Services Company, Western Gas Resources Power Marketing, Inc.; The Dayton Power & Light Company; Delhi Energy Services, Inc.; Florida Power & Light Company; Industrial Energy Applications, Inc.; Valero Power Services Company, Phibro Inc.; KN Marketing, Inc.; Ohio Edison, Public Service Electric and Gas; Wisconsin Power & Light Company; UtiliCorp United Inc.; Southern Company Services, Inc.; and CNG Power Services Corporation. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6625 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2283–005, and 11482–000]

Lower Androscoggin River Basin DEIS, Maine; Notice of Intent to Hold Public and Agency Meetings to Discuss Staff's Draft Environmental Impact Statement for Existing Projects in the Lower Androscoggin River Basin

March 14, 1996.

On November 30, 1995, the Commission's staff mailed the Lower Androscoggin River Basin Draft Environmental Impact Statement (DEIS), to the Environmental Protection Agency, resource and land management agencies, interested organizations and individuals. The availability of the DEIS was publicly noticed in the Federal Register on December 8, 1995. The document evaluates the continued operation of the Gulf Island/Deer Rips Project No. 2283, and the Marcal Project No. 11482. The projects are located on the Androscoggin River and the Little Androscoggin River, Androscoggin County, Maine, respectively.

A public meeting will be conducted by staff in Lewiston, Maine, on Monday, April 8, 1996, from 7:00 p.m. to 10:00 p.m. at the Ramada Inn, 490 Pleasant Street, Lewiston, Maine, to hear the public's comments on the DEIS.

The public meeting will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the Lower Androscoggin River Basin projects under consideration. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

In accordance with Section 10(j) of the FPA, the Commission's staff will also hold an agency meeting with staff from the Maine Department of Environmental Protection and the U.S. Fish and Wildlife Service on Monday, April 8, 1996, 9:30 a.m., at the Ramada Inn, 490 Pleasant Street, Lewiston, Maine, to discuss inconsistencies of some recommendations with the comprehensive planning and public interest standards of Sections 4(e) and 10(a) of the FPA or the substantial evidence requirement of Section 313(b) of the FPA.

All those that are formally recognized by the Commission as intervenors in the Lower Androscoggin River Basin Projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

For further information, please contact Michael Dees at (202) 219–2807.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6622 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

March 14, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 1951.

c. *Date filed:* March 12, 1996.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Hydroelectric Project.

f. *Location:* Oconee River, near the Town of Milledgeville, Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* C.M. Hobson, Manager—Environmental Affairs, Georgia Power Company, 333 Piedmont Avenue—Bin No. 10170, Atlanta, GA 30308–3374, (404) 526–7778.

i. *FERC Contact:* Hillary T. Berlin, (202) 219–0038.

j. *Comment date:* April 8, 1996.

k. *Description of Amendment Request:* The licensee is requesting to accelerate their license expiration date from August 31, 1997, to coincide with the date on which they accept the new license.

l. *The notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENTATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–6681 Filed 3–19–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–007]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure to NORDYNE

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC–007) granting a Waiver to NORDYNE from the existing Department of Energy test procedure for central air conditioners and central air conditioning heat pumps for the company's Powermiser line of heat pumps with integrated water heating.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR Part 430, § 430.27(l), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, NORDYNE has been granted a Waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's Powermiser line of heat pumps with integrated water heating. The Waiver allows NORDYNE to use a modified test procedure for rating its Powermiser heat pumps. NORDYNE shall be allowed to calculate, in addition to the standard SEER and HSPF, a Combined Cooling Performance Factor (CCPF) and a Combined Heating Performance Factor (CHPF). These performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and domestic water heating.

Issued in Washington, DC, on March 7, 1996.

Joseph Romm,

Acting Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

Department of Energy

Office of Energy Efficiency and Renewable Energy

In the Matter of: NORDYNE. (Case No. CAC–007)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, the Department further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

NORDYNE filed a ''Petition for Waiver'' and an ''Application for Interim Waiver,'' dated January 24, 1995, in accordance with Section 430.27 of 10 CFR Part 430. The Department granted the Interim Waiver on July 10, 1995. The Department also published in the Federal Register on August 8, 1995, NORDYNE's petition, and solicited comments, data, and information respecting the petition. 60 FR 40358, August 8, 1995.

NORDYNE's Petition seeks a waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's Powermiser line of heat pumps because the Powermiser's integrated water heating feature causes the prescribed test procedures to evaluate the Powermiser in a manner unrepresentative of its true energy consumption characteristics. NORDYNE's heating and cooling mode test procedures are essentially the same as the current Departmental central air conditioner test procedures. In addition, NORDYNE submitted tests and a rating procedure to determine the performance of the heat pump when it heats domestic water (whether or not space heating or cooling is also being provided).

The Department received 14 written comments concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' All the comments supported granting the waivers.

Appalachian Power Company, Hawaiian Electric Company and Mr. Joe Zeiner of PSI Energy supported the waiver to encourage energy conservation devices. The Tennessee Valley Authority concurred with this, and also commented that the Powermiser ''eliminates coincident peak demand for water heater[s] on the utility system.'' Gulf Power Company, Tampa Electric Company, Alabama Power Company, Georgia Power Company and Mr. Leo Stambaugh commended the NORDYNE integrated appliance as a viable alternative to electric resistance water heating and supported NORDYNE's proposed use of a Combined Cooling Performance Factor (CCPF) and Combined Heating Performance Factor (CHPF) for rating these products.

Dr. Arvo Lannus of Moebius Research commented that the present Department test procedures do not provide for testing products like the Powermiser, with the following adverse effects:

difficulty in educating consumers about the product's benefits; difficulty for the manufacturer to recoup its investment; difficulty for private research institutions to fund research and development in support of energy efficiency goals. Dr. Lannus stated that the Powermiser would benefit consumers and society, in terms of efficiency and environmental benefits. He wrote that the testing and rating procedure, using SEER, HSPF, CCPF and CHPF is reasonable, and also agreed with the proposed bin method of calculation.

Mr. Terry Statt of the Electric Power Research Institute stated that the current DOE test procedure evaluates the Powermiser heat pump in a manner unrepresentative of its actual energy consumption, and that this creates economic hardship for NORDYNE. He further commented that this causes consumers to purchase systems that have higher [total monetary] costs and higher environmental costs. Mr. Statt agreed with NORDYNE's use of a bin method of calculation and the division of the year into two sections (heating and cooling).

The Natural Resources Defense Council supported the concept of the heat pump with integrated water heating as an energy savings device and urged the Department to provide test procedures that accurately estimate the device's energy savings. Virginia Power concurred with this and also commented on the need for a standard test procedure for combined equipment, including fossil-fueled combination heating/water heating units, heat pumps and air conditioners with integral desuperheaters, combined residential energy storage units and triple function heat pumps such as the NORDYNE Powermiser. Virginia Power also commented that the standard test procedure should use water heating settings and use patterns which reflect current consumer use (see Virginia Power Comments on Proposed Rulemaking, Energy Conservation Program for Consumer Products, Test Procedures for Water Heaters, Docket No. EE–RM–94–230, August 30, 1995.) Allegheny Power System commented about the need for a suitable test procedure for integrated water heating systems, and, like Virginia Power, requested that the Department revise the domestic water heater test procedure to reflect a lower daily hot water consumption, and a different schedule for water draws.

The comments of Virginia Power and Allegheny Power about water usage, draw schedules and integrated appliances are beyond the scope of this waiver. The Department may address these issues in upcoming test procedure rules, but, for consistency, this waiver will conform to the existing usage and draws.

The Department consulted with the Federal Trade Commission (FTC) concerning the NORDYNE Petition. The FTC did not have any objections to the issuance of the waiver to NORDYNE.

Assertions and Determinations

NORDYNE's Petition seeks a waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's Powermiser line of heat pumps because the Powermiser's integrated water heating feature causes the prescribed test procedures to evaluate the Powermiser in a manner unrepresentative of its true energy consumption characteristics. DOE agrees that, using the current central air conditioning test procedure, the company cannot account for the energy savings associated with integrated water heating.

NORDYNE has submitted a modified test procedure to be used for rating its Powermiser heat pumps. NORDYNE proposes to calculate, in addition to SEER and HSPF, a Combined Cooling Performance Factor (CCPF) and a Combined Heating Performance Factor (CHPF) for characterizing the water heating and space conditioning performance of the Powermiser. However, to provide a comparable base, NORDYNE had to slightly modify the calculation of SEER and HSPF. The NORDYNE proposed heating and cooling mode test procedures for SEER and HSPF are essentially the same as the current Departmental central air conditioner test procedures found in 10 CFR Part 430, Subpart B, Appendix M. NORDYNE's test procedures differ from the Department's in their use of a bin analysis for SEER, and in their use of seasonal hours rather than fractional hours for HSPF. NORDYNE states in its Petition that the modified test procedure for SEER and HSPF ''yields nearly identical results.'' The Department concurs with NORDYNE's statement regarding the results for SEER and HSPF, and no commenter communicated any disagreement with it.

In addition, NORDYNE submitted tests and a rating procedure to determine the performance of the heat pump when it heats domestic water (whether or not space heating or cooling is also being provided). These performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and domestic water heating. CCPF is the sum of the total space cooling load and the total domestic water heating load during the cooling season, divided by the total energy consumption used for space cooling and water heating over the same period, expressed in Btu/Wh. CHPF is the analogous factor with ''space heating'' substituted for ''space cooling.'' NORDYNE presented examples of cost savings calculations in its Petition for Waiver. In the Petition, NORDYNE compared the annual cost for heating, cooling and water heating of the NORDYNE Powermiser to a combination of a conventional heat pump and an electric water heater.

DOE agrees that, using the current central air conditioning test procedure, the company cannot account for the energy savings associated with integrated water heating, and that the procedures described in NORDYNE's Petition for Waiver will allow NORDYNE to calculate these energy savings. The Department agrees that a waiver should be granted to allow NORDYNE to test its Powermiser line of heat pumps according to NORDYNE's proposed test procedure.

Thus, the Department is granting a waiver of the requirement to test NORDYNE's Powermiser line of heat pumps according to the current test procedure.

It is, therefore, ordered that:

(1) The ''Petition for Waiver'' filed by NORDYNE (Case No. CAC–007) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) NORDYNE shall be required to test its Powermiser line of heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, including the modifications summarized in Attachment A to the letter to NORDYNE granting the Interim Waiver. These modifications are fully presented on pages 2–32 of NORDYNE's attachment to its Petition for Waiver and Application for Interim Waiver, dated January 24, 1995.

(3) NORDYNE shall also test and represent:

- The annual and seasonal energy use and cost of operation of its Powermiser line of heat pumps, and
- The annual and seasonal cost savings of its Powermiser line of heat pumps, when compared to the combination of a conventional heat pump and electric water heater, as follows:

Annual energy usage for the conventional heat pump and water heater:

$$AE_{sep} = \sum_{j=1}^{8}\left(E_{cool}\left(T_j\right) + E_{hwc}\left(T_j\right)\right) + \sum_{j=1}^{15}\left(E_{heat}\left(T_j\right) + E_{hwh}\left(T_j\right)\right)$$

where E_{cool} (T_j) is the total system energy input for cooling for the jth outdoor bin temperature, and is equal to:

$$E_{cool} = \left(T_j\right) = \frac{CLF\left(T_j\right) \times \dot{E}_c\left(T_j\right) \times n_j}{PLF\left(T_j\right)}$$

$$\text{where: } CLF\left(T_j\right) = \frac{BL\left(T_j\right)}{\dot{Q}_c\left(T_j\right)} = \text{Cooling load factor for outdoor temperature bin j.}$$

$$PLF\left(T_j\right) = 1 - C_d \times \left(1 - CLF\left(T_j\right)\right) = \text{The part–load factor for outdoor temperature bin j.}$$

$$BL\left(T_j\right) = \frac{\left(T_j - 65\right)^\circ F}{(95-65)^\circ F} \times \frac{\dot{Q}_{ss}(95^\circ F)}{1.1}$$

$$\dot{Q}_c\left(T_J\right) = \dot{Q}_c(82^\circ F) + \frac{\dot{Q}_c(95^\circ F) - \dot{Q}_c(82^\circ F)}{(95-82)^\circ F} \times \left(T_j - 82^\circ F\right)$$

C_d is the coefficient of cyclic degradation for cooling. $E_c(T_j)$ is the steady-state electrical power input to the heat pump in the space cooling only mode determined according to:

$$\dot{E}_c\left(T_j\right) = \dot{E}_c(82^\circ F) + \frac{\dot{E}_c(95^\circ F) - \dot{E}_c(82^\circ F)}{(95-82)^\circ F} \times \left(T_j - 82^\circ F\right)$$

E_{heat} (T_j) is the total system energy input for heating for the jth outdoor bin temperature, and is equal to:

$$E_{heat}\left(T_j\right) = \frac{HLF\left(T_j\right) \times \dot{E}_h\left(T_j\right) \times n_j}{PLF\left(T_j\right)} + E_{auxs}\left(T_j\right) \times n_j$$

where HLF (T_j) is the heat pump heating load factor for outdoor temperature bin j:

$$HLF\left(T_j\right) = \frac{BL\left(T_j\right)}{\dot{Q}_h\left(T_j\right)} \text{ for } \dot{Q}_h\left(T_j\right) > BL\left(T_j\right)$$

$$\text{and } HLF\left(T_j\right) = 1 \text{ for } \dot{Q}_h\left(T_j\right) \le BL\left(T_j\right)$$

$$BL\left(T_j\right) = \frac{\left(65 - T_j\right)^\circ F}{(65 - DHT)} \times 0.77 \times DHR$$

$$PLF\left(T_j\right) = 1 - C_d \times \left(1 - HLF\left(T_j\right)\right)$$

C_d is the coefficient of cyclic degradation for heating. The steady-state heat pump space heating capacity in the space heating only mode is determined according to:

$$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17^\circ F) + \dfrac{\dot{Q}_h(47^\circ F) - \dot{Q}_h(17^\circ F)}{(47-17)^\circ F} \times (T_j - 17^\circ F), \\ \qquad \text{for } T_j \geq 45^\circ F \text{ or } T_j \leq 17^\circ F \\ \qquad\qquad \text{or} \\ \dot{Q}_h(17^\circ F) + \dfrac{\dot{Q}_h(35^\circ F) - \dot{Q}_h(17^\circ F)}{(35-17)^\circ F} \times (T_j - 17^\circ F), \\ \qquad \text{for } 17^\circ F < T_j < 45^\circ F \end{cases}$$

E_{auxs} (T_j) is the auxiliary resistance heat required to meet the building load.

$$E_{auxs}(T_j) = \frac{BL(T_j) - \dot{Q}_h(T_j) \times HLF(T_j)}{3.413}$$

The steady-state electrical power input to the heat pump in the space heating only mode is determined according to:

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17^\circ F) + \dfrac{\dot{E}_h(47^\circ F) - \dot{E}_h(17^\circ F)}{(47-17)^\circ F} \times (T_j - 17^\circ F), \\ \qquad \text{for } T_j \geq 45^\circ F \text{ or } T_j \leq 17^\circ F \\ \qquad\qquad \text{or} \\ \dot{E}_h(17^\circ F) + \dfrac{\dot{E}_h(35^\circ F) - \dot{E}_h(17^\circ F)}{(35-17)^\circ F} \times (T_j - 17^\circ F), \\ \qquad \text{for } 17^\circ F < T_j < 45^\circ F \end{cases}$$

The energy usage for conventional water heating is also subdivided into cooling and heating seasons, depending on the outdoor temperature being above or below 65°F. For the cooling season, the water heating energy usage per hour is:

$$E_{hwc} = \frac{\dot{Q}_{hw} \times (CSH + N_{dwc})}{E_F \times 3413}$$

$$\dot{Q}_{hw} = \frac{GPD}{24} \times \rho(135^\circ F) \times C_p(96.5^\circ F) \times (135^\circ F - 58^\circ F)$$

GPD is the total daily consumption of domestic hot water in gallons, and for rating purposes is equal to 64.3 gallons.

ρ (135°F) is the density of water in pounds/gallon at the temperature of the water leaving the tank.

C_p (96.5°F) is the specific heat of water at the temperature midway between 58°F and 135°F.

CSH = Cooling season hours.

N_{dwc} = Number of extra hours for dedicated water heating with the outdoor temperature above 65°F.

E_F = The energy factor as defined in the DOE hot water heater test procedures.

The cooling and heating load seasonal hours are calculated from the cooling and heating load hours as follows:

$$CSH = \frac{CLH \times 1.1 \times (DCT - 65)^\circ F}{\sum_{j=1}^{8} \left(T_j - 65^\circ F\right) \times \frac{n_j}{N}}$$

and

$$HSH = \frac{HLH \times (65 - DHT)^\circ F}{\sum_{j=1}^{15} \left(65^\circ F - T_j\right) \times \frac{n_j}{N}}$$

where:

CSH = Cooling season hours

CLH = Cooling load hours

1.1 = The oversizing factor used to determine building load

DCT = Design cooling temperature = 95°F.

T_j = Temperature for the jth outdoor bin temperature.

n_j/N = Season fractional bin hours.

HSH = Heating season hours.

HLH = Heating load hours.

DHT = Design heating temperature.

The extra dedicated water heating hours are then:

N_{dw} = 8760 – CSH – HSH.

where:

N_{dw} = Total number of extra hours for dedicated water heating.

8760 = Total hours per year.

The extra dedicated water heating hours are next divided between the parts of the year warmer and cooler than 65°F in proportion to the cooling and heating season hours as follows:

$$N_{dwc} = N_{dw} \times \frac{CSH}{CSH + HSH}$$

$$N_{dwh} = N_{dw} \times \frac{HSH}{CSH + HSH}$$

where:

N_{dwc} = Number of extra hours for dedicated water heating with the outdoor temperature above 65°F.

N_{dwh} = Number of extra hours for dedicated water heating with the outdoor temperature below 65°F.

For the heating season, the water heating energy usage per hour is:

$$E_{hwh} = \frac{\dot{Q}_{hw} \times \left(HSH + N_{dwh}\right)}{E_F \times 3413}$$

The annual energy usage for the integrated heat pump and water heater is:

$$AE_{int} = \sum_{j=1}^{8} \left(E_{Powc}\left(T_j\right)\right) + \sum_{j=1}^{15} \left(E_{Powh}\left(T_j\right)\right)$$

$$E_{Powc}\left(T_j\right) = \frac{\left(X_1\left(T_j\right) \times \dot{E}_c\left(T_j\right) + X_2\left(T_j\right) \times \dot{E}_{ccw}\left(T_j\right) + X_3\left(T_j\right) \times \dot{E}_{wdc}\left(T_j\right)\right) \times n_j}{PLF\left(T_j\right)} + E_{auxw}\left(T_j\right) - E_{sav}\left(T_j\right) + E_{dwehc}\left(T_j\right)$$

$$E_{Powh}\left(T_j\right) = \frac{\left(X_1\left(T_j\right) \times \dot{E}_h\left(T_j\right) + X_2\left(T_j\right) \times \dot{E}_{hcw}\left(T_j\right) + X_3\left(T_j\right) \times \dot{E}_{wdh}\left(T_j\right)\right) \times n_j}{PLF\left(T_j\right)} + E_{auxw}\left(T_j\right) + E_{auxs}\left(T_j\right) + E_{dwehh}\left(T_j\right)$$

The terms in these equations are all defined in NORDYNE's petition, published in the Federal Register on August 8, 1995. 60 FR 40358.

The seasonal and annual energy and cost credits (savings) shall be calculated as follows: The summer, or cooling season energy credit, in kWh, is:

$$EC_{cool} = \sum_{j=1}^{8} \left(E_{cool}\left(T_j\right) + E_{hwc}\left(T_j\right) - E_{Powc}\left(T_j\right)\right)$$

The winter, or heating season energy credit, in kWh, is:

$$EC_{heat} = \sum_{j=1}^{15}\left(E_{heat}\left(T_j\right) + E_{hwh}\left(T_j\right) - E_{Powh}\left(T_j\right)\right)$$

The annual energy credit (savings), in kWh, for the Powermiser integrated heat pump/water heating appliance is:

$$AEC = AE_{sep} - AE_{int}$$

or

$$AEC = EC_{cool} + EC_{heat}$$

The annual cost credit (savings) , in dollars, for the Powermiser integrated heat pump/water heating is:

$$ACC = AEC \times ER$$

where ER is the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The Waiver shall remain in effect from the date of issuance of this Order until the Department prescribes final test procedures appropriate to the Powermiser line of heat pumps manufactured by NORDYNE.

(5) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(6) Effective March 1, 1996, this Waiver supersedes the Interim Waiver granted NORDYNE on July 10, 1995. 60 FR 40358, August 8, 1995 (Case No. CAC–007).

Issued in Washington, DC, on March 1, 1996.

Joseph Romm,

Acting Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–6567 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Health and Environmental Research Advisory Committee; Notice of Open Meeting

AGENCY: Office of Energy Research, DOE.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Health and Environmental Research Advisory Committee.

DATES: Thursday, April 11, 1996, 8:30 a.m. to 5:30 p.m.; and Friday, April 12, 1996, 8:30 a.m. to 12:00 p.m.

ADDRESSES: Washingtonian Marriott, 9761 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Barnhart, Designated Federal Official, Health and Environmental Research Advisory Committee, U.S. Department of Energy, ER–70, GTN, Germantown, Maryland 20874, Telephone Number: 301–903–3683.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy on the many complex scientific and technical issues that arise in the development and implementation of the health and environmental research program.

Tentative Agenda

Thursday, April 11, 1996, and Friday, April 12, 1996:

- Welcome Remarks
- Opening of Meeting
- Remarks by the Director of the Office of Energy Research
- Office of Health and Environmental Research Program Overview: Scope, Issues, Budget
- Review of Office of Health and Environmental Research Programs
- Review of Subcommittee Activities
- New Business
- Public Comment (10-minute rule)

Public Participation

The two-day meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Benjamin Barnhart at the address or telephone number listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on March 8, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory, Committee Management Officer.

[FR Doc. 96–6711 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 96–02—Certification Notice—149]

Grays Ferry Cogeneration; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: On February 28, 1996, Grays Ferry Cogeneration Partnership, submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no

new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Grays Ferry Cogeneration Partnership.

Operator: Philadelphia United Power Corporation.

Location: Philadelphia, PA.

Plant configuration: Combined cycle, topping cycle cogeneration.

Capacity: 150 megawatts.

Fuel: Natural gas.

Purchasing entities: PECO Energy Company.

In-service Date: October 1, 1997.

Issued in Washington, D.C., March 11 , 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–6706 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P–M

[FE Docket No. EA–112]

Application to Export Electricity USGen Power Services, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: USGen Power Services, L.P. (USGen) has requested authorization to export electric energy to Canada. USGen is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 19, 1996.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C.§ 824a(e)).

On March 1, 1995, USGen filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. USGen neither owns nor controls any facilities for the transmission or distribution of electricity, nor does it have a franchised retail service area. Rather, USGen is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to engage in the wholesale sale of electricity in interstate commerce at negotiated rates pursuant to its filed rate schedules.

In its application, USGen proposes to sell electric energy to Powerex, a wholly-owned subsidiary of British Columbia Hydro and Power Authority. The electric energy USGen proposes to transmit to Canada would be purchased from electric utilities and Federal power marketing agencies in the United States. USGen asserts that such energy would be surplus to the requirements of the entities from which it would be purchased. USGen would arrange for the exported energy to be wheeled from the selling entities, over existing domestic transmission facilities, and delivered to Powerex over the Bonneville Power Administration's (BPA) 500—kilovolt (kV) line at the U.S.-Canada border near Blaine, Washington. The construction of these facilities previously was authorized by DOE in Presidential Permit PP–10.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Ms. Sarah M. Barpoulis, USGen Power Services, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814 AND Mr. Marc Bommersbach, U.S. Generating Company, 100 Pine Street, Suite 2000, San Francisco, CA 94111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on March 11, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–6705 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Filed During the Week of January 8 through January 12, 1996

During the Week of January 8 through January 12, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 8 to January 12, 1996]

Date	Name and location of applicant	Case No.	Type of submission
1/11/96	Huckins Oil Co., Inc. Pembroke, New Hampshire.	RR264–1	Request for Modification/Rescission in the Northeast Petroleum, Inc. Refund Proceeding. If granted: The July 17, 1989 Decision and Order, Case No. RF264–17, issued to Huckins Oil Co., Inc. would be modified regarding the firm's application for refund submitted in the Northeast Petroleum Co., Inc. refund proceeding.
1/11/96	Knolls Action Project Washington, D.C.	VFA–0112	Appeal of an Information Request Denial. If granted: Knolls Action Project would receive a waiver of all fees incurred in the processing of their Freedom of Information Request for certain Department of Energy information.
1/11/96	The News Tribune Tacoma, Washington	VFA–0111	Appeal of an Information Request Denial. If granted: The November 28, 1995 Freedom of Information Request Denial issued by the Bonneville Power Administration Office would be rescinded, and The News Tribune would receive access to certain Department of Energy information.
1/11/96	Williams & Tribune, P.C. Boulder, Colorado	VFA–0110	Appeal of an Information Request Denial. If granted: The October 16, 1996 Freedom of Information Request Denial issued by the Office of Environmental Restoration and Waste Management would be rescinded, and Williams & Trine, P.C. would receive access to certain Department of Energy information.

REFUND APPLICATIONS RECEIVED

[January 8 to January 12, 1996]

Date Received	Name of Refund Proceeding/Name of Refund Application	Case No.
1/1/96 thru 1/5/96	Crude Oil Refund Applications	RK272–3236 thru RK272–3280

[FR Doc. 96–6712 Filed 3–14–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of February 12 through February 16, 1996

During the Week of February 12 through February 16, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: March 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 12 through February 16, 1996]

Date	Name and location of applicant	Case No.	Type of submission
2/12/96	James E. Minter Knoxville, TN.	VFA–0132	Appeal of an Information Request Denial. If granted: The January 6, 1996 Freedom of Information Request Denial issued by the Albuquerque Operatons Office would be rescinded, and James E. Minter would receive access to certain DOE information.
2/12/96	Janis C. Garrett Roseville, CA.	VFA–0131	Appeal of an Information Request Denial. If granted: The January 11, 1996 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Janis C. Garrett would receive access to certain DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of February 12 through February 16, 1996]

Date	Name and location of applicant	Case No.	Type of submission
2/13/96	Perry Gas/Alabama Charter/Alabama RQ183–604 RQ23–605 Montgomery, AL; National Helium/Alabama Coline Gasoline/Alabama RQ3–606 RQ2–607.		Application for Second Stage Perry Gas, Charter, National Helium, and Coline Refunds. If granted: The second stage refund application submitted by The State of Alabama in the Perry Gas, Charter, National Helium, and Coline Refund Proceedings would be granted.
2/14/96	Heller and Sons Distributing, Inc. Hermiston, OR.	VEE–0016	Exception to the Reporting Requirements. If granted: Heller and Sons Distributing, Inc. would not be required to file Form EIA–782B, Reseller/Retailer Monthly Petroleum Products Sales Report.
2/15/96	Bayer & Mingolla Industries, Inc. Memphis, TN.	RR300–265	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The January 31, 1996 Dismissal letter, Case Number RF300–21419, issued to Bayer & Mingolla Industries, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
2/15/96	Chey A. Temple Moxee, WA	VFA–0133	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Chey A. Temple would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of February 12 to February 16, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case number
2/12/96	Crude Oil Refund Application	RK272–3281 thru RK272–3323
2/16/96		RG272–1009 thru RG272–1015

[FR Doc. 96–6713 Filed 3–19–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5444–3]

Air Pollution Control, Proposed Action on Clean Air Act Grant to the Monterey Bay Unified Air Pollution Control District

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Monterey Bay Unified Air Pollution Control District (MBUAPCD or ''district'') in Monterey, California is a result of a non-selective reduction in expenditures. This determination, when final, will permit the MBUAPCD to keep the financial assistance awarded to it for FY–95 by EPA under section 105(a) of the CAA.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by April 19, 1996.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Roy T. Ford, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Roy T. Ford, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1233.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the MBUAPCD to aid in the operation of its air pollution control programs. In FY–94 EPA awarded the MBUAPCD $347,863, which represented approximately 10% of the MBUAPCD's budget. In FY–95 EPA awarded the MBUAPCD $292,856, which represented approximately 8% of the MBUAPCD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. Section 7405(c)(1), provides that ''(n)o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.''

EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA Section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–95 Section 105 application, which EPA reviewed in early 1995, the MBUAPCD projected recurrent expenditures (or its maintenance of effort (MOE)) of $3,254,272. This MOE would have been sufficient to meet the MOE requirements of the CAA because it was not lower than the FY–94 MOE of $2,967,502. In January of 1996, however, the MBUAPCD submitted to EPA documentation which shows that its actual FY–95 MOE was $2,828,502. This amount represents a shortfall of

$139,352 from the FY–94 MOE. In order for the MBUAPCD to be eligible to keep its FY–95 grant, EPA must make a determination under Section 105(c)(2) that the reduction in expenditures is attributable to a non-selective reduction in the programs of all agencies of the applicable unit of government.

The MBUAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the MBUAPCD go directly to the district to fund its operations. It is the ''unit of Government'' for Section 105(c)(2) purposes. The MBUAPCD submitted documentation to EPA which shows that in 1994 and 1995 air permit fee revenues decreased because of declining economic conditions which caused the business community to curtail operations, resulting in fewer permits issued and fees collected. As a result, the MBUAPCD's overall budget and its MOE decreased. The MBUAPCD also submitted documentation to EPA which shows that over the last three years the district instituted a number of cost cutting measures, including the elimination of a position and reductions in hiring, equipment purchases, and contract costs.

The MBUAPCD's MOE reductions resulted from budget cuts stemming from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the MBUAPCD's lower FY–95 MOE level meets the Section 105(c)(2) criteria of a non-selective reduction. Pursuant to the CAA and 40 CFR 35.210, this determination will allow the MBUAPCD to keep the funds received from EPA for FY–95.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by April 19, 1996 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by April 19, 1996. If no written request for a hearing is received, EPA will proceed to a final determination. While notice of the final determination will not be published in the Federal Register, a copy of the determination can be obtained by sending a written request to the above address.

Dated: March 6, 1996.

David P. Howekamp,

Director, Air and Toxics Division.

[FR Doc. 96–6722 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5440–7]

Ambient Air Monitoring Reference and Equivalent Methods; Reference and Equivalent Method Designations

Notice is hereby given that the EPA, in accordance with 40 CFR part 53, has designated one additional reference method and two additional equivalent methods for ambient air monitoring. The reference method is for the measurement of ambient concentrations of nitrogen dioxide. The first equivalent method is for the measurement of ambient concentrations of ozone. The other equivalent is for the determination of lead in suspended particulate matter collected from ambient air.

The new reference method for nitrogen dioxide is an automated method (analyzer) which utilizes the measurement principle based on the chemiluminescent reaction between nitric oxide and ozone and the calibration procedure specified in Appendix F of 40 CFR part 50. This new designated method is identified as follows:

RFNA–0196–111, ''Horiba Instruments, Incorporated Model APNA–360 Ambient NO–NO_2–NO_x Monitor,'' operated with a full scale range of 0–0.5 ppm, at any temperature in the range of 10 °C to 40 °C, with a Line Setting of ''MEASURE'', and an Analog Output of ''MONETARY VALUE'', and with or without the optional Rack Mounting Plate and Side Rails.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on the absorption of ultraviolet radiation by ozone at a wavelength of 254 nm and the calibration procedure specified in Appendix C of 40 CFR part 50. This new designated method is identified as follows:

EQOA–0196–112, ''Horiba Instruments, Incorporated Model APOA–360 Ambient Ozone Monitor,'' operated with a full scale range of 0–0.5 ppm, at any temperature in the range of 10 °C to 40 °C, with a Line Setting of ''MEASURE'', and an Analog Output of ''MOMENTARY VALUE'', and with or without the optional Rack Mounting Plate and Side Rails.

These two automated methods are available from Horiba Instruments, Incorporated, 17671 Armstrong Avenue, Irvine, California 92714. The applications for designation of these nitrogen dioxide and ozone methods were received on September 15, 1995 and August 21, 1995 respectively.

A test analyzer representative of each of these methods has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that these methods should be designated as a reference method and an equivalent method, respectively.

The new equivalent method for the determination of lead in suspended particulate matter collected from ambient air is identified as follows:

EQL–0196–113, ''Determination of Lead Concentration in Ambient particulate Matter by Inductively Coupled Argon Plasma-Optical Emission Spectrometry (Doe Run Company).''

The applicant's request for an equivalent method determination for the above method was received on July 11, 1995. This method has been tested by the applicant, the Doe Run Company, Smelting Division, Herculaneum, Missouri, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method.

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (40 CFR 50, Appendix G). In this method, lead in the particulate matter is solubilized by extraction with nitric acid facilitated by heat. The lead content of the sample extract is analyzed with a Baird ICP 2000 inductively coupled argon plasma—optical emission spectrometer operating at a frequency of 40.68 MHz and using the 220.353 nm lead adsortion line. The instrumental operating conditions have been optimized by the user-laboratory. Technical questions concerning this method should be directed to the Doe Run Company, Smelting Division, 881 Main Street, Herculaneum, Missouri 63048.

The information submitted by these applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58,

Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instuction manual associated with the method or the procedures and specifications provided in the method description and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see identification of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, an automated method designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading. States or other agencies wishing to use a method similar to the new lead equivalent method that employs procedures and specifications significantly different from those in EQL–0196–113 must seek specific approval for their particular method under the provisions of Section 2.8 of Appendix C to 40 CFR part 58 (Modification of Methods by Users), or agencies may seek designation of such a method as an equivalent method under the provisions of 40 CFR part 53.

Part 53 requires that sellers of designated method analyzers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR part 53.11(b) to avoid a cancellation.

(7) an applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdown or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Air Measurements Research Division (MD–78A), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Desingation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning any of the methods should be directed to the appropriate applicant. Additional information concerning this action may be obtained from Frank F. McElroy, Air Measurements Research Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Joseph K. Alexander,

Deputy Assistant Administrator for Research and Development.

[FR Doc. 96–6720 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5440–8]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for Reference Method Determination

Notice is hereby given that the Environmental Protection Agency has received an application to determine if a new nitrogen dioxide monitoring method should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. The application was received on September 27, 1995 from Columbia Scientific Industries, P.O. Box 203190, Austin, Texas 78720, for their Model 5600 Oxides for Nitrogen Analyzer. If, after appropriate technical study, the Administrator determines that this method should be so designated, a notice thereof will be given in a subsequent issue of the Federal Register. For additional information regarding receipt of this application, contact Frank F. McElroy (MD–77), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, NC, 27711 (919–541–2622).

Joseph K. Alexander,

Deputy Assistant Administrator For Research and Development.

[FR Doc. 96–6721 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42076; FRL–4989–3]

Nebraska Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Nebraska Certification Plan.

SUMMARY: On July 20, 1994, EPA approved, on a contingency basis, the Nebraska Certification Plan for Restricted Use Pesticide Applicators. Final approval of the Nebraska Certification Plan was contingent upon Nebraska revising its Plan in various areas. EPA has received the revised Nebraska Plan and based on a review of this revised plan, intends to give final approval. Notice is hereby given of the intention of the Regional Administrator, EPA Region 7, to grant final approval of the revised Nebraska Certification Plan.

DATES: Written comments should be submitted on or before April 19, 1996.

ADDRESSES: Send written comments, identified by docket control number ''OPP–42076'' to Richard O. Jacobson, U.S. Environmental Protection Agency, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508.

The comments received pursuant to this notice will be available at the aforementioned location from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: jacobson.jake@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–42076.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Copies of the Nebraska plan are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508. Contact: Richard O. Jacobson, (402) 437–5080, e-mail: jacobson.jake@epamail.epa.gov.

2. Nebraska Department of Agriculture, Bureau of Plant Industry, 301 Centennial Mall South, Lincoln, NE 68509. Contact: Geir Friisoe (402) 471–2394.

3. U.S. Environmental Protection Agency, Office of Pesticide Programs (7506C), Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: John MacDonald, (703) 305–7370.

FOR FURTHER INFORMATION CONTACT: Richard O. Jacobson, U.S. Environmental Protection Agency, Region 7, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508, Telephone: (402) 437–5080, e-mail: jacobson.jake@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and 40 CFR part 171, the Governor of the State of Nebraska, E. Benjamin Nelson, has submitted a revised plan for Certification of Pesticide Applicators to EPA for approval.

In the Federal Register of April 21, 1994 (59 FR 19010), notice was published of the intent of the Regional Administrator, EPA Region 7 to approve, on a contingency basis, the State of Nebraska Plan for Certification of Pesticide Applicators. After an appropriate comment period, a notice of approval on a contingency basis, was published in the Federal Register of July 20, 1994 (59 FR 37038). The Federal Register notice of July 20, 1994, also addressed comments which had been submitted.

The July 20, 1994 Notice of Contingency Approval stated that final approval of the Nebraska Certification Plan would be granted upon development of appropriate regulations, completion of cooperative agreements with other State agencies and revision of competency standards for one commercial applicator category. These conditions have been met. Appropriate regulations are contained in Title 25 Nebraska Administrative Code Chapter 2 incorporated in the revised Nebraska Certification Plan. The cooperative agreements between the Nebraska Department of Agriculture, responsible for administration of the program, the University of Nebraska, and the Nebraska Department of Aeronautics assure the coordination and cooperation of the various State agencies. These cooperative agreements are contained in the revised Nebraska Certification Plan. The revised Nebraska competency standards for Nebraska category 8, Structural/Health Related Pest Control, meet the requirements contained in the corresponding EPA standards at 40 CFR 171.4(c)(7).

Interested persons are invited to submit comments on the proposal to grant final approval to the revised Nebraska Certification Plan. A record has been established for this action under docket number ''OPP–42076'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in U.S. Environmental Protection Agency, Region 7, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE.

Electronic comments can be sent directly to EPA at:

jacobson.jake@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection.

Dated: March 6, 1996.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 96–6731 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34092; FRL–5353–1]

Reregistration Eligibility Decision Documents; Completion of Comment Period for Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the reregistration eligibility decision documents (REDs) for many chemical cases.

ADDRESSES: Copies of these REDs are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone no. (703) 487–4650. To obtain copies you must provide the publication number that has been assigned to the RED listed in the table below. Electronic copies of the REDs and RED Fact Sheets can be downloaded from the Pesticide Special review and Reregistration Information System at (703) 308–7224, and also can be reached on the internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED

documents listed below should be directed to the appropriate Chemical Review Managers:

Chemical Name	Chemical Review Manager	Telephone No.	E-mail Address
2-Mercaptobenzothiazole	Kathleen Depukat	703–308–8587	Depukat.kathleen@epamail.epa.gov
Alkyl amine hydrochloride	Ron Kendall	703–308–8068	Kendall.ron@epamail.epa.gov
Allium sativum (Garlic)	Bruce Sidwell	703–308–8078	Sidwell.bruce@epamail.epa.gov
Bromine	Mark Wilhite	703–308–8586	Wilhite.mark@epamail.epa.gov
Hexadecadienol acetates	Robert Torla	703–308–8098	Torla.robert@epamail.epa.gov
Inorganic halides	Mark Wilhite	703–308–8586	Wilhite.mark@epamail.epa.gov
Iron salts	Yvonne Brown	703–308–8073	Brown.yvonne@epamail.epa.gov
Limonene	Emily Mitchell	703–308–8583	Mitchell.emily@epamail.epa.gov
Lithium hypochlorite	Ron Kendall	703–308–8068	Kendall.ron@epamail.epa.gov
Nosema locustae	Robert Torla	703–308–8098	Torla.robert@epamail.epa.gov
Nuosept (Cosan 145)	Kathleen Depukat	703–308–8587	Depukat.kathleen@epamail.epa.gov
Peroxy compounds	Rieman Rhinehart	703–308–8584	Rhinehart.rieman@epamail.epa.gov
Phenylethyl propionate	Virginia Dietrich	703–308–8157	Dietrich.virginia@epamail.epa.gov
Polybutene	Mark Wilhite	703–308–8586	Wilhite.mark@epamail.epa.gov
Silver	Dean Monos	703–308–8074	Monos.dean@epamail.epa.gov
Soap salts	Veronica Dutch	703–308–8585	Dutch.veronica@epamail.epa.gov
Sodium cyanide	Kathleen Depukat	703–308–8587	Depukat.kathleen@epamail.epa.gov
Sodium lauryl sulfate	Ron Kendall	703–308–8068	Kendall.ron@epamail.epa.gov
Terbuthylazine	Virginia Dietrich	703–308–8157	Dietrich.virginia@epamail.epa.gov
Thymol	Kathleen Depukat	703–308–8587	Depukat.kathleen@epamail.epa.gov
Vegetable and Flower oils	Virginia Dietrich	703–308–8157	Dietrich.virginia@epamail.epa.gov
Xylenol	Paul Lewis	703–308–8018	Lewis.paul@epamail.epa.gov
Zinc Salts	Mark Wilhite	703–308–8586	Wilhite.mark@epamail.epa.gov

SUPPLEMENTARY INFORMATION: During fiscal years 1992 through 1995, EPA published notices in the Federal Register announcing the availability of REDs for the listed pesticide chemical cases. These REDs were issued as final documents, with a 60–day comment period. In these REDs, EPA provided its regulatory position on the current registered uses of these pesticides and set forth certain requirements for product reregistration eligibility. EPA received no significant comments for the following REDs; 2-Mercaptobenzothiazole, Alkyl amine hydrochloride, Allium sativum (Garlic), Bromine, Hexadecadienol acetates, Inorganic halides, Iron salts, Limonene, Lithium hypochlorite, Nosema locustae, Nuosept (Cosan 145), Peroxy compounds, Polybutene, Silver, Soap salts, Sodium cyanide, Sodium lauryl sulfate, Terbuthylazine, Thymol, Vegetable and Flower oils, and Zinc Salts.

The NTIS publication number for REDs subject to this notice are presented below:

Chemical Name	Case Number	RED Date	RED NTIS Number
2-Mercaptobenzothiazole	2380	09/30/94	738-F-94-027
Alkyl amine hydrochloride	3051	08/25/92	738-R-92-005 738-F-92-014
Allium Sativum (Garlic)	4007	06/11/92	738-F-92-015 738-R-92-006
Bromine	4015	12/14/93	738-F-93-023 738-R-93-027
Hexadecadienol acetates	4111	03/29/94	738-F-94-005 738-R-94-005
Inorganic halides	4051	09/20/93	738-R-93-019 738-F-93-015
Iron salts	4058	02/18/93	738-F-93-002
Lithium hypochlorite	3084	12/02/93	738-F-39-018
Nosema locustae	4104	09/10/92	738-F-92-011
Nuosept (Cosan 145)	3052	09/30/94	738-F-94-027 738-R-94-030
Peroxy compounds	4072	12/14/93	738-F-93-026 738-R-93-030
Polybutene	4076	12/30/94	738-F-95-008 7383-R-95-007
Silver	4082	06/30/93	738-F-93-005 738-R-93-005
Soap salts	4083	09/15/92	738-F-92-013 738-R-92-015
Sodium cyanide	3086	09/30/94	738-F-94-016 738-R-94-020
Sodium lauryl sulfate	4061	09/22/93	738-F-93-009

Chemical Name	Case Number	RED Date	RED NTIS Number
Terbuthylazine	2645	12/30/94	738-R-93-013 738-F-95-006 738-R-95-005
Thymol	3143	09/30/93	738-F-93-010 738-R-93-014
Vegetable and Flower Oils	4097	12/14/93	738-F-93-027 738-R-93-031
Zinc Salts	4099	08/12/92	738-F-92-007 738-R-92-018

List of Subjects

Environmental protection.

Dated: March 1, 1996.

Richard D. Schmitt,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 96–6247 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34091; FRL–5352–9]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility decision documents; opening of public comment period.

SUMMARY: This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the active ingredients 4-Chlorophenoxyacetic, Agrobacterium radiobacter, Aliphatic alcohols, Carbon and Carbon dioxide, Cedarwood oil, Dried blood, Ethalfluralin, Oil of citronella, Oxalic acid, Silicon dioxide/Silica gel, and Sodium fluoroacetate. This notice starts a 60–day public comment period. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by May 6, 1996.

ADDRESSES: Three copies of comments identified with the docket number ''OPP–34091'' and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Room 1132, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–34091''. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in ''SUPPLEMENTARY INFORMATION'' at the end of this document.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which do not include any information claimed as CBI will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a paper copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the above listed decisions should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	E-mail Address
4-chlorophenoxyacetic	2115	Kathleen Depukat	(703) 308–8587	Depukat.kathleen@epamail.epa.gov
Agrobacterium radiobacter	4101	Robert Torla	(703) 308–8098	Torla.robert@epamail.epa.gov
Aliphatic alcohols	4003	Leonard Ryan	(703) 308–8067	Ryan.leonard@epamail.epa.gov
Carbon and Carbon dioxide	4019	Virginia Dietrich	(703) 308–8157	Dietrich.virginia@epamail.epa.gov
Cedarwood oil	3150	Virginia Dietrich	(703) 308–8157	Dietrich.virginia@epamail.epa.gov
Dried blood	4030	Robert Torla	(703) 308–8098	Torla.robert@epamail.epa.gov
Ethalfluralin	2260	Kathleen Depukat	(703) 308–8587	Depukat.kathleen@epamail.epa.gov
Oil of citronella	3105	Robert Torla	(703) 308–8098	Torla.robert@epamail.epa.gov
Oxalic acid	4070	Tom Luminello	(703) 308–8075	Luminello.tom@epamail.epa.gov
Silicon dioxide/Silica gel	4081	Frank Rubis	(703) 308–8184	Rubis.frank@epamail.epa.gov
Sodium fluoroacetate	3073	Leonard Ryan	(703) 308–8067	Ryan.leonard@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the Federal Register.

A record has been established for this notice under docket number ''OPP–34091'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic copies of the REDs and RED Fact Sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record of this notice, as well as the public version, as described above will be kept in paper form.

Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection.

Dated: March 1, 1996.

Richard D. Schmitt,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 96–6249 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30405; FRL–5356–3]

DeKalb Genetics Corp.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the product Corn Borer-Resistant Corn Containing Insecticidal Bt Protein, containing a plant pesticide active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 19, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30405] to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30405]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from DeKalb Genetics Corporation, 3100 Sycamore Rd., DeKalb, IL 60115–9600, to register the product Corn Borer-Resistant Corn Containing Insecticidal Bt Protein which contains the plant pesticide active ingredient *Bacillus thuringiensis* subspecies *kurstaki* delta-endotoxin as produced in corn by a crylA(c) gene and the genetic material necessary for its production, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the

Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30405] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 8, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–6724 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30404; FRL–5353–6]

Leco Plastics, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 19, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30404] and the file symbol (67437–R) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30404]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: John Tice, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8295; e-mail: tice.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Leco Plastics, Inc., 100–02 Rockaway Blvd., Ozone Park, NY 11417, to register the pesticide product Bug Bands (EPA File Symbol 67437–R), containing the active ingredient orange terpenes at 10 percent, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is classified for general use as an insect repelling wrist band to control mosquitoes outdoors on wrist, ankles, belts, carriages, and strollers or walkers. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30404] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 8, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–6726 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66223; FRL 5353–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 18, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 36 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00665	Pennant 5G Granular Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00688	Medal Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00715	Derby Granular Herbicide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000264 LA–81–0040	Weedone 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000352–00411	Dupont 40 % Bromacil and 40% Diuron Powder	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
002935–00361	Red Top Thimet 6.5% Syst. Insect W/PCNB 6.5% Soil Fungicide	Pentachloronitrobenzene *O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
003125 IA–91–0001	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 IA–92–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 IA–92–0003	Sencor Solupak Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 IN–93–0002	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 KS–92–0003	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 MI–92–0001	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 MN–93–0001	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
003125 MO–93–0003	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 MO–93–0004	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 NE–91–0004	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 NE–92–0004	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 NE–92–0005	Sencor Solupak Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 NM–94–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 OH–93–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 OH–93–0003	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 OK–94–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 TX–93–0017	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
010163 AZ–89–0019	Gowan Prometryne 4l	2,4-Bis(isopropylamino)-6-(methylthio)-*s*-triazine
011715–00030	Magic Guard Disinfectant Spray	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
011715–00114	Speer Hospital Spray Disinfectant/Deodorant	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12})
011715–00116	Speer Air Sanitizer	Ethanol Propanol, oxybis- Alkyl* dimethyl benzyl ammonium chloride *(61%C_{12}, 23%C_{14}, 11%C_{16}, 5%C_{18}) Triethylene glycol
011715–00128	Speer Glycolized Air Sanitizer Deodorizer	Isopropanol Triethylene glycol
045728–00006	Thiram Technical Micropearls	Tetramethyl thiuramdisulfide
045728–00009	Metam Manufacturing-Use Concentrate 32.7%	Sodium *N*-methyldithiocarbamate
045728–00010	Metam Manufacturing-Use Concentrate 42%	Sodium *N*-methyldithiocarbamate
055638–00006	Dagger Manufacturing Concentrate	Pseudomonas fluorescens EG-1053 (previously coded 006418)
062719–00198	B & G Ban-Bug D	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate Xylene range aromatic solvent
062719 MO–78–0016	Telone II Soil Fumigant	1,3-Dichloropropene
069470–00004	Cdb 63 Dry Chlorinated Compound Granular	Sodium dichloro-*s*-triazinetrione
069470–00006	Olin Cdb 63 Dry Chlorinated Compound Powder	Sodium dichloro-*s*-triazinetrione

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
045728	Compliance Services International, Agent For: UCB Chemicals Corp., 2001 Jefferson Davis Highway, Suite 1010, Arlington, VA 22202.
055638	Ecogen Inc., 2005 Cabot Blvd W., Langhorne, PA 19047.
062719	Dow Elanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
069470	Dechert Prise & Rhoads, Agent For: Clearon Corp., 4000 Bell Atlantic Tower-1717 Arch St., Philadelphia, PA 19103.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
53404–31–2	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate	000264

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 18, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 29, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–6729 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181001; FRL 5355–4]

Pirate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Louisiana Department of Agriculture Forestry (hereafter referred to as the ''Applicant'') to use the pesticide Pirate to treat up to 1,000,000 acres of cotton to control the beet armyworm (BAW). The Applicant proposes the use of a new (unregistered) chemical [40 CFR 166.24(a)(1)]. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 4, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181001,'' should be

submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181001]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of Pirate on cotton to control the beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the rationale for requesting this emergency exemption is based on pheromone trap catches from the previous winter and spring months indicating that the BAW may be overwintering in Louisiana and if environmental conditions are favorable early in the growing season, a large outbreak of BAW could occur. In addition the inability of the currently available insecticides to control the BAW has resulted in yield losses and high control costs.

Under the proposed exemption, Pirate 3SC may be applied at a maximum rate of 0.2 pounds per acre (8.53 fl. ozs.) using ground or aerial application equipment in a minimum of 10 gallons per acre total volume by ground, or 5 gallons of spray solution per acre by air.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24(a)(1)]. Pirate 3SC is an unregistered chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181001] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Louisiana Department of Agriculture Forestry.

List of Subjects

Environmental Protection, Pesticides and pests, Emergency exemptions.

Dated: March 7, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–6248 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44622; FRL–5356–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on n-butyl acetate (CAS No. 123–86–4), and cyclohexane (CAS No. 110–82–7) submitted pursuant to testing consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that the results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for n-butyl acetate were submitted by the Chemical Manufacturers Association Oxo Process Panel on behalf of the following sponsors: Aristech Chemical

Corporation, BASF Corporation, BP Chemicals, Inc., Eastman Chemical Company, Hoechst Celanese Chemical Group, Inc., Rhone-Poulenc, Inc., Shell Oil Company, Union Carbide Corporation, and Vista Chemical Co. pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on February 16, 1996. The submission includes a final report entitled ''n-Butyl Acetate, A Thirteen-Week Subchronic Inhalation Neurotoxicity Study in the Rat.'' This chemical is used as a solvent for coatings, as a process solvent, and for miscellaneous solvent uses.

Test data for cyclohexane were submitted on behalf of the Chemical Manufacturers Association's Cyclohexane Panel pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on February 20, 1996. The submission includes a final report entitled ''Acute Operant Behavior Study of Cyclohexane by Inhalation in Rats.'' Cyclohexane is found in a number of consumer products including spray paint and spray adhesives and is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44622). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 8, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–6725 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPT–59352; FRL–5356–9]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–96–2 and TME–96–3. The test marketing conditions are described below.

DATES: This notice becomes effective March 8, 1996. Written comments will be received until April 4, 1996.

ADDRESSES: Written comments, identified by the docket number [OPPT–59352] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59352]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: Vera Stubbs, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447A, 401 M St. SW., Washington, DC 20460, (202) 260–5671.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–96–2 and TME–96–3. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The notice of receipt for this application was not published in advance; therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–96–2 and TME–96–3. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of these TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–96–2 and TME–96–3

Date of Receipt: February 5, 1996. The extended comment period will close April 4, 1996.

Applicant: Westvaco Corporation - Chemical Division.

Chemicals: (G) Rosin Modified Hydrocarbon Resin (TME–96–2). (G) Phenolic Modified Rosin Ester Resin (TME–96–3).

Use: (G) lithographic inks.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 12 months. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will

not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPT–59352] (including comments and data submitted electronically a described above). A public version of this record, including printed versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, DC 20460.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 8, 1996.

Paul J. Campanella,

Chief, New Chemicals Branch Office of Pollution Prevention and Toxics.

[FR Doc. 96–6728 Filed 3–19–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission; Comments Requested

March 14, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 20, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via Internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0126.
Title: Section 73.1820 Station Log.
Form Number: None.
Type of Review: Extension of an existing collection.
Respondents: Business or other for-profit.
Number of Respondents: 13,529.
Estimated Time Per Response: 0.79 hours.
Total Annual Burden: 10,688 hours.
Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations. The data is used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EBS is operating properly.

OMB Approval Number: 3060–0395.
Title: Automated Reporting and Management Information Systems (ARMIS)—Sections 43.21 and 43.22.
Form No.: FCC Report 43–02.
Type of Review: Revised collection.
Respondents: Businesses or other for-profit.
Number of Respondents: 161.
Estimated Time Per Response: 943.27 hours.
Total Annual Burden: 151,868 hours.
Needs and Uses: ARMIS is needed to administer our accounting, jurisdictional separations, access charges and joint cost rules and rules to analyze revenue requirements and rates of return, service quality and infrastructure development. It collects financial and operating data from all Tier 1, Class A local exchange carriers with annual revenues over $100 million and carriers who elect incentive regulation. The information contained in the reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities.

OMB Approval Number: 3060–0513.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Type of Review: Revised collection.
Respondents: Businesses or other for-profit.
Number of Respondents: 150.
Estimated Time Per Response: 200 hours.
Total Annual Burden: 30,000 hours.
Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers.

OMB Approval Number: 3060–0511.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Type of Review: Revised collection.
Respondents: Businesses or other for-profit.
Number of Respondents: 150.
Estimated Time Per Response: 1,150 hours.
Total Annual Burden: 172,500 hours.
Needs and Uses: The Access Report is needed to administer our accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6656 Filed 3–20–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting, Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:10 a.m. on Monday, March 18, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) Reports of the Office of Inspector General, and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), Julie Williams, acting in the place and stead of 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) and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)2, (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: March 18, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–6901 Filed 3–18–96; 3:50 pm]

BILLING CODE 6714–0–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Environmental Impact Statement: Flood Recovery Activities in the City of Albany—Dougherty County, Georgia

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Intent.

SUMMARY: FEMA gives notices of its intent to prepare an Environmental Impact Statement (EIS) for flood recovery activities in the City of Albany and Dougherty County, Georgia. The actions to be evaluated by this EIS include the acquisition of flood damaged residences and businesses; replacement of public housing; repair or replacement of public schools; and implement components of the City's Flood Recovery Plan related to FEMA funded activities.

FOR FURTHER INFORMATION CONTACT: Richard S. Shivar, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or telephone (202) 646–3610.

SUPPLEMENTARY INFORMATION:

Alternatives

This EIS will evaluate alternative methods for implementing the various flood recovery activities. *Acquisition of Residences and Businesses*: Alternatives include (1) voluntary participation in the acquisition program, and (2) consideration of other allowable mitigation measures (such as elevation). Public Housing: Multiple alternative sites throughout the City for placement of public housing. *Public Schools*: Alternatives include (1) building schools at new locations identified by the Board of Education, and (2) rebuilding schools at existing locations. As required by the National Environmental Policy Act (NEPA), FEMA will also address the ''no action'' alternative.

Public Involvement

Under NEPA, affected Federal, State, and local agencies and other interested parties will be invited to participate in the EIS scoping process. A scoping meeting will be scheduled within 30 days of publication of this notice. The public will be invited to review the draft EIS and participate in a public meeting to comment on the draft EIS. Release of the draft EIS for public comment, as well as the date of the public meeting will be announced in the local news media, as these dates are established.

Dated: March 14, 1996.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 96–6691 Filed 3–19–96; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. BancPlus Corporation and BancPlus Corporation Employee Stock Ownership Plan, both of Belzoni,

Mississippi; to acquire 100 percent of the voting shares of Home Savings Bank, SSB, Meridian, Mississippi.

Board of Governors of the Federal Reserve System, March 14, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–6650 Filed 3–19–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022696 AND 030896

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Fluor Corporation, S&R Equipment Company, Inc., S&R Equipment Company, Inc	96–1062	02/26/96
Brunswick Corporation, Roadmaster Industries, Inc., Nelson/Weather-Rite, Inc	96–1037	02/27/96
Mariner Health Group, Inc., MedRehab, Inc., MedRehab, Inc	96–1065	02/27/96
Dwight C. Schaubach, Republic Industries, Inc., Republic Industries, Inc	96–1117	02/27/96
Republic Industries, Inc., Dwight C. Schaubach, Incendere, Inc	96–1118	02/27/96
John Stewart Jackson, Republic Industries, Inc., Republic Industries, Inc	96–1119	02/27/96
Republic Industries, Inc., John Stewart Jackson, The Denver Fire Reporter & Protective Co	96–1120	02/27/96
Central Newspaper, Inc., McCormick & Company, Inc., McCormick & Company, Inc	96–0948	02/28/96
WMX Technologies, Inc., Star Recycling, Inc., Star Recycling, Inc	96–0973	02/28/96
WMX Technologies, Inc., Allied Sanitation, Inc., Allied Sanitation, Inc	96–0974	02/28/96
Corel Corporation (a Candian company), Novell, Inc., Novell, Inc	96–0993	02/28/96
Novell, Inc., Corel Corporation (a Canadian company), Corel Corporation	96–0994	02/28/96
National Media Corporation, Postive Repsonse Television, Inc., Positive Response Television, Inc	96–1004	02/28/96
Goran Capital Inc., Fortis AMEV, N.V., Superior Insurance Company	96–1025	02/28/96
Goran Capital Inc., Fortis AG, Superior Insurance Company	96–1026	02/28/96
Allen J. Becker, ITT Corporation, Madison Square Guarden, L.P	96–1031	02/28/96
Structural Dynamics Research Corporation, CAMAX Manufacturing Technologies, Inc., CAMAX Manufacturing Technologies, Inc	96–1039	02/28/96
Warren A. Hood, Jr., NV Koninklijke KNP BT, Sengewald U.S.A., Inc	96–1066	02/28/96
Olympus Real Estate Fund, L.P., Monterey/Octagon Investors Limited Partnership, Monterey Bay Hotel Limited Partnership	96–1074	02/28/96
Prime Hospitality Corp., Hillsborough Associates, Hillsborough Associates	96–1079	02/28/96
Prime Hospitality Corp, Wellesley I, L.P. and Meriden Hotel Associates, L.P., Wellesley I, L/P. and Meriden Hotel Associates, L.P	96–1081	02/28/96
Airplanes Limited, GPA Group plc, GPA II Limited	96–1083	02/28/96
PhyCor, Inc., Wichita Falls/Medical & Surgical Clinic, L.L.P., Clinics of North Texas, L.L.P	96–1084	02/28/96
The Prudential Insurance Company of America, ConAgra, Inc., Northwest Fabrics and Crafts, Inc	96–1085	02/28/96
Bedord Capital Financial Corp., Halston Borghese International Limited (Br. Virgin Isl), Halston Borghese, Inc	96–1088	02/28/96
Tele-Communications, Inc., Balkin Cable Holdings, L.P., W.A.V., Inc.; Balkin Cable Holding, L.P	96–1093	02/28/96
Citation Corporation, James D. Hunt and Sandra J. Hunt, husband and wife, Southern Aluminum Castings Company	96–1096	02/28/96
Trump Hotels & Casino Resorts, Inc., Donald J. Trump, Taj Mahal Holding Corp., and Trump Taj Mahal Corporation	96–1098	02/28/96
AutoZone, Inc., Alldata Corporation, Alldata Corporation	96–1108	02/28/96
Jefferson-Pilot Corporation, Christopher D. Sickels, KIFM Broadcasting Limited Partnership	96–1112	02/28/96
ENSCO International Incorporated, Dual Invest AS, Dual Drilling Company	96–1113	02/28/96
Nale Laboratories, plc (an Irish company), Warner-Lambert Company, Warner Chilcott Laboratory Division	96–1115	02/28/96
Lui Che Woo, Trust Number One U/LW&T of George J. Maloof, dtd 9/1/78, Los Pueblos, Inc	96–1124	02/28/96
Charlton Health System, Inc., Tobey Health Systems, Inc., Tobey Health Systems, Inc	96–1063	02/28/96
MCN Corporation, Belden & Blake Corporation, Ward Lake Drilling, Inc	96–1103	02/29/96
Jefferson-Pilot Corporation, John G. Davies, KIFM Broadcasting Limited Partnership	96–1105	02/29/96
Avondale Incorporated, Triarc Companies, Inc., Graniteville Company	96–1114	02/29/96
PNC Bank Corp., MidCoast Holdings, Inc., MidCoast Mortgage Corporation	96–1130	02/29/96
Legacy Storage Systems International, Inc. (Canadian), Rexon, Inc. (debtor-in-posses-sion), Rexon, Inc. (debtor-in- possession)	96–1174	02/29/96
Westwood One, Inc., Alan Markowitz, New York Shadow Traffic Limited Partnership, Philadelphia	96–1030	03/01/96
Anthony Lomangino, WMX Technologies, Inc., WMX Technologies, Inc	96–1032	03/01/96
Smith's Food & Drug Centers, Inc., Ronald W. Burke, Smitty's Supermarkets, Inc	96–1016	03/05/96
Ronald W. Burke, Smith's Food & Drug Centers, Inc., Smith's Food & Drug Centers, Inc	96–1017	03/05/96
Foundation Health Corporation, Managed Health Network, Inc., Managed Health Network, Inc	96–1024	03/05/96
Tribune Company, Brentwood Associates IV, L.P., Educational Publishing Corporation	96–1036	03/05/96
Catholic Helathcare West, Woodland Healthcare, Woodland Memorial Hospital & Woodland Staffing Services	96–1043	03/05/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022696 AND 030896—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Scudder Family Voting Trust for ANI, Amphlett Printing Company, Amphlett Printing Company	96–1071	03/05/96
United News & Media plc, MAI plc, MAI plc	96–1073	03/05/96
The Atlantic Foundation, Manugistics Group, Inc., Manugistics Group, Inc	96–1086	03/05/96
Insignia Financial Group, Inc., Douglas Elliman, Inc., Douglas Elliman, Inc	96–1087	03/05/96
St. Jude Medical, Inc., Daig Corporation, Daig Corporation	96–1100	03/05/96
John J. Fleischhacker, St. Jude Medical, Inc., St. Jude Medical, Inc	96–1101	03/05/96
Marco F. Hellman Irrevocable Trust, LSAI Holding Corp., (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1109	03/05/96
Tully M. Friedman, LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1110	03/05/96
Daniel J. Starks, St. Jude Medical, Inc., St. Jude Medical, Inc	96–1111	03/05/96
Temasek Holdings (Private) Limited, Micropolis Corporation, Micropolis Corporation (Thailand) Ltd	96–1116	03/05/96
Jones Medical Industries, Inc., Eli Lilly and Company, Eli Lilly and Company	96–1123	03/05/96
The Southern Company, Vanguard Real Estate Fund II, Vanguard Real Estate Fund II	96–1125	03/05/96
Robert D. Haas, LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1132	03/05/96
The Elise K. Haas 1984 Trust, LSAI Holding Corp. (Joint Venture), LSAI Holding Corp., (Joint Venture)	96–1133	03/05/96
The Elise K. Hass 1986 Trust, LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1134	03/05/96
James M. Koshland, LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1135	03/05/96
Peter E. Haas, Jr., LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1136	03/05/96
Peter E. Haas, Jr., LSAI Holding Corp. (Joint Venture), LSAI Holding Corp. (Joint Venture)	96–1137	03/05/96
Carolina Medicorp, Inc., RJR Nabisco Holdings Corp., R.J. Reynolds Tabacco Company	96–1138	03/05/96
H.J. Heinz Company, Earth Elements, Inc., Earth Elements, Inc	96–1139	03/05/96
Young Broadcasting Inc., N.L. Bentson, Midcontinent Television of South Dakota, Inc	96–1146	03/05/96
Amoco Corporation, The Broken Hill Proprietary Co. Ltd. (an Australian co), BHP Petroleum (Americas) Inc	96–1147	03/05/96
Sega Enterprises, Ltd., Sega Multimedia, Inc., Sega Multimedia, Inc	96–1149	03/05/96
Prudential Corporation plc, David Z. Burger, City Freeholds (U.S.A.), Inc	96–1154	03/05/96
GS Capital Partners II, L.P., The Community Foundation, Inc., AMF Bowling Centers (Aust.) Int'l Inc	96–1157	03/05/96
GS Capital Partners II, L.P., AMF Bowling Centers, Inc., AMF Bowling Centers, Inc	96–1159	03/05/96
GS Capital Partners II, L.P., AMF Bowling, Inc., AMF Bowling, Inc	96–1160	03/05/96
Masayoshi Son, Sega Multimedia, Inc., Sega Multimedia, Inc	96–1161	03/05/96
GS Capital Partners II, L.P., AMF Holdings Inc., AMF Holdings Inc	96–1162	03/05/96
GS Capital Partners II Offshore, L.P., AMF Holdings Inc., AMF Holdings Inc	96–1163	03/05/96
Minnesota Corn Processors, Inc., California Syrup & Extract Company, Liquid Sugars, Inc	96–1164	03/05/96
Minnesota Corn Processors, Inc., The Alfred B. Saroni, Jr. 1986 CRT, Liquid Sugars, Inc	96–1165	03/05/96
Charter Power Systems, Inc., Burr-Brown Corporation, Power Convertibles Corporation	96–1197	03/05/96
AMP Incorporated, Akzo Noble N.V., Akzo Nobel Electronic Interconnections Inc	96–1143	03/07/96
Royal Dutch Petroleum, Gerald A. Boelte, LLOG Exploration Company	96–1150	03/07/96
Sumner M. Redstone, Duncan MacNaughton, Pacific Video Entertainment Inc	96–1166	03/07/96
AMP Incorporated, AMP Incorporated, AMP-AKZO Company	96–1185	03/08/96

For Further Information Contact: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–6735 Filed 3–19–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0253J]

Analysis Regarding The Food and Drug Administration's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products; Reopening of the Comment Period as to Specific Documents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period as to specific documents.

SUMMARY: The Food and Drug Administration (FDA) is reopening to April 19, 1996, as to specific documents, the comment period on its analysis regarding FDA's jurisdiction over these products, which was published in the Federal Register of August 11, 1995 (60 FR 41453). FDA is reopening the comment period for 30 days for the sole purpose of inviting public comments on the information being added to the administrative record. Elsewhere in this issue of the Federal Register, FDA is reopening the comment period, as to specific documents, for its proposed rule entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents.''

DATES: Written comments must be received or postmarked on or before April 19, 1996. Comments postmarked after such date will not be considered.

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: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 11, 1995 (60 FR 41453), FDA published a notice

containing an analysis of FDA's jurisdiction over nicotine-containing cigarettes and smokeless tobacco products. The analysis supported a finding at that time that nicotine in cigarettes and smokeless tobacco products is a drug and that these products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–395).

In the Federal Register of October 16, 1995 (60 FR 53620), FDA extended to January 2, 1996, the comment period on the notice that set forth the jurisdictional analysis.

FDA is adding three statements from former industry scientists and employees to the administrative record. These statements, describe among other things, the industry's understanding of nicotine and industry practice with respect to the control of nicotine levels in cigarette manufacture.

FDA might rely on these statements in support of any final decision it may make on its jurisdiction. The agency is therefore providing the public an opportunity to comment on them.

FDA believes that 30 days to comment is ample in this case, as the agency is specifically limiting its reopening of the comment period to comments on the statements being added. Comments are invited, and will be considered, only to the extent they are focused on the information being newly added to the record and only to the extent the comments regarding such information raise new issues not already raised by the person submitting the comment.

The documents being added to the record are as follows:

1. Uydess, Ian L., Declaration of Ian L. Uydess, Ph.D., February 29, 1996.
2. Farone, William A., Ph.D., ''The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective,'' March 8, 1996.
3. Rivers, Jerome K., Declaration of Jerome K. Rivers, March 7, 1996.

As part of its ongoing investigation, the agency has compiled information that includes notes and transcripts of interviews with former industry scientists and employees. These notes and transcripts have been referenced in this proceeding (Federal Register of December 27, 1995 (60 FR 66981)), but have not been included in the public docket because, among other reasons, they would likely disclose the identity of sources that furnished information to FDA on a confidential basis (60 FR 66981), they were obtained under assurances of confidentiality, and in some cases they contain trade secret or other confidential information. Among these documents are notes and transcripts reflecting conversations with Dr. Uydess, Dr. Farone, and Mr. Rivers, whose statements are identified above. Since the agency may rely on these statements, the agency is making them available for public comment now. The agency will not rely on any notes or transcripts made by the agency reflecting conversations with any former industry scientists and employees.

Interested persons may, on or before April 19, 1996, submit to the Dockets Management Branch (address above) written comments regarding the documents listed above. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 18, 1996

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–6789 Filed 3–18–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement for Scholarships for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1996 Scholarships for Disadvantaged Students (SDS) program are being accepted under the authority of section 737 of the Public Health Service Act (the Act), Title VII, Part B, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Schools that received funds for academic year 1995–96 will be funded based on the information provided in last year's financial status report, and do not need to reapply.

Purpose

The SDS program provides funds to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools, as well as to undergraduate students who have demonstrated a commitment to pursuing a career in health professions.

For purposes of the SDS program in FY 1996, an ''individual from disadvantaged background'' is defined in 42 CFR part 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these lowincome levels in the Federal Register.

The following income figures determine what constitutes a low-income family for purposes of the SDS program for FY 1996.

Size of parents' family [1]	Income level [2]
1	$10,200
2	13,200
3	15,700
4	20,200
5	23,800
6	26,700

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1995, rounded to nearest $100. These low income figures are published in this issue of the FEDERAL REGISTER.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriation for title VII programs, the amount of available funding for this program cannot be estimated. Of the funds available for FY 1996, 30 percent shall be made available to schools agreeing to expend the funds only for nursing scholarships.

The period of fund availability will be for one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above.

(2) To provide financial assistance to undergraduate students who have demonstrated a commitment to pursuing a career in the health professions, in order to facilitate the completion of the educational requirements for such careers, provided that the total amount used for this purpose may not exceed 25 percent of the funds awarded to the school under this program.

Any school receiving SDS funds will be required to maintain separate accountability for these funds.

School Eligibility

Funds under this program will be made available to accredited public or nonprofit private health professions schools. For purposes of the SDS program, as defined in section 737(a)(3) of the Act, the term ''health professions schools'' means schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or allied health or schools offering graduate programs in clinical psychology and which are accredited as provided in section 799(1)(E) of the Act, schools of allied health as defined in section 799(4) of the Act, and which are located in States as defined in section 799(9) of the Act, and schools of nursing as defined in section 853 of the Act.

As required by statute, to qualify for participation in the SDS program, a school must be:

(1) carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) carrying out a program for recruiting and retaining minority faculty.

In addition, each school that received funds in FY 1995 must be carrying out all of the statutory requirements listed below:

(1) Ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school. This does not include normal course work, that by definition includes minority health issues (e.g., sickle cell anemia in a pathology class), but refers to course work reflecting an institutional awareness of the special health needs of minority populations;

(2) Enter into arrangements with one or more health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(3) Enter into arrangements with one or more public or nonprofit private secondary educational institutions and undergraduate institutions of higher education (feeder schools), for the purpose of carrying out programs regarding:

(a) the educational preparation of disadvantaged students, including minority students, to enter the health professions; and

(b) the recruitment of disadvantaged students, including minority students, into the health professions; and

(4) Establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school. This program may include the involvement of students, community health professionals, faculty, alumni, past recipients of Health Career Opportunity Program (HCOP) funds, faculty/staff of feeder schools, etc., in institutionally organized activity (e.g., tutoring, counseling, and summer/bridge programs).

Each school funded for the first time in FY 1996 will also be required to carry out each of the activities specified above by not later than 12 months from receipt of award. Funds awarded to a school under the SDS program may not be used to carry out any of the above activities which the school must be doing, or must agree to do. In addition, a school will be required to continue to carry out all described activities, and also the student/faculty recruitment and retention activities, for as long as the SDS program is in operation at the school.

Evaluation Criteria for Fiscal Year 1996

For FY 1996, applications from newly participating schools will be evaluated on the degree to which the schools meet the statutory requirements listed above. Guidance for presenting the information will be provided in the FY 1996 application materials. Schools that received funds for academic year 1995–96 will be funded based on the information provided in last year's financial status report, and do not need to reapply.

Student Eligibility: As required by statute, to qualify for the SDS program, a student must:

(1) be a citizen, a U.S. national, an alien lawfully admitted for permanent residency in the U.S., or a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, a citizen of the Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia;

(2) meet the definition of an ''individual from a disadvantaged background'' as defined above; and

(3)(a) be enrolled in or accepted by an eligible school for enrollment as a full-time student; or

(b) be an undergraduate student who has demonstrated a commitment to pursuing a career in health professions, including nursing.

Statutory Preference

The law requires that in providing SDS scholarships, the school give preference to students who are from disadvantaged backgrounds and for whom the cost of attending an SDS school would constitute a severe financial hardship. Severe financial hardship will be determined by the school in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs.

The following Criteria for Undergraduate Students, Definitions, Methodology for Implementing the Statutory Special Consideration, the Nonstatutory Special Consideration for Baccalaureate Nursing Programs, and the Procedures for Calculating Scholarship Awards were established in FY 1991 after public comment (at 57 FR 49779) on October 1, 1991, and are being extended in FY 1996. The Funding Preference and Priority were established in FY 1994 after public comment (at 59 FR 44740) on August 30, 1994, and are being extended in FY 1996.

Criteria for Undergraduate Students

In the instance of (3)(b) above, it has been established that the undergraduate students eligible for scholarships must be at feeder schools and have signed statements that they are interested in health professions or nursing careers.

Definitions

''Black'' means a person having origins in any of the black racial groups of Africa.

''Hispanic'' means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

''American Indian or Alaskan Native'' means a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, dated May 3, 1974.

''Native American'' as defined in Pub. L. 101–527, means American Indian, Alaskan Native, Aleut, or Native Hawaiian.

''Minority'' with respect to faculty, refers to Blacks, Hispanics, Native Americans, Filipinos, Koreans, Pacific Islanders, and Southeast Asians whose percentage among the total supply of practitioners in the applicable health profession is below that group's percentage in the total population.

Methodology for Implementing the Statutory Special Consideration

In accordance with the statute, in making awards under section 737(a), the Secretary shall give special consideration to eligible schools that have enrollments of underrepresented minorities above the national average for its particular discipline.

For purposes of determining eligibility of a school, Asians will not be included in the definition of underrepresented minorities for the school. Although certain Asian subgroups (i.e, Filipinos, Koreans, Pacific Islanders, and Southeast Asians) are considered to be underrepresented in the health professions and are included as minorities for purposes of program requirements relating to faculty recruitment and retention (see above), national data on these subgroups are not available as a basis for establishing national average enrollment of underrepresented minorities.

For purposes of the FY 1996 award cycle, the national average enrollments of Blacks, Hispanics, and Native Americans (in combination) are: for medicine 14.4 percent; osteopathic medicine 7.8 percent; nursing (RN only) 12.9 percent; dentistry 11.9 percent; pharmacy 11.6 percent; optometry 9.2 percent; podiatric medicine 10.4 percent; veterinary medicine 5.6 percent; public health 15.9 percent; allied health 17.3 percent; and clinical psychology 17 percent.

Nonstatutory Special Consideration for Baccalaureate Nursing Programs

Among schools of nursing, additional special consideration will be given to baccalaureate programs. One of the distinguishing features of baccalaureate education is the substantial focus on preparation for community health practice. Training nurses for community health practice is an integral component of the Department's access strategy.

It is not required that new applicants request consideration for a funding factor. Applications from new schools which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Procedures for Calculating Awards

Awards to eligible schools will be calculated by comparing the enrollment of disadvantaged students in each eligible school with the total enrollment of the disadvantaged students in all eligible schools.

A school with an enrollment of underrepresented minority students which is above the national average (for each discipline) will be given double credit (i.e., its enrollment of disadvantaged students would be doubled for awarding purposes). A baccalaureate nursing school will be given double credit. A baccalaureate nursing school with an underrepresented minority enrollment above the national average will be given quadruple credit (i.e., its enrollment of disadvantaged students will be multiplied by four for awarding purposes).

Other Consideration

Other funding factors may be applied in determining the funding of eligible schools.

A funding preference is defined as the funding of a specific category or group of eligible schools ahead of other categories or groups of eligible schools.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that new applicants request consideration for a funding factor. Applications from new schools which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Funding Preference and Priority

For fiscal year 1996, among allied health schools or programs, preference will be given to the following baccalaureate and graduate programs: dental hygiene, medical laboratory technology, occupational therapy, physical therapy and radiologic technology. In addition, priority among allied health applicants will be given to dental hygiene. A priority for dental hygiene will be implemented by taking the total funds allocated to the allied health disciplines in the initial allocation and recalculating this part of the allocation. Dental hygiene schools will receive double credit for their disadvantaged enrollments in the reallocation of the allied health funds.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Smoke-Free Workplace

The Public Health Service strongly encourages all award recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Paperwork Reduction Act

The application form and instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0149.

Application Requests

Applications are not required from schools of medicine, osteopathic medicine, dentistry, pharmacy, optometry, podiatric medicine, veterinary medicine, nursing, public health, clinical psychology and allied health which received SDS awards in FY 95. Upon request, applications will be mailed to schools in the disciplines identified above which did not participate in the SDS program in FY 95.

Requests for application materials and questions regarding business management and program policy should be directed to: Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn

Building, Room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–4776; FAX: (301) 443–0846.

The application deadline date for new schools is April 19, 1996. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The *Catalog of Federal Domestic Assistance* Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: March 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–6666 Filed 3–19–96; 8:45 am]

BILLING CODE 4160–15–P

''Low Income Levels'' for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a ''low income family'' for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the Federal Register low income levels used for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A ''low income level'' is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use ''low income levels'' as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program, section 740, the Program of Financial Assistance for Disadvantaged Health Professions Students, section 740 (a)(2)(F), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, section 827. Loans to Disadvantaged Students, section 724, Scholarships for Health Professions Students from Disadvantaged Backgrounds, section 737, Disadvantaged Health Professions Faculty Loan Repayment and Fellowships Program, section 738 were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and are also using the low income levels. Other factors used in determining ''disadvantaged backgrounds'' are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), section 740

This program awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Section 740 (a)(2)(F)

This program awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education. The provision of these scholarships shall be subject to section 795 relating to residency training and practice in primary health care.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

This program awards grants to public and nonprofit private schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 724

This program makes awards to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 737

This program awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment and Fellowship Program, Section 738

This program awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology. Section 738 (a) allows loan repayment only for an individual who has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for repayment contract (i.e., ''new'' faculty).

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1995.

Size of parents family [1]	Income level [2]
1	$10,200
2	13,200
3	15,700

Size of parents family [1]	Income level [2]
4	20,200
5	23,800
6 or more	26,700

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1995.

Dated: March 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–6665 Filed 3–19–96; 8:45 am]

BILLING CODE 4160–15–P

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990; Availability of Funds for Early Intervention Services

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Availability of Funds for Grants To Provide Outpatient Early Intervention Services with Respect to HIV Disease.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 discretionary grants to provide outpatient early intervention services including primary care services with respect to human immunodeficiency virus (HIV) disease.

These grants are awarded under the provisions of subpart II and subpart III of part C of title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381 (42 U.S.C. 300ff–51—300ff–67).

This program announcement is subject to the final action on the appropriation of funds. At this time, given the continuing resolutions and the absence of a final FY 1996 appropriation for Ryan White Title III(b) programs, the specific amount available is not known.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the objectives cited for special populations, particularly people with low income, minorities, and the disabled, which constitute a significant portion of the homeless population. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

DUE DATES: Applications are due on June 1, 1996. Applications will be considered to have met the deadline if they are: (1) received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

ADDRESSES: Application kits (Form PHS 5161–1) with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189 may be obtained from, and completed applications should be mailed to, Bureau of Primary Health Care (BPHC) Grants Management Officer (GMO), c/o Houston Associates, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20901 (telephone 1–800–523–2192; FAX 301–523–2193). The Office of Grants Management can provide assistance on business management issues. The BPHC Office of Grants Management is located at 4350 East West Highway, Bethesda, MD 20814 (telephone 301–594–4235).

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Joan Holloway, Director, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 4350 East-West Highway, Bethesda, Maryland 20814 (telephone 301–594–4444).

SUPPLEMENTARY INFORMATION:

Number of Awards

It is anticipated that should sufficient funds become available, approximately 50 competing grants may be awarded to organizations to provide early intervention services with respect to HIV. These grants may range from approximately $100,000 to approximately $500,000 and be made for a maximum of three years. Continuation awards for any future years will be made subject to the availability of funds and satisfactory performance in past budget years toward meeting the goals and objectives of the project.

Eligible Applicants

Eligible applicants are public entities and nonprofit private entities that are: migrant health centers under Section 329 of the PHS Act; community health centers under Section 330 of the PHS Act; health care for the homeless grantees under Section 340 of the PHS Act; family planning grantees under Section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally-qualified health centers under section 1905(1)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease.

Both existing Title III(b) grantees whose project periods end September 30, 1996 and new applicants that meet eligibility requirements may apply.

Project Requirements

Funding under this grant program is intended to increase the capacity and accessibility of the specified entities to offer a higher quality and a broader scope of HIV-related early intervention services to a greater number of people in their service areas with or at risk for HIV infection. The program must meet the conditions specified in the statute and provide the services specified in the statute (sections 2651, 2661 and 2662 of the Public Health Service Act). In addition, the program may provide certain optional services.

The required services to be provided under this grant are:

- Comprehensive individual counseling, including counseling of pregnant women, regarding HIV disease according to specific statutory mandates for the content and conduct of pretest counseling, counseling of those with negative test results, counseling of those with positive results, with attention to the appropriate setting for all counseling;
- Testing individuals with respect to HIV disease, in laboratories certified by the Clinical Laboratories Improvement Amendments, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and

for preventing and treating conditions arising from the disease;

• Referral to appropriate providers of health and support services, including, as appropriate to entities funded under parts A and B of title XXVI of the PHS Act, to biomedical research facilities, community-based organizations or other entities that offer experimental treatment for HIV disease, and to grantees under section 2671 for the care of pregnant women;

• Other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease; and

• Providing therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease.

Optional services that may be included if they can be shown to be essential to the delivery of care are:

• Outreach, case management, and counseling for eligibility for other health services.

Applicants, or providers acting under an agreement with the applicant, must be participating and qualified providers under the State Medicaid plan approved under title XIX of the Social Security Act, unless the participation agreement has been waived by the Secretary. A waiver procedure is available from BPHC. Grantees are required to maximize service reimbursements from private insurance, Medicare, other Federal programs, and other third-party payment sources.

Other Grant Requirements

The applicant must agree that the services provided will conform to the assurances and agreements required under the statute that:

• The applicant will participate in an HIV care consortium established pursuant to part B, title XXVI, if such a consortium exists.

• Hemophilia services will be provided through the network of regional comprehensive hemophilia diagnostic and treatment centers.

• The applicant will ensure confidentiality of patient information.

• Testing will be provided only after obtaining a statement that the testing is done after counseling has been conducted and that the decision of the individual to undergo testing is voluntarily made.

• Opportunities for anonymous testing will be provided.

• Individuals seeking services will not have to undergo testing as a condition of receiving other health services.

• A sliding fee schedule which conforms to the requirements at *section 2664(e) of the PHS Act will be utilized.

• Funds will not be expended for services covered, or which could reasonably be expected to be covered, under any State compensation program, insurance policy, or under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis.

• Funds will be expended only for the purposes awarded, and such procedures for fiscal control and fund-accounting, as may be necessary, will be established.

• Counseling programs shall be designed to reduce exposure to, and transmission of HIV disease by providing accurate information; and shall provide information on the health risks of promiscuous sexual activity and injecting drug use.

• No more than 5 percent of the grant funds may be expended for administrative expenses. Funds may not be expended for construction, inpatient care, residential care, or cash payments to recipients of services.

• The HIV Client and Program Profile, which has been formally established as the Minimum Data Set (MDS) for BPHC, will be submitted annually. (Approved under the Paperwork Reduction Act, OMB No. 0915–0158.)

A review of applications may take place to screen out new application(s) which should not be forwarded to the objective review committee because the above-mentioned requirements have not been met.

Criteria for Evaluating Applications

These competitive applications for grant support will be reviewed based upon the following evaluation criteria:

• The need in the community, based on the 2-year period preceding the proposed grant period, for additional preventive and primary care services to those at risk for HIV infection, including women, children, and minorities, and to persons with HIV infection; barriers to meeting those needs within the existing service provider system; and other information (e.g., epidemiological and health resources data) that makes a compelling case for the grant requested as specified in section 2653 of the PHS Act.

• The extent of the applicant's role within the community in addressing the unmet needs for delivery of HIV primary care services to the targeted populations.

• The degree to which the proposed budget is appropriate to the program plan and the degree to which coordination with other funding sources is documented.

• Comprehensiveness of the existing, plus proposed, scope of counseling and testing, referral, primary care prevention, diagnostic and treatment services, and optional outreach, case management, or eligibility assistance services provided by the applicant; and development of mechanisms to assure continuity of primary care for persons living with HIV infection.

• The applicant's demonstrated efforts related to implementation of the HRSA Program Advisory, ''ZDV Therapy for Reducing Perinatal HIV: Implementation in HRSA Funded Programs.''

• Extent of active inclusion of people living with HIV disease in program planning or program implementation or program evaluation or formal advisory activities.

• Evidence of the provision of comprehensive oral health services (diagnostic, preventive, and therapeutic) as an integral part of the applicant's HIV early intervention program.

• Extent to which actions taken assure effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and Prevention, and with State Care Consortia funded under section 2613 of the PHS Act; extent to which efforts are consistent with priorities of the HIV Planning Council in the cities funded under Title XXVI of the PHS Act, and with programs funded by other PHS agencies.

• The adequacy and completeness of the program evaluation plan, and the relationship of the evaluation plan to the goals and objectives of the proposed program, so that effectiveness can be measured.

IN ADDITION, FOR PROJECT PERIOD RENEWALS: The degree to which the grantee succeeded in accomplishing the goals and objectives in the preceding project period, including the extent to which HIV primary care services were integrated into the applicant's overall primary care program; and a record of compliance with reporting requirements in effect during that period.

IN ADDITION, FOR NEW APPLICANTS: demonstrated ability of the applicant organization to carry out the proposed program, including the extent to which the proposed key clinical staff have had prior experience in the provision of clinical care for individuals with HIV infection.

Planning Grants

In the event that an amendment to the Ryan White CARE Act authorizing planning grants is enacted before the application due date of June 1, applications will be accepted for fiscal year (FY) 1996 planning grants to develop a system of care to provide outpatient early intervention services including primary care services with respect to human immunodeficiency virus (HIV) disease. Subject to the availability of funds, it is anticipated that approximately 10 grants ranging from approximately $25,000 to $50,000 each may be awarded. The awarding of a planning grant will range from one to three years and will not, in any way, commit the PHS to support the applicant for additional planning grants or for future operational funding.

Eligible Applicants for Planning Grants

Applicants for planning grants must be public entities and nonprofit private entities that are: migrant health centers under Section 329 of the PHS Act; community health centers under Section 330 of the PHS Act; health care for the homeless grantees under Section 340 of the PHS Act; family planning grantees under Section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally qualified health centers under section 1905(*1*)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease. The applicant must be located in a rural or underserved community where emerging or ongoing HIV issues have not been adequately addressed.

Project Requirements for Planning Grants

Funding under this grant program is intended to increase the capacity and accessibility of the specified entities to offer a higher quality and a broader scope of HIV-related early intervention services to a greater number of people in their service areas who are at risk of HIV infection. The program must propose to address the requirements for the Ryan White Early Intervention Services Program, as outlined above, and as specified in the statute and provide the services specified in the statute (sections 2651, 2661 and 2662 of the Public Health Service Act).[1]

[1] These references will be clarified in the program guidance document.

Criteria for Evaluating Applications for Planning Grants

These competitive applications for grant support will be reviewed based upon the following evaluation criteria:

- The need in the community, based on the 2-year period preceding the proposed grant period, for additional preventive and primary care services to those at risk for HIV infection, including women, children, and minorities, and to persons with HIV infection; barriers to meeting those needs within the existing service provider system; and other information (e.g., epidemiological and health resources data) that makes a compelling case for the grant requested.
- The applicant's proposed role within the community in addressing the unmet needs for delivery of HIV primary care services to the targeted populations.
- The degree to which the proposed budget is appropriate to the program plan and the degree to which coordination with other funding sources is documented.
- The degree to which the applicant proposes to include people living with HIV disease in program planning or program implementation or program evaluation or formal advisory activities.
- The degree to which the applicant proposes effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and Prevention, with State Care Consortia funded under Section 2613 of the PHS Act, with the HIV Planning Council in the cities funded under Title XXVI of the PHS Act, and with programs funded by other PHS agencies.
- The adequacy and completeness of the program evaluation plan, and the relationship of the evaluation plan to the goals and objectives of the proposed program, so that effectiveness can be measured.

Other Award Information

Public Health System Reporting Requirements: Under these requirements (approved by the Office of Management and Budget 0937–0195), the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(1) A copy of the face page of the application (SF 424).

(2) A summary of the project, not to exceed one page, which provides:

(a) A description of the population to be served,

(b) A summary of the services to be provided, and

(c) A description of the coordination planned with the appropriate State and local health agencies.

The Program to Provide Outpatient Early Intervention Services with Respect to HIV Disease has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally recognized Indian tribal governments) should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The BPHC does not guarantee that it will accommodate or explain its responses to State process recommendations received after the date. (See ''Intergovernmental Review of Federal Programs'', Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.918.

Dated: March 14, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–6664 Filed 3–19–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–125–06–6332–00; GP6–0094]

Closed/Limited Access Restrictions on Public Land; Coos Bay District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of restrictions, North Spit of Coos Bay Oregon.

SUMMARY: The following closed and limited designations of public lands for motorized vehicle use are the result of decisions made in the Coos Bay District Record of Decision and Resource Management Plan (May 1995) and the Coos Bay Shorelands Final Management Plan (September 1995) and received full public review during their formal comment period. These actions occur on the North Spit of Coos Bay Oregon, on approximately 1572 acres of Bureau of Land Management administered lands. These actions are to enhance Snowy Plover protection during nesting season and wetland protection throughout the year.

Motor Vehicle Use Designations

Pursuant to Title 43, Code of Federal Regulations, part 8360.1 the following lands are hereby closed or limited to use by motorized vehicles on certain public lands in the Coos Bay Shorelands (including Coos Bay Shorelands Special Recreation Management Area and North Spit Area of Critical Environmental Concern). These designations do not apply to military, fire, emergency, or law enforcement vehicles while being used for emergency purposes; any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved.

Restricted Area Description

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 4—N½NW¼,
Sec. 5—NW¼NW¼,
Sec. 6—all,
Sec. 7—lots 2, 3, 4, 7, 8, NE¼, SE¼NW¼, NE¼SW¼, S½SW¼,
Sec. 18—lot 7, E½NW¼
T. 25 S., R. 14 W.,
Sec. 13—lots 3, 4
Sec. 24—lots 6, 7, 8, 9, 10, 11, 12, W½NE¼, NW¼SW¼
Sec. 25—lot 3,
Sec. 26—lots 8, 9, 10

Closed Access to Motor Vehicles

All Bureau of Land Management administered land from the south end of the effluent pond, north to the Forest Service boundary are closed to motorized vehicles. No motorized vehicles are permitted on the foredune, foredune road, or the upland portions of these sections.

All Bureau of Land Management administered lands east of the foredune road and west of the bay access road and the Trans-Pacific Park Way are closed to motorized vehicles (except for the designated road along the southern and northern boundaries of the effluent pond and the central dune area by special permit).

Limited Access to Motor Vehicles

Dry sand along ocean beaches from September 16–March 14 (closed March 15–September 15) for Snowy Plover habitat protection.

260 acre central dune open sand area T. 25S., R. 13W., sec.18 and T. 25S., R. 14W., sec. 13 and 24, an 80 acre parcel in T. 25S., R.13W., sec. 4 near Roseburg Chip Facility is open by permit only.

This restriction order is effective immediately and shall remain in effect until revised, revoked, or amended by the authorized officer pursuant to 43 CFR 8360. Any person who violates this restriction notice may be subject to a maximum fine of $1,000 or imprisonment not to exceed 12 months or both under authority of 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Ronald Andersen, Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon, 97459, (503) 756–0100.

Dated: March 11, 1996.

Daryl L. Albiston,

Umpqua Area Manager.

[FR Doc. 96–6611 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–33–P

[NV–930–1430–01; N–60630]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Burau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 28, SW¼SW¼, S½NW¼S¼;
Sec. 29, S½SE¼.

Containing 140 acres, more or less.

This parcel of land, situated in Henderson, and known as the Henderson Landfill, is being offered as a non-competitive FLPMA sale to the City of Henderson.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Henderson.

2. Those rights for water pipeline purposes which have been granted to the Bureau of Reclamation by Permit No. N–1521 under the Act of December 5, 1924 (043STAT0672).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or

interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: March 7, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–6612 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–HC–M

[WY–037–1430–01; WYW–135973]

Realty Action; Lease/Conveyance for Recreation and Public Purposes; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes classification and application for lease and sale in Carbon County.

SUMMARY: The following public lands in Carbon County have been examined and found suitable for classification and/or lease/conveyance to the Carbon County Racing Association for recreation purposes under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

Sixth Principal Meridian

T. 21 N., R. 87 W.,
Sec. 22, SW¼, E½SE¼;
The above land contains 240.00 acres.

FOR FURTHER INFORMATION CONTACT: Marilyn Roth, Realty Specialist, Great Divide Resource Area, Bureau of Land Management, 812 E. Murray Street, Rawlins, Wyoming 82301, 307–324–4841.

SUPPLEMENTARY INFORMATION: The purpose of this classification and application for lease/sale of these lands is for the Carbon County Racing Association to construct, operate, and maintain a racing recreational facility. The developments will include a ⅜ mile oval track and a ¼ mile straight track, mud pit, pit parking area, and spectator parking. The lease and improvements will initially be confined to 70 acres.

The current lease and future sale will contain reservations to the United States for ditches and canals and all minerals, and will be subject to all existing reservations and prior rights. The lease/conveyance of the lands is consistent with the Great Divide Resource Management Plan (RMP). The land is not needed for Federal purposes.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Rawlins District Office, 1300 N. Third Street, Rawlins, Wyoming 82301.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a outdoor recreation racing facility. Comments on the classification are restricted to whether the land is physically suited for an outdoor recreation racing facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a outdoor recreational facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 96–6750 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–22–P

Fish and Wildlife Service

Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The information contained in the February 16, 1996 (61 FR 6254) notice regarding the Federal Duck Stamp Contest has been superseded by the information contained in the proposed rulemaking document published March 14, 1996 (61 FR 10557).

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, (202) 208–4354 or Fax (202) 208–6296.

Dated: March 15, 1996.

John G. Rogers, Jr.,

Director.

[FR Doc. 96–6661 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Glacier Bay National Park and Preserve, Alaska: Vessel Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service (NPS) has prepared a Finding of No Significant Impact (FONSI) for the Glacier Bay National Park and Preserve Vessel Management Plan/Environmental Assessment (VMP/EA). The NPS finds that the modified alternative does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969 and the regulations of the Council of Environmental Quality (40 CFR 1508.9), an environmental impact statement will not be prepared for this action.

DATES: The FONSI will be made available for a 30-day public review period. The review period will close April 19, 1996. Depending on the public review of the FONSI, the NPS expects to publish a final rule in the Federal Register to implement the vessel management plan. The NPS is considering the possibility of seeking a good cause exemption, under Section 553(d)(3) of the Administrative Procedures Act, to the 30-day delayed effective date to make the rule effective immediately following publication in the Federal Register.

ADDRESSES: Copies of the FONSI and supporting environmental analysis are available on request from the Chief, Division of Environmental Quality, National Park Service, Alaska Systems Support Office, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Glen Yankus, Alaska System Support Office, (907) 257–2645.

SUPPLEMENTARY INFORMATION: Six alternatives were considered in the original VMP/EA (May 1995). The alternatives included an array of vessel management options and provided

varying levels of protection for sensitive resources. The original proposed action (Alternative 5) would have raised seasonal cruise ship entry quotas by 72 percent. Daily limits of two cruise ships, three tour boats, six charter boats and 25 private boats would have continued. Seasonal entries and use-days for tour boats, charter boats, and private boats would not have changed from existing levels.

Six open houses/public hearings were held on the VMP/EA and proposed regulations. Hearings were held in Anchorage, Juneau, Gustavus, Hoonah, Pelican, and Elfin Cove. The NPS received 427 timely comments on the VMP/EA. The public comment period closed August 25, 1995. The majority of commenters (about 85%) were opposed to the original proposed action (Alternative 5). Commenters were concerned that air quality, water quality, biological resources, and visitor experience would be compromised by cruise ship increases. This same majority of commenters favored Alternative 4 which proposed increased resource protection and wilderness recreation, and fewer vessel entries for all vessels categories.

Based on public comments received on the VMP/EA and proposed rule, the NPS has modified the proposed alternative with respect to vessel quotas, vessel operating requirements and special-use area closures and restrictions. The modified alternative, under consideration for the final rule, responds to the public's concern for the Glacier Bay environment by reducing proposed cruise ship quota increases and increasing resource protection, yet still providing for the continued growing demand for park visitation. The modified alternative also responds to comments about smaller vessels by allowing modest seasonal increases for charter boats and private boats.

The modified alternative integrates moderate vessel quota increases with mitigation measures, imposed by regulatory and other approaches, to offset vessel impacts and provide additional protection for sensitive park resources (humpback whales, other marine mammals, nesting birds, and air quality). Under the modified alternative, seasonal entry quotas for cruise ships would increase by 30 percent during the 1996 and 1997 summer seasons (June 1 through August 31), however, the daily limit of two ships per day would continue. Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations would authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. The Superintendent would retain the authority to take any actions necessary to protect the values and purposes of Glacier Bay National Park. Any future adjustment to cruise ship traffic within the scope of the regulations would be published in the ''Notice'' section of the Federal Register, with an opportunity for public comment. The daily limit of three tour boats per day would not be changed. Daily limits of 6 charter boats and 25 private boats would continue. Current restrictions on seasonal entries and use-days for charter and private boats would be modified to provide an 8-percent increase in charter boats and a 15-percent increase for private vessels. Six specified areas would be closed to motor vessels for varying periods, from June 1 through September 15, to provide enhanced resource protection and a broader spectrum of visitor experiences. Additional mitigating measures include vessel operating requirements, special-use area closures and restrictions, vessel oil-spill response planning requirements, air pollution and underwater noise minimization strategies, and a boater Orientation/Educational Program.

The NPS has determined that the modified alternative, under consideration for the final rule, can be implemented with no significant adverse effect to natural and cultural resources as documented by the environmental assessment. Key environmental issues associated with the modified alternative include effects on marine mammals and birds from vessel disturbance and air quality degradation from cruise ship stack emissions. Although some disturbance to these resources would be expected, the mitigation strategies included in this action are intended to offset significantly the environmental effects resulting from vessel entries. In addition, the NPS intends to institute a comprehensive research and monitoring program to fill informational needs and quantify the effects of vessel traffic on air quality, marine mammals, birds and visitor-use enjoyment. The monitoring program, developed within one year of the record of decision, will stipulate research and protection actions the NPS will undertake to ensure that environmental effects do not exceed acceptable levels. An annual report, detailing efforts, funding levels and personnel allocated to VMP actions will be made available to the public. This program will enhance the scientific basis for future adjustments in vessel quotas. Future vessel quotas will continue to be subject to the existing daily limits, and future vessel increases in seasonal cruise ship entries will have to be justified by an affirmative demonstration of compatibility with the protection of park resources and values.

The modified alternative under consideration for the final rule will not have an effect on any Natural Register Properties, or other unique geographical or cultural features; does not have effects to the human environment that involve unique or unknown risks or establish a precedent for future actions with significant effects; and complies with Executive Orders 11988 and 11990. In 1993 the National Marine Fisheries Service (NMFS) issued a nonjeopardy opinion for the humpback whale. The NMFS recommended that the NPS implement a humpback whale feeding ecology research program that would provide information on movement, distribution, and abundance of humpback whales in Glacier Bay and northern southeastern Alaska. The park research and monitoring program incorporates this recommendation. Based on the implementation of the recommendations by the NMFS, previous consultation under the Endangered Species Act, and subsequent consultations with NMFS, no further action is required at this time by the NPS under the Endangered Species Act in implementing the modified alternative.

Dated: March 6, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–6649 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing

its intention to request approval for the collection of information for blaster certification applications in Federal program states and on Indian lands.

DATES: Comments on the proposed information collection must be received by May 20, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120—SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact the Bureau's clearance officer, John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collection that OSM will be submitting to OMB for extension.

Title: Certification of blasters in Federal program states and on Indian lands.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program states and on Indian lands.

Total Annual Responses: 35.

Burden per Respondent: 50 minutes.

Total Annual Burden Hours: 30.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Dated: March 15, 1996.

Ruth E. Stokes,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–6677 Filed 3–19–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Public Information Collections Submitted to OMB for Review

SUMMARY: Agency for International Development (AID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for AID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 736–4743.

SUPPLEMENTARY INFORMATION:

OMB Nubmer: OMB 0412–0003

Form Number: AID 1550–3

Title: A.I.D. Consultant Registry Information System (ACRIS) Instruction Books for the Organization Profile.

Summary: A.I.D. procuring activities are required to establish bidders mailing lists ''to assure access to sources and to obtain meaningful competition'' (CFR 1–2.205). In compliance with this requirement, A.I.D.'s Office of Small and Disadavntaged Business Utilization/Minority Resource Center has responsibility for ''developing and maintaining a Contractor's Index of bidders/Offerors capable of furnishing services for use by the A.I.D. procuring activities.'' (AID 7–1.704–29(b)(4).

Description of Respondents: Business or other for profit, Not for profit institutions

Number of Respondents: 1,000

Estimated Total Annual Hour Burden on Respendents: 1,000 hours.

Dated: March 13, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–6616 Filed 3–19–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–367 (Preliminary)]

Certain Laminated Hardwood Flooring From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–367 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of certain laminated hardwood flooring,[1] provided for in subheading 4421.90.98 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by April 22, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 29, 1996.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

[1] Laminated hardwood trailer, truck body, container, and rail car flooring produced from hardwood lumber and processed and laminated to meet specifications required by purchaser. For trailer flooring, those specifications generally follow those set forth in the Fruehauf Engineering Standards for Laminated Hardwood Flooring, as revised. Certain laminated hardwood flooring is covered by statistical reporting number 4421.90.98.40 of the Harmonized Tariff Schedule of the United States (HTS).

E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 7, 1996.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov or ftp://ftp.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 7, 1996, by the Ad Hoc Committee on Laminated Hardwood Trailer Flooring (Anderson-Tully Co., Memphis, TN, Cloud Corp., Harrision, AK, Havco Wood Products, Inc., Cape Girardeau, MO, Industrial Hardwoods Products Inc., Redwing, MN, and Lewisohn Sales Co. Inc., North Bergen, NJ.).

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 28, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than March 25, 1996, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 2, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 14, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–6628 Filed 3–19–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

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, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Chevron Chemical Company, et al.*, Civil Action No. 7:96–CV–20, was lodged on March 8, 1996, with the United States District Court for the Middle District of Georgia. Under the proposed consent decree, the settling defendants, Chevron Chemical and Kova Fertilizer, will reimburse the United States $376,170.40 for its past response costs incurred at the Marzone/Chevron Chemical Superfund Site in Tifton, Georgia. Settling Defendants will also implement most of the Remedial Design and Remedial Action for Operable Unit One of the Site, at an estimated cost of $5.2 million. In particular, they will conduct the complete Remedial Design and Remedial Action for the contaminated soils and prepare a preliminary Remedial Design for mediation of the contaminated groundwater. Settling defendants will also fully reimburse EPA for its past and future response costs in connection with Operable Unit One.

This action is brought pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The settling defendants are past owners or operators of the Site, which was used for the formulation of pesticides.

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. *Chevron Chemical Company, et al.*, DOJ Ref. #K90–11–3–274A.

The proposed consent decree may be examined at the office of the United States Attorney, 433 Cherry Street, Fourth Floor, Macon, Georgia 31202; the Office of Regional Counsel, Region IV, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Environmental Enforcement Section 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 of the Decree, please refer to the referenced case and enclose a check in the amount of $19.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. For a copy of the Decree with all of the attachments (Record of Decision for Operable Unit One, Statement of Work, and Site Map), please refer to the referenced case and enclose a check in the amount of $37.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6613 Filed 3–19–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a De Minimis Settlement By Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on February 12, 1996, a proposed consent decree in *United States* versus *Fidelcor Business Credit Corp., et al.,* Civ. A. No. 93–CV–0233, was lodged with the United States District Court for the Eastern District of Pennsylvania. This settlement is a *de minimis* settlement with the current owners and current lessee of the Eddystone Avenue Superfund Site, located in Eddystone, Pennsylvania. The current owners are Salvatore and Ruby Finocchiaro and the current lessee is R.F. Trucking, Inc. The *de minimis* settlement in this matter is pursuant to Section 122(g)(1)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. §§ 9622, and requires the Settlors to pay $2,970.00 in past response costs to the United States and provide access to the Site to EPA. The Decree reserves the right of the United States to seek further injunctive relief should the Settlors fail to meet the requirements of the Decree and to seek recovery of costs associated with damage to natural resources.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* versus *Fidelcor Business Credit Corp., et al.,* DOJ Reference No. 90–11–3–956.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 651 Chestnut Street, Philadelphia, Pa.; Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; 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 decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–6614 Filed 3–19–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 24, 1995, and published in the Federal Register on November 8, 1995, (60 FR 56354), Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of levorphanol (9220), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Hoffman-LaRoche, Inc. to manufacture levorphanol is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, 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 Assistance Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 11, 1996.

Gene R. Haislip,

Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–6692 Filed 3–19–96;8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1749–96]

RIN 1115–AE28

Renewal of Immigration and Naturalization Service Citizens' Advisory Panel

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, Sections 1–14, and Title 41 CFR sections 101–6.1001–6.1035, the Commissioner, Immigration and Naturalization Service (INS), with the concurrence of the Attorney General, is renewing, for a 2-year period, the Citizens' Advisory Panel (CAP) for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the INS and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is seeking to address the complaints of impropriety by making recommendations on community policing and training initiatives for law enforcement personnel in order to strengthen the relationship between the INS and all members of the community.

The CAP is also reviewing the systems and procedures in the INS for responding to specific complaints alleging that an INS employee exercised his/her authority in an improper manner. The CAP will receive reports and assist in the coordination of local citizens' advisory committees and panels developed by Border Patrol Chief Patrol Agents and/or Immigration District Directors.

A notice was published in the Federal Register which established the CAP (February 11, 1994, at 59 FR 6658) in response to allegations of human rights abuses by the Border Patrol, especially along the Southwest border, and to concerns expressed by private citizens and organizations over the lack of responsive, expeditious, and objective complaint process. Continuation of this CAP will facilitate resolution of these issues, and assist the INS in furtherance

of its goal to build and maintain a good working relationship with all members of the community. It will serve to enhance public confidence in immigration law enforcement and to demonstrate the INS' commitment to respecting and protecting the rights of all individuals.

MEMBERSHIP: The CAP is composed of thirteen voting members appointed by the Attorney General. Four of these members are officials from the following components of the Department of Justice: Office of the Attorney General, the INS, and the Community Relations Service. Among these members is the Commissioner of the INS, who serves as the permanent chairperson.

The remaining nine members are private citizens concerned about civil rights, human relations, immigration issues, and ethics in public service. In addition, the CAP has two non-voting members: a Consulate or an Embassy official, representing the Government of Mexico, who serves in a permanent advisory capacity to the CAP, and the INS Director of the Office of Internal Audit who serves in a permanent capacity as the INS Liaison Representative. This composition has produced a balanced membership.

The CAP functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The renewal of its charter will be filed in accordance with the provisions of the Act.

CONTACT PERSON: Susan B. Wilt, Immigration and Naturalization Service, 425 I Street NW., Room 3260, Washington, DC 20536, Telephone: (202) 514–2373.

Dated: March 14, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–6679 Filed 3–19–96; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL CREDIT UNION ADMINISTRATION

Alternative Dispute Resolution

AGENCY: National Credit Union Administration (NCUA).

ACTION: Policy statement.

SUMMARY: Consistent with the Administrative Dispute Resolution Act of 1990, the Community Development and Regulatory Improvement Act of 1994, the recommendations of the National Performance Review, and Executive Order 12988, NCUA has adopted a Statement of Policy on the use of alternative dispute resolution (ADR) techniques to resolve appropriate disputes in a fair, timely, and cost efficient manner.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, telephone (703) 518–6561.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Dispute Resolution Act of 1990 (ADRA) encouraged federal agencies to employ consensual methods of dispute resolution as alternatives to litigation. Congress enacted the ADRA to reduce the time, cost, inefficiencies, and contentiousness that too often are associated with litigation and other adversarial dispute resolution mechanisms. Although the ADRA sunset in October 1995, federal agencies continue to have authority to use ADR techniques to resolve disputes.

Support and encouragement for the use of ADR in federal agencies have come from other sources. In September 1993, Vice President Gore recommended that federal agencies ''increase the use of alternative means of dispute resolution.'' Report of the National Performance Review, Recommendation REG06 (Sept. 7, 1993).

A year later, Congress enacted the Riegle Community Development and Regulatory Improvement Act of 1994. Section 309(e) of the statute requires that NCUA implement a pilot program for using ADR methods to resolve: a) claims against insured credit unions for which NCUA has been appointed conservator or liquidating agent; b) actions taken by NCUA in its capacity as conservator or liquidating agent; and c) any other issue for which the NCUA Board determines that ADR would be appropriate. The statute mandates that the program: a) be fair to all interested parties; b) resolve disputes expeditiously; and c) be less costly than traditional means of dispute resolution, including litigation.

On February 5, 1996, President Clinton signed Executive Order 12988, addressing civil justice reform. Section 1 of the Executive Order directs those federal agencies and litigation counsel that conduct civil litigation on behalf of the United States Government in federal court to follow certain guidelines designed to promote the just and efficient resolution of civil claims. The guidelines encourage litigation counsel to resolve claims through informal discussions, negotiations, and settlements rather than through formal court proceedings. They state that it is appropriate for litigation counsel to use ADR techniques to resolve claims after determining that the use of a particular technique is warranted for a particular claim and will materially contribute to the prompt, fair, and efficient resolution of the claim. Finally, the guidelines state that litigation counsel should be trained in ADR techniques to facilitate broader and effective use of ADR.

In light of the above, the NCUA Board has adopted the following policy statement.

Statement of Policy on Alternative Dispute Resolution

Alternative dispute resolution is the resolution of disputes through informal, voluntary consensual techniques. NCUA is committed to the use of ADR as a tool to resolve disputes at the earliest stage possible in an expeditious, cost effective, and mutually acceptable manner. NCUA adopts this policy to express its full support for ADR and to set forth a framework for the continuing and expanded use of ADR. NCUA fully supports the cost-effective use of ADR, including negotiation, mediation, early neutral evaluation, minitrials, use of settlement judges, and other hybrid forms of ADR in appropriate instances.

NCUA will consider ADR in any dispute in which a negotiated solution is a potentially acceptable outcome. The individual at NCUA who has decision-making authority in a particular matter will determine whether to use ADR in the matter and which method to use. Not every dispute is suitable for settlement through ADR. NCUA views ADR processes as supplementary to, not a displacement of, traditional adjudicative methods of resolving disputes. NCUA will engage in ADR only after determining that ADR is appropriate in a particular case.

The factors NCUA will use to determine whether ADR is appropriate in a particular case are as follows: (1) A creative solution, not necessarily available in formal adjudication, may provide the most satisfactory outcome; (2) The case does not involve or require the setting of precedent; (3) All of the substantially affected parties are involved in the proceeding; (4) Variation in outcome is not a major concern; (5) The parties are likely to agree to use ADR; (6) Litigation likely would be a lengthy and/or expensive process; (7) Cases of this type frequently settle at some point in the process; and (8) The potential for impasse is high.

The particular ADR method selected will depend on the specifics of the case.

Mediation, which involves the use of a trained neutral third party to help disputants negotiate a mutually agreeable settlement, may be suitable when one or more of the following characteristics are present: (1) The parties are looking for a substantial level of control over the resolution of the dispute; (2) The parties have, or expect to have, an ongoing relationship; (3) Communication between the parties has broken down to a significant degree; (4) The legal standards for decision are fairly clear, or neither party has a need to clarify them; or (5) There are multiple issues to be resolved.

Early neutral evaluation involves using a neutral factfinder, often one with substantive expertise, to evaluate the relative merits of the parties' cases. This process, which can be used early on in a dispute, usually involves an informal presentation to the neutral of the highlights of the parties' cases or positions. The neutral provides a nonbinding evaluation, sometimes in writing, which can give parties a more objective perspective on the strengths and weaknesses of their cases, thereby making further negotiations more likely to be productive. Early neutral evaluation may be an appropriate process when some or all of the following are characteristics of the dispute: (1) The dispute involves technical or factual issues that lend themselves to expert evaluation; (2) The parties disagree significantly about the value of their case; (3) Top decision-makers of one or more parties could be better informed about the real strengths and weaknesses of the case; or (4) The parties are seeking an alternative to extensive discovery.

A minitrial is a structured settlement process in which the disputants agree on a procedure for presenting their cases in highly abbreviated versions (usually no more than a few hours or a few days) to the senior officials for each side with the authority to settle the dispute. This process allows those in senior positions to see first hand how their case and that of other parties play out, and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may subsequently mediate the dispute or help parties evaluate their cases. The procedures for minitrials are developed by agreement among the parties. Minitrials can be useful in cases that have some or all of the following characteristics: (1) Getting important facts and positions before high-level decision-makers for the parties is important; (2) The parties are looking for a substantial level of control over the resolution of the dispute; (3) Some or all of the issues are of a technical nature; or (4) A trial on the merits would be very long and/or complex.

A settlement judge serves essentially as a mediator or neutral evaluator in cases pending before a tribunal. The settlement judge is usually a second judge from the same body as the judge who will ultimately make the decision if the case is not resolved by the parties. In some cases, a settlement judge may give an informal advisory opinion. Settlement judges can be useful in cases that have some or all of the following characteristics: (1) The case is in formal adjudication; or (2) The parties have not been able to negotiate a settlement on their own.

Common to most of the processes discussed above is the use of a neutral third party. NCUA anticipates that most of the time a neutral is used to resolve a dispute with an outside party, the neutral will not be an employee of NCUA. Neutrals are available from other federal agencies, court systems, and private companies. In all cases, the particular neutral will be approved by all parties to the dispute.

The Community Development and Regulatory Improvement Act of 1994 required that NCUA's use of ADR processes: 1) be fair to all interested parties; 2) resolve disputes expeditiously; and 3) be less costly than traditional means of dispute resolution, including litigation. In addition to those objectives, NCUA's goals in using ADR techniques will be to: (1) Free up personnel and other resources; (2) Create opportunities for wider ranges of creative solutions and possible options; (3) Forge better relationships among disputing parties, inside and outside the agency; (4) Improve communication between and within parties; (5) Improve the satisfaction level of disputants with both the process and substantive results of the dispute resolution process; and (6) Improve the reliability of information on which decisions are based.

In furtherance of its commitment to ADR and in response to Executive Order 12988, NCUA will provide its litigation attorneys with training in ADR techniques. NCUA also will provide introductory ADR training to executives, managers, and supervisors so that they understand what ADR is, its potential benefits, and where to go for assistance.

This policy statement is intended only to improve the internal management of NCUA in resolving disputes. It shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against NCUA or its employees. This policy statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of NCUA or its employees with this statement. Nothing in this policy statement shall be construed to obligate NCUA to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to submit to binding arbitration, or to alter any existing delegation of settlement or litigating authority.NCUA will engage in ADR only if it consents to do so.

NCUA hereby announces that during the period from March 13, 1996, to August 13, 1997, it will conduct an ADR pilot project based on the principles and objectives set forth above. Every dispute in which the agency is engaged during that period will be evaluated to determine its appropriateness for ADR. At the end of the period, NCUA will evaluate the project to determine the effectiveness of its ADR program and whether changes need to be made to improve the program.

NCUA welcomes and encourages input on the use of ADR and comment on current and potential uses of ADR from both within and outside the agency.

By the National Credit Union Administration Board on March 13, 1996.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–6704 Filed 3–19–96; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: March 28, 1996, 8:00 a.m., open session; March 29, 1996, 7:30 a.m., closed session; March 29, 1996, 8:20 a.m., open session.

PLACE: University of California at Davis, Alpha Gamma Rho Hall, Beuhler Center, Old Davis Road, Davis, California 95616.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, March 28, 1996

Open Session (8:00 a.m.–5:00 p.m.)
- Subject of Meeting: Science and Engineering Research and Education in the Twenty-First Century
- Session I—Research as a Public Priority
- Session II—The Research University as a Vital Contributor
- Session III—Capitalizing on Investments in Science and Engineering

Session IV—Research—A Key to Education

Friday, March 29, 1996

Closed Session (7:30 a.m.–8:20 a.m.)
Minutes, February 1996 Meeting
Alan T. Waterman Award
Other Awards

Friday, March 29, 1996

Open Session continued (8:20 a.m.–11:45 a.m.)
Minutes, February 1996 Meeting
Closed Session Agenda Items for May 1996 Meeting
Session V—Education—A Statewide Perspective
Session VI—Research, The Foundation of the Future
Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 96–6798 Filed 3–18–96; 10:16 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Catholic University of America

[Docket No. 50–77]

(Catholic University of America AGN–201 Research Reactor); Order Terminating Facility License

By application dated February 6, 1992, the Catholic University of America (the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dispose of the component parts of its Aerojet-General Nucleonics (AGN–201) Nuclear Research Reactor located in Washington, District of Columbia. A ''Notice of Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning, and Terminating Facility License'' was published in the Federal Register on August 20, 1992, (57 FR 37850). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

By Order dated September 24, 1992, (57 FR 45094), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. On June 2, 1995, the licensee requested approval for changes to the decommissioning plan. These changes were approved on July 17, 1995. By letter dated December 20, 1994, as supplemented on September 22, 1995, the licensee submitted the radiological survey report for the facility in accordance with the NRC approved decommissioning plan as amended.

This order applies to room B–16R of Pangborn Hall (also known as the nuclear reactor room) and the machine shop in the power plant building at the Catholic University of America campus in Washington, D.C. The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the NRC approved decommissioning plan requirements for release of the facility for unrestricted use.

Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated September 24, 1992, as supplemented on July 17, 1995. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the licensee, and pursuant to Sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R–31 is terminated as of the date of this Order.

In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the Federal Register on March 12, 1996 (61 FR 10037).

For further details with respect to this action see (1) the application for termination of Facility License No. R–31, dated February 6, 1992, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the ''Notice of Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning, and Terminating Facility License,'' published in the Federal Register on August 20, 1992, (57 FR 37850). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW, Washington, DC, 20555.

Copies of items (2), (3) and (4) may be obtained upon addressed request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Program Management.

Dated at Rockville, Maryland this 14th day of March 1996.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–6673 Filed 3–19–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Extreme External Phenomena; Notice of Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on April 3, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 3, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the proposed final revisions to 10 CFR Part 50 and 10 CFR Part 100, new Appendix S to Part 50, and associated Regulatory Guides and Standard Review Plan sections. This rulemaking covers two considerations. First is the proposed final rule revising 10 CFR Part 100, ''Reactor Site Criteria,'' for future plants and the second rule will replace Appendix A, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants,'' to 10 CFR Part 100 as the licensing bases for new plants. Both consider-ations address the relocation of plant design criteria and source term and dose calculations from Part 100 to Part 50. 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 engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, 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 engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EST). 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 potential changes to the agenda, etc., that may have occurred.

Dated: March 13, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–6668 Filed 3–19–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Postponement

A meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled to be held on March 21 and 22, 1996, at the Los Angeles Airport Hilton, 5711 West Century Blvd., Los Angeles, California, has been postponed to a future date as a result of the GE Nuclear Energy decision to redirect its SBWR passive plant design program. Notice of this meeting was published in the Federal Register on Tuesday, March 12, 1996 (61 FR 10037).

Further information contact: Mr. Paul A. Boehnert, the cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: March 14, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–6669 Filed 3–19–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 10, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the NRC Office of Nuclear Regulatory Research (RES) activities related to high-burnup fuels, recent experimental results from foreign facilities for reactivity-initiated accidents with high-burnup fuels, 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 engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, 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 engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EST). 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 potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 14, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–6670 Filed 3–19–96; 8:45 am]

BILLING CODE 7590–01–P

Office of Nuclear Material Safety and Safeguards; Spent Fuel Project Office; Notice of Issuance and Availability of Draft NUREG–1536 Standard Review Plan for Dry Cask Storage Systems

The United States Nuclear Regulatory Commission (NRC) has issued draft NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems.'' This document represents the draft standard review plan for the review of systems that store spent nuclear fuel and high-level radioactive waste.

The primary purpose of the final version of this document is to provide NRC staff with guidance that fosters consistent reviews of applications for certificates of compliance under the provisions of Title 10, Code of Federal Regulations, Part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.'' The secondary purpose of this document is to inform the nuclear industry of NRC staff review procedures.

The NRC staff is soliciting comments from interested parties on the draft document. The NRC will accept comments on the proposed document for 90 days from the date of this Federal Register notice. The NRC staff is interested in comments from the general public on the adequacy and efficacy of the draft NUREG. In particular, any substantive comments concerning the technical adequacy, regulatory framework, or procedural enhancements are desired. Comments should be sent to Patricia L. Eng, Technical Assistant, Spent Fuel Project Office, Mail Stop O–6–F–18, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments received during the 90 day comment period regarding the draft document will be addressed prior to publication of the final version of the document. Comments received after the comment period may or may not be addressed depending upon the nature of the comments and staff availability.

Copies of the report have been placed in the NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Rooms nationwide. A free single copy of draft NUREG–1536 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, ATTN:

Distribution, 0–P1–37, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 14th day of March 1996.

For the Nuclear Regulatory Commission.

Patricia L. Eng,

Technical Assistant, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–6672 Filed 3–19–96; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: April 30–May 1 Meeting in Texas on the Integration of the OCRWM's Site-Characterization and Repository Development Program

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its spring meeting on Tuesday and Wednesday, April 30 and May 1, 1996, in Austin, Texas. The meeting will be held at the Wyndham Austin Hotel, 4140 Governor's Row, Austin, Texas 78744; (tel) 512–448–2222; (fax) 512–442–8028; toll-free reservations (800) 433–2241. To receive the government rate, reservations must be made by April 8, 1996; please mention the Nuclear Waste Technical Review Board meeting. The meeting is open to the public and will begin at 8:30 a.m. both days.

The Board has invited representatives of the Office of Civilian Radioactive Waste Management (OCRWM) and its contractors to describe efforts to integrate the many elements of the site-characterization and repository development program. The Board is interested in understanding what rationale underlies ongoing and future program activities; what specific efforts are being made to integrate major program activities; and how priorities are set when specific activities are being defined and resources allocated. How, for example, are the waste isolation strategy and recent insights from performance assessments being used to make decisions about the overall repository design, about the extent of underground excavation, and about what testing should be carried out? The Board will be briefed on the OCRWM's revised program plans, including their viability assessment of the Yucca Mountain site and their plans for submitting a license application. Substantial time will be set aside on day two for a round-table discussion.

Time also will be set aside for public comment and questions. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in table. Depending on the number of people wishing to speak, a time limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of this meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning June 11, 1996. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: March 12, 1996.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 96–6615 Filed 3–19–96; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notification of Item Added to Agenda

On March 15, 1996, the Board voted unanimously to add one item to its agenda for the March 20, 1996 Board Meeting:

(8) Supplemental Annuity Loan Repayment

Dated: March 15, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–6825 Filed 3–18–96; 11:40 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 236—SEC File No. 270–118, OMB Control No. 3235–0095

Reg. B—SEC File No. 270–102, OMB Control No. 3235–0093

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following:

Rule 236 that requires issuers wishing to rely upon an exemption from registration from the Securities Act of 1933 (''Securities Act'') for the issuance of fractional shares, script certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

Regulation B provides exemptions from the Securities Act relating to fractional undivided interests in oil or gas rights. Persons offering securities under this exemption, as conditions to the exemption, are still required to file basic prescribed documents with the Commission containing certain material information and to provide prospective investors with this information with respect to such securities. A report on Form 1–G must be filed with the Commission on or before the 15th day after the expiration of each effective offering sheet pursuant to Regulation B, or the termination of sales, whichever comes first. Not later than three calendar months after the termination of the offering, the offeror must file with the Commission and send to purchasers of interests a report on Form 3–G. An estimated 5 submissions are made pursuant to Regulation B annually, resulting in an estimated total annual reporting burden of 205 hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the

Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 11, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6637 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21824; File No. 812–9788]

The Manufacturers Life Insurance Company of America, et al.

March 13, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Manufacturers Life Insurance Company of America (''ManAmerica''), Separate Account Four of The Manufacturers Life Insurance Company of America (the ''Account''), and ManEquity Securities, Inc. (''ManEquity'').

RELEVANT ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(a)(3) of the 1940 Act and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii)(A) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit ManAmerica to deduct, under certain variable life insurance policies (''Policies'') funded by the Account, a surrender charge that is modified by a rider (the ''COLI Rider'' or the ''Rider'') used in connection with sales of the Policies as corporate-owned life insurance.

FILING DATE: The application was filed on September 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 8, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, W. Randolph Thompson, Jorden Burt Berenson & Johnson LLP, Suite 400 East, 1025 Thomas Jefferson Street, N.W., Washington, D.C. 20007–0805.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. ManAmerica is a stock life insurance company organized in 1977 under the laws of the State of Michigan. It is an indirect, wholly-owned subsidiary of The Manufacturers Life Insurance Company (''Manufacturers Life''), a mutual life insurance company based in Toronto, Canada. ManAmerica is a licensed life insurance company in the District of Columbia and all states other than New York.

2. The Account was established by ManAmerica in 1987 under the laws of the Commonwealth of Pennsylvania and currently is operated under the laws of Michigan. It is a separate account within the meaning of Section 2(a)(37) of the 1940 Act and is registered under the 1940 Act as a unit investment trust.

3. Pursuant to an agreement with ManAmerica, ManEquity distributes variable life insurance policies funded by the Account, including the Policies, through its own registered representatives or through other broker-dealers having distribution agreements with ManEquity. ManEquity, an indirect wholly-owned subsidiary of Manufacturers Life, is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. The Policies are flexible premium variable life insurance policies funded by the Account and are registered under the Securities Act of 1933 on Form S–6. Within certain limits, policyholders may make premium payments in variable amounts and at various times. The Policies will remain in force as long as their net cash surrender value at the beginning of each policy month is sufficient to pay the amount of the monthly deductions due at that date. If the foregoing test is not satisfied, the Policies will lapse, unless a required payment is made during the grace period or the death benefit guarantee provision takes effect.

5. Premium payments received under the Policies are subject to a charge for state and local premium taxes.

6. ManAmerica deducts a monthly administrative expenses charge of $6.00, and a charge for the administrative costs associated with underwriting and issuing a Policy. This latter charge varies with the age of the insured at issuance (between $2 and $6 per $1,000 of face amount), and is accrued and assessed as a deferred charge that grades down to zero over fifteen years.

7. ManAmerica also deducts monthly cost of insurance charges under the Policies at rates not to exceed those based on the 1980 Commissioners Standard Ordinary Mortality Tables. Additional charges are imposed if the insured does not meet standard underwriting requirements, and for certain ''incidental insurance benefits'' (within the meaning of Rule 6e–3(T)(c)(2)).

8. A Policy owner is permitted to make one transfer among investment options per month at no charge. Under its ''Dollar Cost Averaging'' program ManAmerica charges $5 for each transfer (if Policy value is less than $15,000), and $15 per transfer under its ''Asset Allocation Balance'' program. Administrative charges are not designed to yield a profit to ManAmerica.

9. ManAmerica also deducts daily a mortality and expense risk charge from the assets of the Account, which charge will not exceed an annual rate of 0.65%. Applicants represent that, subject to the relief requested herein, all administrative and other charges in connection with the Policies will comply with all applicable requirements of Rule 6e–3(T).

10. The Policies have both a front-end sales load of 3% of premiums received throughout the life of the Policies and a contingent deferred sales load of 47% of premiums paid, up to the first two ''target premiums.'' The deferred sales load is subject to refund rights on surrenders in the first two policy years. In most cases, the full deferred sales load is deducted from any surrender or lapse during the first five policy years, and a portion of the full deferred sales load is imposed in the event of a partial withdrawal or face amount decrease

during that period. For the ten years following the first five policy years, the deferred sales load applicable to surrenders, lapses, partial withdrawals, or face amount decreases is reduced by ten percent per year. After the end of fifteen policy years, there is no deferred sales load. The deferred sales load also applies in the event of an increase in face amount for up to fifteen years after the increase.

11. Generally accepted accounting principles (''GAAP'') require that a corporation or partnership (an ''Employer'') that purchases a Policy book as an expense the net amounts of the premiums paid for a life insurance policy over that policy's cash surrender value, and book as an asset the cash surrender value of such a policy. The COLI Rider reduces the adverse impact on the earnings of the Employer that would otherwise result from the application of this aspect of GAAP by refunding or waiving surrender charges under the Policies according to the following schedule:

Partial withdrawal or surrender in policy year	Percent of surrender charges waived
1 & 2	100
3	75
4	50
5	25
6 and later	0

The rider does not apply upon lapse or face amount decrease.

12. The net effect of implementing the Rider is to reduce the amount of surrender charges that would otherwise be applicable during the early policy years. However, because the Rider's waiver percentages are decreasing in each of the third through sixth policy years, the Rider could cause a policyowner to pay proportionately more surrender charge upon a surrender, partial withdrawal, lapse, or face amount decrease in those years than may have been paid upon a partial withdrawal or than might have been paid had there been a surrender in a preceding policy year. For example, if a Policy subject to the Rider were surrendered in the first policy year, ManAmerica would waive 100% of the otherwise applicable first year surrender charge. Consequently, the amount of the surrender charge would be zero. If, however, the Policy were surrendered in the third policy year, ManAmerica would waive 75% of the otherwise applicable surrender charge (47% of up to two target premiums received) or, started another way, would deduct 25% of that amount (i.e., 0.25 * 0.47 = 0.1175% of up to two target premiums received). Proportionately, this results in a greater amount of surrender charge being paid than would have been paid had the policy been surrendered in the first policy year. If the Policy were surrendered after the fifth policy year, the Rider would no longer be applicable. Accordingly, if the surrender charge were imposed during the sixth policy year, for example, it could be as high as 0.423% (0.9 * 0.47% = 0.423%) of two target premiums.

13. The COLI Rider also applies to surrender charges established in connection with face amount increases. The waiver percentage that will apply to any surrender or partial withdrawal after a face amount increase will be determined by the policy year in which a surrender or a partial withdrawal occurs, rather than the year in which the face amount increase is implemented. Thus, in the event of a partial withdrawal from, or a surrender of, a Policy at a time when the Rider is in effect, the Rider will reduce the surrender charges attributable to the base policy and each face amount increase by the same proportionate amount.

14. There is no specific charge or fee for the COLI Rider. Rather, ManAmerica intends to make the Rider available under Policies purchased by or through an Employer if a minimum of ten lives (or fewer, if not prohibited by state law) are insured and the aggregate annual target premiums for all Policies purchased by or through that Employer equals at least $100,000.

15. In ManAmerica's experience, policy owners of the type to which the COLI Rider will be available are unlikely to surrender their Policies within the five-year period during which the Rider is operative. The amount of the surrender charge has not been increased to compensate for the fact that, because of the Rider, not all Policies will be subject to the full surrender charges that otherwise would apply.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes or persons, securities or transactions, 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 provisions of the 1940 Act. Applicants request an order pursuant to Section 6(c) of the 1940 Act providing exemptions from Section 27(a)(3) of the 1940 Act and subsections (b)(13)(ii) and (d)(1)(ii)(A) of Rule 6e–3(T) thereunder, to the extent necessary to permit ManAmerica to deduct a surrender charge under the Policies that is modified by the COLI Rider in the manner set forth herein.

2. Section 27(a)(3) of the Act provides, in effect, that the amount of sales charge deducted from any of the first twelve monthly payments of a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. This prohibition is referred to commonly as the ''stair-step'' rule.

3. Subsection (b)(13)(i) of Rule 6e–3(T), in pertinent part, provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment. Rule 6e–3(T)(b)(13)(ii) provides exceptions to its stair-step provisions for increases caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance policy from another plan of insurance. Neither of these exceptions is applicable in the present case.

4. Subsection (d)(1) of Rule 6e–3(T) provides relief similar to subsection (b)(13)(ii) for sales charges deducted from other than premiums, subject to, *inter alia,* a requirement in subsection (d)(1)(ii)(A) that ''the amount of sales load deducted pursuant to any method permitted under this paragraph (other than asset-based sales loads) does not exceed the proportionate amount of sales load *deducted prior thereto* pursuant to the same method * * *'' (emphasis added).

5. Applicants submit that Policy owners benefit from the fact that the COLI Rider applies to partial withdrawals as well as to full surrenders. Applicants represent that, consequently, the effective rate of a surrender charge actually imposed upon a partial withdrawal during the first five policy years from a Policy subject to the COLI Rider can be lower than the surrender charge actually imposed upon a later partial withdrawal, face amount decrease, surrender, or lapse. Accordingly, Applicants request an exemption from the stair-step

requirements of Section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii)(A) to the extent necessary to permit the deduction of a surrender charge modified by the COLI Rider, because such a deduction could be at a percentage that is greater than the percentage of sales load that would have been deducted had the surrender occurred earlier, when the COLI Rider would have limited the deduction to a lesser amount.

6. Applicants represent that when there has been no partial withdrawal to which the COLI Rider applies at the time of the lapse, face amount decrease, or surrender, the sales load imposed would not be higher in percentage than that imposed upon any prior partial withdrawal or face amount decrease. Applicants further represent that in such a case, however, the sales load imposed might be different (i.e., lower) than that imposed on prior face amount decreases or partial withdrawals not subject to the COLI and, therefore, be deemed to violate Section 27(a)(3). Moreover, because the deferred sales load that would have been imposed on prior transactions subject to the COLI Rider could have been lower, the relief from Section 27(a)(3) provided by exemptive rule would not be available. For these reasons as well, Applicants request relief to permit the deduction of a surrender charge modified by the COLI Rider.

7. Applicants submit that the requested relief should be granted because the Policies' sales charge structure benefits Policy owners and is not inconsistent with the policies and purposes behind Section 27(a)(3), namely, addressing the perceived abuse of periodic payment plan certificates that deducted large amounts of front-end sales charges so early in the life of the plan that little of the investor's money was actually invested and an investor redeeming in the early periods would recoup little of his or her investment. Applicants further submit that, to the extent that the operation of the Rider actually reduces the amount of sales charges otherwise payable under a Policy in the early years, the Rider can be viewed as furthering the purposes of the 1940 Act.

8. Applicants submit that discouraging unduly complicated sales charges also may be deemed to be a purpose of Section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1). Applicants further submit that the variation to the Policies' sales charge structure effected by the COLI Rider is relatively straightforward and easily understood as compared to that of many other variable life insurance policies currently being offered. Moreover, Applicants represent that eligible Policy owners will benefit from the sales charge structure effected by the Rider, and that the prospectuses for the Policies, or supplements thereto, will contain disclosure information prospective Policy owners of the effect of the Rider on the sales charges under the Policies.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6639 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21823; File No. 812–9754]

The Minnesota Mutual Life Insurance Company, et al.

March 13, 1996.

AGENCY: Securities and Exchange Commission (the ''Commission'' or the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Minnesota Mutual Life Insurance Company (''Minnesota Mutual''), Minnesota Mutual Variable Annuity Account (''Account'') and MIMLIC Sales Corporation (''MIMLIC'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction from the assets of the Account of a mortality and expense risks charge and a deduction from each purchase payment of a guaranteed minimum annuity risk charge, under certain variable annuity contracts (''Contracts''). Applicants also request that the exemptions apply to (a) contracts that are substantially similar in all material respects to the Contracts (''Future Contracts''), (b) any separate account established by Minnesota Mutual in the future to fund the Contracts or Future Contracts (''Future Accounts'') and (c) any National Association of Securities Dealers (''NASD'') member that may in the future serve as principal underwriter of the Contracts or Future Contracts (''Future Underwriter'').

FILING DATE: The application was filed on September 8, 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 the application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 pm., on April 8, 1996 and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Donald F. Gruber, Esq., Senior Counsel, The Minnesota Mutual Life Insurance Company, 400 North Robert Street, St. Paul, MN 55101–2098.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, 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 SEC's Public Reference Branch.

Applicants' Representations

1. Minnesota Mutual is a mutual life insurance company organized under Minnesota law. The Account is registered with the Commission under the Act as a unit investment trust. The Account is divided into a number of sub-accounts, each corresponding to a mutual fund portfolio in which the sub-account's assets are invested. Currently, there is only one sub-account (''Sub-Account'') available under the Contracts.

2. MIMLIC, a wholly owned subsidiary of MIMLIC Asset Management Company, which in turn is a wholly owned subsidiary of Minnesota Mutual, will be the principal underwriter of the Contracts. MIMLIC is registered as a broker-dealer under the Securities Exchange Act of 1934 and is an NASD member.

3. The Contracts are individual, immediate variable annuity contracts

designed for use in connection with personal retirement plans, some of which may qualify for federal income tax advantages under the Internal Revenue Code of 1986, as amended. The Contracts provide for scheduled annuity payments, which must commence on a date within 12 months after the issue date of the Contract, except in certain states where a shorter period is required.

4. Prior to the commencement of annuity payments, the owner of a Contract may surrender it for its total annuity value as of the date of surrender plus amounts deducted for sales charge, risk charges, and state premium taxes where applicable. After the commencement of annuity payments and during the cash value period, the owner may withdraw all or a portion of the cash value of the Contract, subject to certain dollar minimums. The cash value period commences on the date annuity payments commence and runs for a period approximately equal to the annuitant's life expectancy at the time the Contract is issued.

5. The Contract provides for two annuity payment options: a life annuity and a joint and last survivor annuity. If the annuitant, or the last surviving annuitant, dies during the cash value period, the beneficiary will be paid a death benefit equal to the cash value of the Contract. The Contract permits the beneficiary to elect, a lieu of a single sum payment, payment of the death benefit in the form of annuity payments until the end of the cash value period and to withdraw some or all of the cash value.

6. Although annuity payments will vary in relation to the investment performance of the Sub-Account, Minnesota Mutual guarantees a minimum annuity payment of at least 85% of the initial variable annuity payment amount. If an additional purchase payment is made, Minnesota Mutual guarantees that the variable annuity payments will always be at least 85% of the initial annuity payment amount attributable to that additional purchase payment plus the amount already guaranteed at the time of that purchase payment. Withdrawals of cash value will reduce the guaranteed minimum payment amount.

7. Purchase payments under the Contracts will be credited in the form of annuity units and cash value units. Annuity units serve to measure the amount of each variable annuity payment under the Contracts, subject to the guaranteed minimum annuity payment amount. Cash value units serve to measure the cash value of the Contract available for withdrawal during the cash value period. The amount of cash value at any time is equal to the number of cash value units credited to the Contract times the current annuity unit value times a factor set forth in a table in the Contract.

8. Additional purchase payments may be made during the cash value period while the annuitant is alive, subject to certain limitations and Minnesota Mutual's right to terminate at any time the owner's right to make additional payments. Each purchase payment will result in the credit of a number of cash value units equal to the number of annuity units credited. A withdrawal of cash value will result in the cancellation of cash value units as well as a number of annuity units. The reduction in cash value and annuity units as the result of a withdrawal will normally be at different rates, so that the number of cash value units after a withdrawal will no longer equal the number of annuity units. While annuity payments will be reduced as a result of cash value withdrawals, so long as the annuitant is alive, annuity payments will never be eliminated, even if all available cash value is completely withdrawn.

9. Under the Contract, deductions are made from each purchase payment for a sales charge, a risk charge and state premium taxes, where applicable. A sales charge is deducted from the purchase payment using a percentage determined by the amount of total cumulative premiums paid to the date of the purchase payment, including the new purchase payment and any purchase payments made to a Contract previously issued to the same owner [1] (''cumulative premiums''). The sales charge is 4.5% if cumulative premiums are less than $500,000, 4.125% if cumulative premiums are $500,000 to $749,999.99 and 3.75% if cumulative premiums are $750,000 to $1,000,000.

10. Currently, a risk charge of 1.25% is deducted from each purchase payment for Minnesota Mutual's guarantee of the minimum annuity payment (''guaranteed minimum annuity risk charge''). This charge may be increased to a maximum of 2%. According to the Applicants, if the charge proves to be insufficient to cover the actual cost of the risk assumed by Minnesota Mutual in providing a guarantee of a minimum annuity payment amount, then Minnesota Mutual will absorb the resulting losses. Conversely, if the charge proves to be more than sufficient after the establishment of any contingency reserves deemed prudent or required by law, any excess will be profit to Minnesota Mutual.

11. In addition to the above deductions from purchase payments, certain deductions will be made from the net asset value of the Sub-Account. Minnesota Mutual will deduct a charge, computed daily, currently equal to an annual rate of .15% of the Sub-Account's net asset value for administrative services relative to the Contracts. Minnesota Mutual reserves the right to increase this charge to a maximum annual rate of .40% of the Sub-Account's net asset value. In making this charge, Applicants state that they are relying on Rule 26a–1 under the Act, and amounts so deducted will satisfy the ''at-cost'' restrictions of that Rule.

12. Minnesota Mutual also will deduct a charge, computed daily, currently equal to an annual rate of .80% of the Sub-Account's net asset value for mortality and expense risks assumed by Minnesota Mutual under the Contracts, of which .55% is for mortality risks and .25% is for expense risks. Minnesota Mutual reserves the right under the Contracts to increase the mortality risk charge to .80% and the expense risk charge to .60%. However, any increase of the total charge for mortality and expense risks above 1.25% on an annual basis would be subject to the approval of the Commission.

13. The mortality risk assumed by Minnesota Mutual in connection with the Contracts arises from Minnesota Mutual's guarantee that it will make annuity payments in accordance with the annuity tables and other provisions in the Contract to each annuitant regardless of how long that annuitant lives or all annuitants as a group live. This assures that neither an annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under the Contract. The expense risk assumed by Minnesota Mutual in connection with the Contracts arises from Minnesota Mutual's guarantee that the deductions provided for in the Contracts for sales and administrative expenses and the guaranteed minimum annuity payment amount will be adequate to cover actual expenses incurred. If the deductions made for mortality and expense risks prove to be insufficient to cover the actual cost of the mortality and expense risks assumed, Minnesota Mutual will absorb the resulting losses.

[1] The application will be amended during the notice period to include the portion of this representation relating to payments under previously issued Contracts.

Applicants' Legal Analysis

1. Applicants request exemptive relief, pursuant to Section 6(c) of the Act, from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit (a) the deduction of a guaranteed minimum annuity risk charge of up to 2% of a purchase payment from each purchase payment made under a Contract or Future Contract and, (b) the deduction of a mortality and expense risks charge of up to 1.25% from the assets of the Account or Future Accounts with respect to the Contracts and Future Contracts. Applicants also request that the exemptive relief extend to any other NASD member that may serve in the future as principal underwriter for the Contracts or Future Contracts.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2)(C) and 26(a)(3) of the Act.

3. Applicants submit that Minnesota Mutual is entitled to reasonable compensation for its assumption of risks associated with the guaranteed minimum annuity payment amount and its assumption of mortality and expense risks. Applicants represent that the guaranteed minimum annuity risk charge of up to 2% is reasonable in relation to the risks assumed. This representation is based upon a determination by Minnesota Mutual actuaries of the amount of a one-time charge reburied to cover the Company's risks for the guarantee with respect to each purchase payment. Minnesota Mutual will maintain at its home office, available to the Commission upon request, a memorandum summarizing the analysis made and the basis for Minnesota Mutual's conclusion in this regard.

4. Applicants represent that the mortality and expense risks charge is within the range of industry practice for comparable annuity products. This representation is based upon an analysis made by Minnesota Mutual of publicly available information about selected variable annuity products, taking into consideration such factors as any contractual rights to increase charges above current levels, the existence of other charges and a front end sales load deduction. Minnesota Mutual will also maintain at its home office, available to the Commission upon request, a memorandum providing the basis for its conclusion in this regard, setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

5. Applicants acknowledge that it is possible that Minnesota Mutual's revenues from the sales charge could be less than its costs of distributing the Contracts. In that case, the excess distribution costs would be paid out of Minnesota Mutual's general assets, including the profits, if any, from the guaranteed minimum annuity risk charge or the mortality and expense risks charge. In those circumstances, a portion of the guaranteed minimum annuity risk charge or the mortality and expense risks charge might be viewed as providing for some of the costs relating to the distribution of the Contracts.

6. Notwithstanding the foregoing, Minnesota Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Minnesota Mutual at its home office and will be available to the Commission upon request. Moreover, Minnesota Mutual represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have that plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of that fund within the meaning of Section 2(a)(19) of the Act.

7. Applicants submit that extending the relief to Future Contracts, Future Accounts and Future Underwriters is appropriate in the public interest. According to the Applicants, the requested exemptions should promote competitiveness in the variable annuity contract market by eliminating the need for filing redundant exemptive applications, thereby reducing Minnesota Mutual's costs. The delay and expense of repeatedly seeking exemptive relief for substantially similar contracts, new separate accounts or new principal underwriters could impair Minnesota Mutual's ability to take effective advantage of business opportunities that might arise. There is no benefit or additional protection afforded to investors by requiring Applicants to repeatedly seek exemptive relief with respect to the same issues addressed in the application.

8. Applicants represent that before any Future Contracts are made available for sale to the public, Minnesota Mutual will have determined that the mortality and expense risk charges under such contracts are within the range of industry practice for comparable annuity products based upon its analysis of then publicly available information about selected variable annuity products. Minnesota Mutual will maintain at its home office, available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

9. Applicants also represents that, if the sales charges under any Future Contracts are expected to be insufficient to cover the costs of distributing such contracts, before the Future Contracts are made available for sale to the public, Minnesota Mutual will have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Future Contracts will benefit the Separate Account or Future Account, as applicable, and the owners of the Future Contracts. The basis for that conclusion will be set forth in a memorandum that will be maintained by Minnesota Mutual at its home office and will be available to the Commission upon request. Moreover, Minnesota Mutual represents that if the Future Contract is funded by a Future Account, the Future Account will invest only in an underlying mutual fund which undertakes, in the event such fund should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that the exemptive relief requested is appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6640 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (PLM Equipment Growth Fund III, Limited Partnership Depository Units) File No. 1–10813

March 14, 1996.

PLM Equipment Growth Fund III (''Partnership'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Partnership, PLM Financial Services, Inc. acts as the general partner, and as such is responsible for managing the affairs of the partnership. The Partnership was originally anticipated to have a life-span not to exceed 10–12 years unless earlier terminated pursuant to the provisions of the limited partnership agreement. The Partnership was informed in May 1988 and it became listed on August 16, 1991. There are three phases to this partnership; funding, operations (including a period of reinvestment), and, liquidation. Because the Partnership will soon be terminating its reinvestment phase, it is considered to be in, or entering into, its liquidation stage. Sizable equipment sales will significantly reduce the size of the partnership's remaining portfolio which will make it difficult for the marketplace to accurately price the units. The Partnership has recently completed one such sale and we anticipate that similar sales will take place in the partnership in the near future.

Any interested person may, on or before April 4, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary,

[FR Doc. 96–6633 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (PLM Equipment Growth Fund II, Limited Partnership Depositary Units) File No. 1–10553

March 14, 1996.

PLM Equipment Growth Fund II (''Partnership'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Partnership, PLM Financial Services, Inc. acts as the general partner, and as such is responsible for managing the affairs of the partnership. The Partnership was originally anticipated to have a life-span not to exceed 10–12 years unless earlier terminated pursuant to the provisions of the limited partnership agreement. The Partnership was informed in May 1987 and it became listed on November 20, 1990. There are three phases to this partnership; funding, operations (including a period of reinvestment), and, liquidation. Because the Partnership will soon be terminating its reinvestment phase, it is considered to be in, or entering into, its liquidation stage. Sizable equipment sales will significantly reduce the size of the partnership's remaining portfolio which will make it difficult for the market place to accurately price the units. The Partnership has recently completed one such sale and we anticipate that similar sales will take place in the partnership in the near future.

Any interested person may, on or before April 4, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–6634 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (PLM Equipment Growth Fund, Limited Partnership Depositary Units) File No. 1–10260

March 14, 1996.

PLM Equipment Growth Fund (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Partnership, PLM Financial Services, Inc. acts as the general partner, and as such is responsible for managing the affairs of the Partnership. The Partnership was originally anticipated to have a life-span not to exceed 10–12 years unless earlier terminated pursuant to the provisions of the limited partnership agreement. The Partnership was formed in May 1986 and it became listed on June 1, 1990. There are three phases to this partnership; funding, operations (including a period of reinvestment), and, liquidation. Because the Partnership will soon be terminating its reinvestment phase, it is considered to be in, or entering into, its liquidation stage. Sizable equipment sales will significantly reduce the size of the Partnership's remaining portfolio which will make it difficult for the market place to accurately price the units. The Partnership has recently completed one such sale and we anticipate that similar

sales will take place in the Partnership in the near future.

Any interested person may, on or before April 4, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–6635 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Release No. 21825; 812–9778]

Vanguard Money Market Reserves, Inc., et al.; Notice of Application

March 13, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Vanguard Money Market Reserves, Inc., Vanguard Institutional Portfolios, Inc., Vanguard Municipal Bond Fund, Inc., Vanguard California Tax-Free Fund, Vanguard New Jersey Tax-Free Fund, Vanguard New York Insured Tax-Free Fund, Vanguard Ohio Tax-Free Fund, Vanguard Pennsylvania Tax-Free Fund, Vanguard Florida Tax-Free Fund, Vanguard Bond Index Fund, Vanguard Fixed Income Securities Fund, Inc., Vanguard/Wellesley Income Fund, Inc., Vanguard Asset Allocation Fund, Inc., Vanguard Convertible Securities Fund, Inc., Vanguard STAR Fund, Vanguard/Wellington Fund, Inc., Vanguard/Trustees Equity Fund, Vanguard Equity Income Fund, Inc., Vanguard Index Trust, Vanguard International Equity Index Fund, Inc., Vanguard Quantitative Portfolios, Inc., Vanguard Preferred Stock Fund, Vanguard/Windsor Funds, Inc., Vanguard/PRIMECAP Fund, Inc., Gemini II, Inc., Vanguard World Fund, Inc., Vanguard/Morgan Growth Fund, Inc., Vanguard Explorer Fund, Inc., Vanguard Specialized Portfolios, Inc., Vanguard Variable Insurance Fund, Vanguard Tax-Managed Fund, Inc., Vanguard Horizon Fund, Inc., Vanguard Admiral Funds (together with any future investment company, or portfolio thereof, that proposed to participate in the proposed credit facility that (a) is part of a group of investment companies which holds itself out to investors as related companies for purposes of investment and investor services, and (b) obtains corporate management, administrative, and distribution services from The Vanguard Group, Inc. (''TVGI'') (the ''Funds'');[1] and TVGI.

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to borrow from and lend to each other through a proposed credit facility.

FILING DATES: The application was filed on September 22, 1995 and amended on January 16, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 8, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Vanguard Financial Center, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds, except Vanguard STAR Fund and Vanguard Institutional Index Fund are members of the Vanguard group of investment companies. Each of the Funds, except Gemini II, is registered as a open-end, management investment company under the Act. Gemini II is registered as a closed-end investment company under the Act. TVGI is a wholly and jointly owned subsidiary of the Funds that provides corporate management, administrative, transfer agent, and distribution services on an at-cost basis to each Fund, except Vanguard Institutional Index Fund, pursuant to a service agreement. TVGI provides such services to Vanguard Institutional Index Fund on an at-cost basis pursuant to a separate service agreement.

2. In 1987, the Funds and TVGI obtained an order exempting them from the provisions of section 17(d) of the Act and rule 17d–1 thereunder to the extent necessary to permit the Funds to establish a joint account (the ''Joint Account'') for investing in certain repurchase agreements.[2] At the end of each trading day, the Funds' uninvested cash balances are deposited in the Joint Account. Cash balances in the Joint Account are then invested in one or more large short-term repurchase agreements, each of which has a duration of no more than seven days. TVGI invests these cash balances as part of its duties under its existing management and service agreement with each of the Funds and does not charge any additional fee for this service.

3. At any particular time, while some Funds are lending money by entering into repurchase agreements (either directly or through the Joint Account) other Funds may be borrowing money to satisfy redemption requests. Currently, the Funds have loan agreements with four banks, although no Fund has agreements with all four banks. The interest rate paid by the Funds for bank borrowings is usually significantly higher (ranging between 60 and 85 basis points) than the rate earned on investments in repurchase agreements. Applicants believe that the differential does not reflect a material difference in the quality or the risk or respective

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[1] All Funds that presently intend to rely on the requested relief are included as named applicants. Other Funds will be covered by the order if they later decide to participate in the proposed credit facility.

[2] *Wellington Fund, Inc.,* Investment Company Act Release Nos. 15605 (March 5, 1987) (notice) and 15653 (March 31, 1987) (order).

transactions, but rather reflects the power of the banks to negotiate a higher rate of interest on Fund borrowings than they pay on repurchase agreements.

4. The Funds propose to enter into master loan agreements that would permit the Funds to lend money to each other for temporary purposes through a proposed credit facility. The credit facility is intended to reduce substantially the Funds borrowing costs and to enhance the ability of the Funds to earn higher rates of interest for their short-term lendings. Although the credit facility would substantially reduce the Funds' reliance on bank credit arrangements, the Trusts would continue to maintain existing loan agreements and to borrow money from banks.

5. The proposed transactions are likely to provide the Funds with significant savings at times when the cash position of a Fund is insufficient to meet temporary cash requirements. This situation generally arises when shareholder redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days (or longer for certain foreign transactions). However, shareholder redemption requests are normally effected immediately. Therefore, the Funds need a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. While bank borrowings will continue to be available to supply such liquidity, the rates charged under the proposed credit facility would be below those offered by the banks on short-term loans. Likewise, Funds making cash loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term repurchase agreements. Thus, the credit facility would benefit both those Funds that are borrowers and those Funds that are lenders.

7. The interest rate to be charged to the Funds on any loan made pursuant to the credit facility would be the average of the highest interest rate available through the Joint Account and a single benchmark rate set for all Funds. The benchmark rate would be calculated each day by TVGI according to a formula established by the Funds' boards of directors/trustees to approximate the lowest interest rate at which bank loans are available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates.

8. The Cash Management Department of TVGI would administer the credit facility. On each business day, the Cash Management Department would compare the interfund loan rate with the available Joint Account repurchase agreement rate for that day (which will reflect actual rates negotiated by the Cash Management Department that day for the Joint Account) and the available borrowing rates quoted by at least three of the banks with which the Funds have loan agreements. The Cash Management Department will make cash available to borrowing Funds only if the interfund loan rate is more favorable to the lending Fund than the Joint Account repurchase agreement rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

9. The lending banks are currently large banks of national standing. Generally, the size and prominence of banks able to make loans of this size ensure that the rates quoted to the Funds and loans will be representative of the available market rates. TVGI currently solicits daily rate quotes from each bank with which the Funds have loan agreements. While applicants anticipate that this practice will continue, TVGI will obtain three such representative quotes on any day on which an interfund loan takes place. If quotes are solicited from fewer than all lending banks, TVGI will solicit quotes from those banks which, on the basis of the facts and circumstances known at the time, it believes will offer loan interest rates as favorable to the borrowing Funds as comparable loans from the other banks with which one or more Funds have lending agreements. Applicants submit that these procedures provide a high level of assurance that quoted rates will be representative of the prevailing bank loan rates.

10. Under the proposal, the portfolio managers for each participating Fund, other than the money market Funds, may provide the Cash Management Department with standing instructions to participate in the credit facility daily as a borrower or lender. A Fund would not participate in the credit facility as a lender unless it also elected to participate in the Joint Account or, in the case of money market Funds, unless the Fund would invest on any given day in the Joint Account. As in the case of the Joint Account, the Cash Management Department on each business day would collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the money market Funds, from the Funds' custodians. With respect to the money market Funds, the portfolio managers would inform the Cash Management Department directly each day by a time or times specified by the Cash Management Department (initially midmorning) of the amount of cash, if any, they wished to direct to the credit facility as a lender.[3] The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Department would allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loans lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally would be allocated in a manner that would minimize the number of participants necessary to complete the loan transaction.

12. Applicants expect that there would be far more available uninvested cash each day than borrowing demand. Therefore, after the Cash Management Department has allocated cash for interfund loans, it will inform the money market portfolio managers of the amount of interfund loans, if any, made for each money market Fund so that the Fund portfolio managers may invest any remaining cash in the Joint Account or other available investments. With respect to other participating Funds, the Cash Management Department would follow standing instructions from the portfolio managers to invest the remaining amounts daily through the Joint Account.

13. No Fund would be permitted to participate in the proposed credit facility unless: (a) the Fund had obtained shareholder approval for its participation or, if such approval were not required by law, the Fund's prospectus and/or statement of additional information had disclosed at all times the possibility of the Fund's participation in the credit facility upon receipt of requisite regulatory approvals; (b) the Fund had fully disclosed all material information concerning the proposed credit facility in its prospectus and/or statement of additional

[3] Money market Fund managers would not delegate investment of cash balances to the Cash Management Department under standing instructions because applicants believe that the investment objective of such Funds and the unique requirements of rule 2a–7 require their direct management of all money market Fund assets, including short-term cash positions.

information; and (c) the Fund's participation in the credit facility was consistent with its investment objective, fundamental limitations and/or Declaration of Trust or Articles of Incorporation. Even if a Fund's participation in the credit facility were found not to require shareholder approval, each Fund would seek such approval unless it had previously obtained such approval or its prospectus and/or statement of additional information had at all times disclosed the possibility of its participation upon receipt of requisite regulatory approvals.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements. The requested order would permit the Funds to borrow from and lend to each other through a proposed credit facility.

2. Applicants contend that the interfund loans would be equivalent in credit quality to other money market instruments rated ''high quality'' by independent statistical rating organizations because of: (a) the very high asset coverage requirement for all interfund loans; (b) the high quality and liquidity of the assets covering the loans; (c) the fact that all interfund loans having less than 1000% asset coverage will be fully collateralized; (d) the requirement that if a lending bank requires collateral from a Fund, all interfund loans to the Fund will be similarly collateralized regardless of asset coverage level; (e) the ability to call interfund loans on any business day; and (f) the fact that the independent directors/trustees will exercise effective oversight of the interfund lending program as administered by TVGI.

3. Applicants also believe that the program would involve no realistic risk resulting from potential conflicts of interest. TVGI has no pecuniary interest in the administration of the program. TVGI would administer the credit facility as part of its duties under its existing management and service agreement with each Fund and would receive no additional fee as compensation for its services. Thus, TVGI would administer the facility as a disinterested fiduciary.

4. The interfund lending program does not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Under the credit facility, the Funds would neither negotiate interest rates between themselves, nor would TVGI set the rates in its discretion. Rather, rates would be set pursuant to a preestablished formula, approved by the directors/trustees, which would be the function of the current rates quoted by an independent third-party for short-term borrowings and for short-term repurchase agreements. All Funds participating in the credit facility on any given day would receive the same rate.

5. Because of the broad definition of ''security'' in section 2(a)(36) of the Act, the obligation of a borrowing Fund to repay an interfund loan could constitute a security for the purposes of section 12(d)(1) of the Act. Applicants request an exemption from the provisions of section 12(d)(1) of the Act only to the extent necessary for applicants to participate in the credit facility. Applicants will in all other respects comply with section 12(d)(1) of the Act and the terms of any Commission orders granted to applicants, including the order granted in the matter of *Vanguard STAR Fund,* Investment Company Act Release Nos. 21372 (Sept. 22, 1995) (notice) and 21426 (Oct. 18, 1995) (order).

6. Applicants submit that the credit facility would not involve the type of abuses at which section 12(d)(1) of the Act was directed. Section 12(d)(1) of the Act was intended to prevent the pyramiding of investment companies and the additional and duplicative costs and fees attendant upon multiple layers of investments. In this case, the purpose of the proposed credit facility is to save money for all participating Funds. In addition, there would be no duplicative costs to the Funds or their shareholders.

7. Applicants also submit that the credit facility would not involve the type of abuses that section 18(f) was intended to prevent. Applicants seek relief from section 18(f) to the limited extent necessary to allow a Fund to borrow from other Funds in amounts, as measured on the day when the most recent loan was made, not to exceed 125% of the borrowing Funds net cash redemptions for the preceding seven calendar days. Applicants would be subject to all of the proposed conditions, including the percentage and collateral limitations on interfund borrowings. The Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including interfund and bank borrowings, have at least 300% asset coverage.

8. Applicants contend that the proposed credit facility is consistent with the overall purpose of section 21(b) of the Act. This section is intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. The proposed transactions do not raise such concerns because: (a) TVGI would administer the program as a disinterested fiduciary; (b) all loans made by any Fund to another Fund would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or comparable short-term instruments; (c) the interfund loans would not involve a significantly greater risk than such other investments; (d) the lending Fund would receive interest at a higher rate than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than would otherwise be available to it under its bank loan agreements. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

9. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

10. Funds that are advised by the same entity are ''affiliated person'' of each other under section 2(a)(3)(C) of the Act by reason of being under common control. As investment adviser and/or principal underwriter to the Funds, TVGI is deemed an ''affiliated person'' of the Funds under section 2(a)(3) of the Act. Section 17(a)(1) is intended to prevent the same abuses contemplated by section 12(d)(1) by generally prohibiting an affiliated person of a registered investment company from selling any security to such registered investment company. Section 17(a)(3) is intended to prevent the same abuses contemplated by section 21(b) by generally prohibiting an affiliated person of a registered investment company from borrowing money or other property from such investment company.

11. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including

the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. For the reasons discussed above, applicants assert that the proposed transaction satisfies the criteria of section 17(b).

12. Section 17(d) and rule 17d-1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or joint arrangement or profit-sharing plan ''on a basis different from or less advantageous than that of'' the affiliated person. For the reasons discussed above, each applicant's participation in the credit facility would not involve overreaching or unfair advantage over any other applicant, would be consistent with the provisions, policies, and purposes of the Act, and participation by each Fund would be on the same terms that are no different from or less advantageous than that of other participating Funds.

Applicant's Conditions

1. The interest rates to be charged to the Funds under the credit facility will be the average of the current Joint Account repurchase agreement rate and a benchmark rate established periodically to approximate the lowest rate available from banks on loans to the Funds.

2. The Cash Management Department on each business day will compare the interfund loan rate set pursuant to the formula calculated as provided in condition 1 with the Joint Account repurchase agreement rate negotiated that day and all short-term borrowing rates quoted to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the credit facility prior to such borrowing. The Cash Management Department will make cash available for interfund loans only if the interfund rate is more favorable to the lending Fund than the Joint Account repurchase agreement rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

3. If a Fund has outstanding borrowings, any interfund loans: (a) Will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the interfund loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the borrowing total less than 10% of its total assets, provided that if a Fund has a secured loan outstanding from any lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility only on a secured basis. A Fund could not borrow through the credit facility if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No equity, taxable bond, or money market Fund may loan funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5%, or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day the most recent interfund loan was made to the Fund, will not exceed 125% of the Fund's total net cash redemptions for the preceding seven calendar days.

10. Each interfund loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and Declaration of Trust or Articles of Incorporation.

12. The Cash management Department will calculate total Fund borrowing and lending demand through the credit facility, and allocate interfund loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash management Department will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the money market Funds.

13. TVGI will monitor the interest rates charged and the other terms and conditions of the interfund loans and

will make a quarterly report to the boards of directors/trustees of the Funds concerning their participation in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's board of directors/trustees, including a majority of the independent directors/trustees: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the benchmark rate formula used to determine the interest rate on interfund loans, and review no less frequently than annually the continuing appropriateness of such benchmark rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an interfund loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, TVGI will promptly refer such loan for arbitration to an independent arbitrator selected by the board of each Fund involved in the loan who will serve as arbitrator of disputes concerning interfund loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Funds' board of directors/trustees in connection with the review required by conditions 13 and 14.

17. TVGI will prepare and submit to the Fund boards for review an initial special report on the ''Design of a system'' with respect to the operations of the interfund credit facility prior to the commencement of operations of the facility, including a report thereon of its independent public accountants. A test program of modest duration involving actual transactions may be conducted prior to submission of the initial report to the boards. An appropriate single Fund which next files its form N–SAR after board review of the initial report will file the report with its Form N–SAR, and the other Funds will incorporate the report by reference in their next N–SAR filings. Thereafter, an annual report on the ''Design of the System and Certain Compliance Tests'' with respect to the accounting control procedures for the credit facility which includes an opinion of the independent public accountants will be filed for two years (measured from the commencement of the facility subsequent to the test program) with the Form N–SAR of an appropriate single Fund which next files its Form N–SAR after the release of such annual report and opinion, and the other Funds will incorporate each such annual report by reference to their next subsequent Form N–SAR filings. A form of the independent public accountants' opinion is attached as an exhibit to the application. The initial ''Design'' report and the annual ''Design and Compliance Tests'' report will each be prepared in accordance with the requirements of Statement of Auditing Standards No. 70 (''SAS 70'') as it may be amended from time to time or pursuant to similar auditing standards as may be adopted by the American Institute of Certified Public Accountants from time to time, including reports of independent accountants thereon. Each SAS report will include a description of the principal procedures used by TVGI to monitor compliance with certain of the conditions the Funds have agreed to as part of the relief requested. The principal procedures described in the initial ''Design'' report and the annual ''Design and Certain Compliance Tests'' reports will include, at a minimum, procedures that are designed to achieve the following objectives: (a) the Funds are required to comply with the net redemption and percentage limitations on borrowing, and the percentage limitations on lending; (b) the Funds are required to make loans only at the interfund rate and such rate must be higher than the Joint Account repurchase agreement rate but lower than the lowest daily quote rate for available borrowing; (c) the Funds are required to allocate borrowing and lending demand in accordance with procedures established by the boards of directors/trustees; (d) if a Fund, at the time of its borrowing from a Fund, also has outstanding third-party borrowings, the interest rate on such interfund borrowing cannot exceed the interest rate on third-party borrowings; and (e) the Funds are required to pledge collateral for interfund loans when and to the extent provided by the conditions to any order issued on the application. Each annual SAS 70 report will consider compliance with the procedures designed to achieve the foregoing objectives. After the final annual SAS 70 report, compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal accounting control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N–SAR.

18. No fund will be permitted to participate in the Credit Facility upon receipt of requisite regulatory approval unless the Fund has fully disclosed in its prospectus all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6638 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36953; File No. SR–Amex–96–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Trading of Options on the Amex Gold BUGS℠ Index

March 11, 1996.

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 February 9, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade standardized options on the Amex Gold BUGS℠ Index (''Index''), a modified equal-dollar weighted index developed by the Amex and comprised of 15 gold mining company stocks (or American

Depositary Receipts (''ADRs'') thereon) which are traded on the Amex or the New York Stock Exchange (''NYSE''). The Amex proposes to amend Commentary .01 to Amex Rule 901C, ''Designation of Stock Index Options,'' to indicate that 90% of the Index's numerical index value must be accounted for by stocks which meet the then current criteria and guidelines provided in Amex Rule 915, ''Criteria for Underlying Securities'' and to indicate that these criteria must also be satisfied immediately following each quarterly rebalancing.

The text of the proposal is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*

The Amex proposes to trade standardized options on the Index, a modified equal-dollar weighted index developed by the Amex, representing a portfolio of 15 large actively traded gold mining company stocks. The Exchange believes that an index of gold mining stocks whose values are affected strongly by the price of gold will be attractive to many investors. In an effort to give investors an index with a significant exposure to the near term movements in gold prices, the Exchange has included in the Index those gold mining companies that do *not* hedge their gold production for extensive periods into the future. According to the Amex, gold fluctuating price of gold. Only companies that have a hedging ratio of less than 1½ years production will be considered for inclusion in the Index.

Eligibility Standards for Index Components

The Amex states that the Index conforms with Exchange Rule 901C, which specifies criteria for the inclusion of stocks in an index on which standardized options will be traded. According to the Amex, the Index also conforms to most of the criteria set forth in Amex Rule 901C, Commentary .02 (which provides for the commencement of trading of options on an index 30 days after the date of filing), except that the Index is calculated using a modified version of the equal-dollar weighting method and four of the components of the Index do not meet the six month minimum trading volume criteria.[1] According to the Amex, all of the Index's component securities meet the following eligibility standards: (1) all of the Index's component securities are traded on the Amex or the NYSE; (2) the component stocks comprising the top 90% of the Index by weight have a market capitalization[2] of at least $75 million, and those component stocks constituting the bottom 10% of the Index by weight have a market capitalization of at least $50 million; and (3) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index. In addition, stocks constituting 87.34% of the Index by weight have minimum monthly volume of one million shares during the six months preceding the Amex's filing. Four stocks constituting 12.66% of the Index by weight have minimum monthly volumes ranging from 429,000 to 62,000 shares during the six months preceding the Amex's filing.

Index Calculation

The Index is calculated using a modified equal-dollar weighting methodology. Three of the Index's component companies are given higher weightings based upon their market value. The following is a description of how this modified equal-dollar weighting calculation method works. As of the market close on February 5, 1996, a portfolio of gold mining company stocks was established representing an investment of approximately (1) $16,000 in two components in the Index; (2) $12,000 in one of the components; (3) $2,000 in two components; and (4) $4,300 in the remaining 12 components (rounded to the nearest whole share). The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 200.00 at the close of trading on February 5, 1996. Each quarter thereafter, following the close of trading on the Thursday prior to the third Friday of March, June, September, and December, the Index portfolio will be reviewed and adjusted if any one of the three components initially representing higher weightings in the Index value currently represents 25 percent or more of the Index value, or if any one of the other components initially representing lower weightings in the Index value currently represents 5 percent or more of the Index value. The Index portfolio will be rebalanced, if necessary, by changing the number of whole shares of each component stock so that the three components initially given higher weights will again represent less than 25 percent of the Index value, and the remaining lower-weighted components will each represent less than 5 percent of the Index value. The Exchange has chosen to rebalance the Index following the close of trading on the Thursday prior to the third Friday of March, June, September and December, since it allows an option contract to be held for up to three months without a change in the Index portfolio while, at the same time, maintaining the equal-dollar weighting feature of the Index. If necessary, a divisor adjustment will be made at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component stock in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution,

[1] Under Amex Rule 901C, Commentary .02, the Amex may list options on a stock industry index pursuant to Section 19(b)(3)(A) under the Act provided that the index satisfies certain criteria. Commentary .02 requires, among other things, that the index be calculated based on either the capitalization weighting, price weighting, or equal-dollar weighting methodology, and that the trading volume for each component stock of the index in each of the last six months be not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume must be at least 500,000 shares in each of the last six months.

[2] In the case of ADRs, this represents market capitalization as measured by total world-wide shares outstanding.

reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the new component stock will be added to the Index at a weight determined by the Exchange and the Index will be rebalanced. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Maintenance of the Index

The Exchange will maintain the Index so that upon quarterly rebalancing: (1) the total number of component securities will not increase or decrease by more than 33⅓ percent from the number of components in the Index at the time of its initial listing and in no event will the Index have less than nine components; (2) component stocks constituting the top 90 percent of the Index by weight will have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10 percent of the Index by weight will have a minimum market capitalization of $50 million; (3) at least 90 percent of the Index's numerical index value and at least 80 percent of the total number of component securities individually will meet the then current criteria for standardized option trading set forth in Amex Rule 915; (4) stocks constituting 85 percent of the Index have a monthly trading volume of at least 500,000 shares for each of the last six months; (5) no single component will represent more than 25 percent of the weight of the Index and the five highest weighted components will represent no more than 60 percent of the Index at each quarterly rebalancing; and (6) in order to maintain the character of the Index, companies whose gold production hedging policies change to greater than 1½ times annual production will be considered for removal from the Index.

The Amex will not open for trading any additional option series if the Index fails to satisfy any of the maintenance criteria set forth above unless the Exchange determines that such failure is not significant and the Commission concurs in that determination or unless the continued listing of options on the Index has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

Expiration and Settlement

THe options on the proposed Index will be European-style (*i.e.*, exercises permitted only at expiration) and cash-settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard Time) will apply. Options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in an expiring option series normally will be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Amex plans to list series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, the Amex may list longer term option series having up to 36 months to expiration. In lieu of such long-term options on a full value Index, the Amex may instead list long-term, reduced value put and call options based on one-tenth 1⁄10 the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term Index options will be subject to the same rules which govern the trading of all of the Amex's index options, including sales practice rules, margin requirements, and floor trading procedures. As noted above, all Index options will have European-style exercise. Position limits on reduced-value long term Index options will be equivalent to the positions limits for full value Index options and will be aggregated with such options. For example, if the position limit for the full value Index options is 9,000 contracts on the same side of the market, then the position limit for the reduced value Index options will be 90,000 contracts on the same side of the market.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange's regular way opening sale prices for the component stocks. In the case of securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system (''NASDAQ''), the first regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C, ''Applicability and Definitions,'' through 980C, ''Exercise of Stock Index Option Contracts,'' will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a stock index option under Amex Rule 901C(a) and a stock index industry group under Amex Rule 900C(b)(1).[3] With respect to paragraph (b) of Amex Rule 903C, ''Series of Stock Index Options,'' the Exchange proposes to list near-the-money option series on the Index at 2-½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by paragraph (c) of Amex Rule 904C, ''Position Limits,'' will result in a position limit of 9,000 contracts for options on the Index.[4]

(b) *Basis*

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

[3] Under Amex Rule 900C(b)(1), a stock index industry group is an index of stocks representing a particular industry or related industries.

[4] Amex Rule 904(c) provides that the position limit for an industry index option will be 9,000 contracts if the Amex determines at the commencement of trading of the options that any single stock in the underlying stock index industry group accounted, on average, for 20% or more of the numerical index value or that any five stocks in the group together accounted, on average, for more than 50% of the numerical index value, but that no single stock in the group accounted, on average, for 30% or more of the numerical index value, during the 30-day period immediately preceding the review.

(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

Within 35 days after the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6641 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36956; File No. SR–Amex–96–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Assurances of Delivery for Short Sales of Derivative Securities into an Underwriting Syndicate's Stabilizing Bid

March 11, 1996

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 January 31, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its policy to require that members trading derivative securities as Registered Options Traders pursuant to Amex Rule 958 make prior arrangements either to borrow the necessary securities or to obtain other assurances that delivery can be made on settlement date prior to effecting a short sale into an underwriting syndicate's stabilizing bid.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1989, the Exchange has required members and member organizations effecting short sales for both customer and proprietary accounts either to make prior arrangements to borrow the securities or to obtain acceptable assurances that delivery can be made on settlement date.[1] Such assurances include knowledge that the security is available for borrowing, conversion privileges, rights exercises or other similar situations so long as the security needed for delivery can be timely obtained. Short sales by specialists, market makers and odd-lot dealers in fulfilling their market making responsibilities are excepted from this requirement. Arbitrageurs and other traders may not rely upon this ''market maker'' exception.

In 1992, the Exchange amended its rules to permit regular members to register as Registered Options Traders (''ROTs'') in order to trade index warrants for their own account subject to Amex Rule 958.[2] The Exchange deemed it desirable to enable members to trade these equity derivative securities[3] subject to Rule 958 (which affords specialist ''good faith'' margin treatment and an exemption from stabilization requirements) instead of the more restrictive provisions of Rules 111 and 114 applicable to Registered Equity Market Makers because the Exchange believed that application of Rules 111 and 114 to index warrants would make it unlikely that members would trade such securities. However, the 1992 rule change also had the effect of exempting members trading as ROTs from the short sale policy given their market making activities in index warrants.

The Exchange now proposes a narrow modification to its short sale policy which would require members who register as ROTs and trade equity derivatives pursuant to Rule 958 to make prior arrangements to borrow these securities or obtain other acceptable assurances that delivery can be made on settlement date when selling short into the stabilizing bid of an underwriting syndicate. Implementation of the modified short sale policy is expected to provide increased stability to the market for listed Amex equity derivative securities

[1] *See* Securities Exchange Act Release No. 27542 (Dec. 15, 1989).

[2] *See* Securities Exchange Act Release No. 24277 (June 8, 1992). The SEC has recently approved an Amex proposal to allow regular members to trade currency warrants for their own account subject to the provisions of Amex Rule 958. *See* Securities Exchange Act Release No. 36852 (Feb. 15, 1996).

[3] The term ''equity derivative security'' refers to an underwritten security the value of which is determined by reference to another security, or to a currency, commodity, interest rate or index of the foregoing. Such securities are commonly listed pursuant to Exchange Company Guide Sections 106, 107, 118 or Amex rule 1102.

during a stabilized distribution by reducing the number of ''fails'', *i.e.*, when a short seller is unable to effect delivery of the security to the purchaser, and resulting ''buy-ins'', *i.e.*, when a purchaser buys the security for the account of the short seller due to the failure of the short seller to effect delivery in accordance with the procedures of the clearing corporation.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and 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 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 Amex. All submissions should refer to File No. SR–Amex–96–05 and should be submitted by April 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6644 Filed 3–19–96; 8:45 am]

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[Release No. 34–36961; File No. SR–CBOE–96–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Exchange's Member Death Benefit Program

March 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 1996, the Chicago Board Options Exchange, Inc. (''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 revise its Member Death Benefit Program to expand the coverage of the Program to include certain recently active members and to establish a defined benefit under the Program of $50,000. 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 Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Member Death Benefit Program is set forth in CBOE Rule 3.24 and functions in the following manner. The Member Death Benefit Program covers any natural person who is a nominee of a member organization, a Chicago Board of Trade exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee. The Exchange refers to the foregoing individuals as ''active members.'' Each active member designates a beneficiary under the Program. Upon the death of an active member, the Exchange pays a member death benefit to that member's designated beneficiary. The amount of the benefit is equal to the number of active members at the time of the member's death multiplied by $25. Because this benefit is based on the number of active members, the amount of the benefit fluctuates as the number of active members fluctuates. As of December 31, 1995, there were 1,384 active members. Therefore, if a benefit were to have been paid on that date, it would have been equal to $34,600. After a member death benefit has been paid under the Program, the Exchange bills each active member $25 in order to recoup the cost of the benefit.

The purpose of the proposed rule change is to revise the Member Death Benefit Program in two primary respects. First, the Exchange proposes to

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[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 CFR U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

expand the coverage of the Member Death Benefit Program to cover any individual who (i) was an active member within 90 days prior to the date of his or her death and (ii) was an active member during at least 274 out of the 365 days preceding the date of his or her last termination from active member status. This expanded coverage would be in addition to the Program's current coverage of any individual who is an active member at the time of his or her death. Second, the Exchange proposes to establish a defined member death benefit under the Program of $50,000. This $50,000 benefit would replace the current member death benefit under the Program which is based on the number of active members at the time of a member's death. Accordingly, instead of being billed $25 by the Exchange after a member death benefit payout has occurred, under the proposed rule change each active member will be assessed an amount equal to $50,000 divided by the number of active members at the time of the assessment.

The proposed rule change also makes two clarifications concerning the administration of the Member Death Benefit Program. First, the proposed rule change clarifies that in no event shall more than one member death benefit be paid by reason of the death of an individual who is eligible to receive the member death benefit. Second, the proposed rule change clarifies that the active members who will be assessed after a member death benefit has been paid by the Exchange will be those individuals who are active members at the time of the assessment. The actual date upon which such assessments will occur will be at the discretion of the Exchange. Finally, the proposed rule change makes certain editorial changes to Rule 3.24 that do not affect its substance.

The purpose of the Member Death Benefit Program is to provide a death benefit to the designated beneficiaries of active members. The Exchange believes that the proposed rule change will further that purpose and provide for a fairer and more appropriate way to provide the member death benefit. For example, currently if an individual who has been an active member for three quarters of the previous year temporarily leaves his seat in order to take a short vacation, that individual would not be covered by the Member Death Benefit Program in the event that the individual were to pass away while on vacation. The same is true if the individual were to temporarily leave his seat because of an illness or accident and then were to pass away shortly thereafter. The proposed rule change is intended to cover these types of individuals under the Member Death Benefit Program because they have been active members for much of the year preceding the time of their death.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act in particular, in that it is designed to (i) provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and (ii) remove impediments to and perfect the mechanism of a free and open market and a national market system by serving to assist the Exchange in attracting and retaining active members through the enhancement of the financial security of their families in the event their death.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which the Amex consents, the commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–CBOE–96–13 and should be submitted by April 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6636 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36964; File No. SR–CBOE–95–68]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Expansion of the Firm Facilitation Exemption to All Non-Multiply-Listed Exchange Option Classes

March 13, 1996.

I. Introduction

On November 16, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the firm facilitation exemption for position and exercise limits that is currently available for the Standard & Poor's (''S&P'') 500 Index (''SPX'') options and for interest rate options to all non-multiply-listed Exchange option classes.

Notice of the proposed rule change appeared in the Federal Register on December 27, 1995.[3] No comments were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36609 (December 20, 1995), 60 FR 67002 (December 27, 1995).

change on March 12, 1996.[4] This order approves the CBOE's proposal, as amended.

II. Background and Description

The CBOE has previously established firm facilitation [5] exemptions for SPX index options (Rule 24.4.03) [6] and for interest rate options (Rule 23.3(c)).[7] Exchange member firms have expressed to the CBOE's Department of Market Regulation their belief that the current firm facilitation exemptions that are available in these option classes, which allow member firms to meet the investing needs of their customers in such options, should be expanded floor-wide. The CBOE has also noted situations in which a member firm was willing to accommodate a large customer order [8] that could not be filled by the trading crowd, but was prevented from facilitating the order because of a position limit constraint. In light of the above, the CBOE proposes that the firm facilitation exemption be made available to all non-multiply-listed Exchange options classes.[9]

The CBOE proposes to expand the firm facilitation exemption by incorporating it as new Interpretation and Policy .06 to Rule 4.11, the general position limit rule.[10] By including the firm facilitation exemption within Rule 4.11, the exemption would be available to equity, broad-based index, narrow-based index, Flexible Exchange (''FLEX''), interest rate, and government securities option classes to the extent and at the levels specified therein.[11]

As is the case with the SPX and interest rate firm facilitation exemptions, Exchange Rule 6.74(b) procedures for crossing a customer order with a firm facilitation order must be followed. In this regard, before a customer order can be crossed with a firm facilitation order, the trading crowd must be given reasonable opportunity to participate. Moreover, only after it has been determined that the trading crowd will not fill the order, may the firm's customer order be crossed with the firm's facilitation order.

In addition, except for the existing SPX and interest rate firm facilitation exemptions which are set at higher levels, the expended firm facilitation exemption will be twice the standard limit. [12]

The CBOE notes that the firm facilitation exemption will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a firm desires to facilitate customer orders in the XYZ option class, which is assumed to be a class of options that is not multiply-listed and has a 25,000 contract standard position limit, the firm may qualify for a firm facilitation exemption of up to twice the standard limit (50,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (50,000 contracts), in addition to the 25,000 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 125,000 XYZ contracts on the same-side of the market.

The CBOE notes, however, that the firm facilitation exemption will not presently extend to all option classes listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the exemption will be extended only to non-multiply-listed option classes. [13]

Under the CBOE's proposal, the facilitation firm must receive approval from the Exchange's Exemption Committee prior to executing facilitating trades. Although Exchange approval may be granted on the basis of verbal representations, the facilitation firm is required to furnish to the Exchange's Department of Market Regulation, within two business days or such other time period designated by the Exchange, [14] forms and documentation substantiating the basis for the exemption. Within five business days after the execution of a facilitation exemption order, a facilitation firm must hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Department of Market Regulation documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Moreover, the facilitation firm is required to promptly provide to the exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

III. 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, with the requirements of Section 6(b)(5). [15] Specifically, the Commission believes that the CBOE's proposal is reasonably designed to accommodate the needs of investors and other market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change has the potential to enhance the depth and liquidity of the options market by providing Exchange members greater flexibility in executing large customer orders.

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[4] In Amendment No. 1, the CBOE deleted reference to a facilitating firm's ability to receive a position limit exemption when hedging a facilitation exemption order with opposite side of the market option contracts. In addition, Amendment No. 1 clarified the Exchange's proposal by stating that facilitation exempted positions are to be viewed in the aggregate. *See* letter from Mary L. Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Holly Smith, Associate Director, Division of Market Regulation, Commission, dated March 12, 1996 (''Amendment No. 1'').

[5] The CBOE defines a facilitation trade as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

[6] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (approval order for File No. SR–CBOE–92–09).

[7] *See* Securities Exchange Act Release No. 33106 (October 26, 1993), 58 FR 58358 (November 1, 1993) (approval order for File No. SR–CBOE–93–21).

[8] The CBOE notes that the SPX facilitation exemption defines a customer order as one that is entered, cleared, and in which the resulting position is carried on behalf of the customer with the firm.

[9] The CBOE's general exercise limit provisions (Rule 4.12) also will be amended to increase exercise limits to the levels permitted by the firm facilitation exemption. Several other non-substantive, editorial changes to the position and exercise limit rules, interpretations, and policies will be made as well.

[10] Through the rule proposal, the firm facilitation exemption provisions contained in Rule 24.4.03 (for SPX index options) and in Rule 23.3(c) (for interest rate options) would be eliminated.

[11] The CBOE notes that the structuring of the rule proposal in this manner is important because the special position limits for broad-based index options (Rule 24.4), for narrow-based index options (Rule 24.4A), for FLEX options (Rule 24A.7), for interest rate options (Rule 23.3), and for government securities options (Rule 21.3) each mandate compliance with Rule 4.11. CBOE Rule 4.11 also specifically governs the position limits applicable to equity option classes.

[12] The CBOE notes that this filing does not propose to change the existing SPX and interest rate firm facilitation exemptions.

[13] The CBOE notes, however, that the Intermarket Surveillance Group (''ISG'') is currently working on developing such procedures.

[14] Telephone conversation between Mary Bender, Senior Vice President, Division of Regulatory Services CBOE, and Matthew S. Morris, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on March 6, 1996.

[15] 15 U.S.C. § 78f(b)(5) (1988).

Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

The CBOE proposal contains several safeguards in connection with the expanded facilitation exemption that will serve to minimize any potential disruption or manipulation concerns. These safeguards are very similar to the structure and process that is currently employed in obtaining a facilitation exemption in SPX and interest rate options.[16]

First, the facilitation firm must receive approval from the Exchange's Exemption Committee prior to executing facilitating trades. Although Exchange approval may be granted on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the facilitation firm is required to furnish to the Exchange's Department of Market Regulation, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption.

Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Department of Market Regulation documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on ''all or none'' or ''fill or kill'' instructions, and the orders may not be executed until Exchange Rule 6.74(b) procedures have been satisfied and crowd members have been given a reasonable time to participate in the trade.

Fifth, in no event may the aggregate exempted position under this interpretation exceed the number of contracts specified in the exemption's table, *i.e.*, twice the applicable standard limit, excluding SPX and interest rate options.[17]

Sixth, the facilitation firm may not increase the exempted options position once it is closed, unless approval from the Exchange is again received pursuant to a reapplication under Interpretation .06.

In summary, the Commission believes that the safeguards built into the facilitation exemption process discussed above should serve to minimize the potential for disruption and manipulation concerns, while at the same time benefitting market participants by allowing member firms greater flexibility to facilitate large customer orders. This structure substantially mirrors the process that has existed for granting firm facilitation exemption requests for SPX and interest rate options, and the CBOE has surveillance procedures to surveil for compliance with the rule's requirements. Accordingly, the Commission believes it is appropriate to extend the benefits of the SPX and interest rate option facilitation exemptions to other option classes traded on the CBOE.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 deletes reference to a facilitating firm's ability to receive a position limit exemption when hedging a facilitation exemption order with opposite side of the market option contracts. In addition, Amendment No. 1 clarifies the Exchange's proposal by stating the facilitation exempted positions are to be viewed in the aggregate. Both revisions narrow the scope of the proposed rule change, thereby reducing concerns regarding the potential for manipulation or market disruption. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–68 and should be submitted by April 10, 1996.

V. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to expand the firm facilitation exemption for position and exercise limits to all non-multiply-listed Exchange option classes is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–95–68), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[16] In approving the firm facilitation exemptions for SPX and interest rate options, the Commission expressed its opinion that providing member organizations with exemptions for the purpose of facilitating large customer orders would better serve the needs of the investing public. At that time, the Commission also noted that safeguards were built into the exemption to minimize any potential disruption or manipulation concerns. *See supra* notes 6 and 7.

[17] The Commission notes that for SPX options, the facilitating exemption is 100,000 contracts, and for interest rate options, the facilitating exemption is three times the applicable standard limit. These levels are the same as under the current rules.

[18] 15 U.S.C. § 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36965; File Nos. SR–MCC–96–02 and SR–MSTC–96–02]

Self-Regulatory Organizations; Midwest Clearing Corporation; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Termination of Services Provided by Midwest Clearing Corporation and Midwest Securities Trust Company

March 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 16, 1996, the Midwest Clearing Corporation (''MCC'') and the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–MCC–96–02 and SR–MSTC–96–02) as described in Items I, II, and III below, which items have been prepared primarily by MCC and MSTC. On February 26, 1996, MCC and MSTC filed an amendment to the proposed rule changes to make technical corrections which did not affect the substance of the proposals.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

On February 16, 1996, MCC and MSTC notified their participants of the procedures that MCC and MSTC will follow with respect to returning to participants their MCC and MSTC participant funds contributions. MSTC also notified its participants on February 16, 1996, that the interface between MSTC and The Depository Trust Company (''DTC'') was to be discontinued on February 20, 1996.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On January 5, 1996, the Commission approved proposed rule changes filed by MCC, MSTC, and Chicago Stock Exchange, Incorporated regarding their decisions to terminate as of January 15, 1996, securities clearing and depository services offered by MCC and MSTC. The decision to terminate such services was made in conjunction with an agreement with the National Securities Clearing Corporation and DTC.[4]

MCC and MSTC have issued a Conversion Flash describing a method for the orderly and equitable return of participants' MCC and MSTC participant funds contributions.[5] MSTC also issued a Conversion Flash on February 16, 1996, notifying its participants that the MSTC/DTC interface would be discontinued with the close of business on February 20, 1996, in anticipation of the conversion to same-day funds settlement on February 22, 1996.[6]

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the proposals will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in MCC's and MSTC's custody or control of for which MCC and MSTC are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC do not believe the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

MCC and MSTC have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i)[7] of the Act and pursuant to Rule 19b–4(e)(1)[8] promulgated thereunder because the proposals constitute stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of existing rules of MCC and MSTC. At any time within sixty days of the filing of such rule changes, 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal offices of MCC and MSTC.

All submissions should refer to the file numbers SR–MCC–96–02 and SR–MSTC–96–02 and should be submitted by April 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6675 Filed 3–19–96; 8:45 am]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner [counsel to MCC/MSTC], to Cheryl Tumlin, Staff Attorney, Division of Market Regulation, Commission (February 26, 1996).

[3] The Commission has modified the text of the summaries prepared by MCC and MSTC.

[4] Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195, [File Nos. SR–MCC–95–04 and SR–MSTC–95–10] (order approving proposed rule changes).

[5] The Conversion Flash is attached as Exhibit A to MCC's and MSTC's filings and is available in the Commission's Public Reference Room or through MCC or MSTC.

[6] The Conversion Flash is attached as Exhibit A to MSTC's proposed rule change and is available in the Commission's Public Reference Room or through MSTC.

[7] 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

[8] 17 CFR 240.19b–4(e)(1) (1995).

[9] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36958; File No. SR–OCC–95–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Adjust the Exercise Threshold for Yield-Based Treasury Options

March 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 26, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise OCC's rules to adjust the exercise threshold for yield-based Treasury option contracts carried in clearing members customers' accounts in connection with OCC's exercise-by-exception (''ex-by-ex'') processing procedures. OCC believes the proposal will provide cost savings to its members without affecting the risks of processing options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend Rule 1702 to adjust the exercise threshold for yield-based Treasury option contracts[3] carried in clearing members customers' accounts in connection with OCC's ex-by-ex processing procedures.[4] Currently, OCC Rule 1702 specifies two threshold amounts whereby option contracts that are in-the-money by those threshold amounts will be deemed by OCC to have been exercised. One of the threshold amounts is used for yield-based Treasury options carried in clearing members' customer's accounts and the other threshold amount is used for yield-based Treasury options carried in all other clearing members' accounts. For customer positions in yield-based Treasury options, the current threshold amount is $25.00 per contract, and for all other positions in such options, the current threshold amount is $1.00 per contract. OCC proposes to reduce the threshold amount for customer positions in yield-based Treasury options from $25.00 to $1.00 per contract. The current $1.00 threshold amount for clearing members' non-customer positions in yield-based Treasury options will remain unchanged. As a result, all yield-based Treasury option positions that are in-the-money by $1,00 per contract or more will be exercised unless clearing members submit a timely, contrary instruction to OCC. The change to the threshold amount for ex-by-ex processing will not affect an OCC clearing member's obligations to its customers or correspondent brokers, which are determined by contract and generally applicable principals of law.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it reduces costs to those acting on behalf of investors without adversely affecting the safeguarding of securities in OCC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] As discussed below, the Commission believes that the rule change is consistent with this obligation because it should facilitate the prompt and accurate clearance and settlement of yield-based Treasury options transactions by providing promptness and precision in the exercise of certain in-the-money yield-based Treasury options.

The rule change should assure that certain customer-held yield-based Treasury options that are in-the-money by $1.00 or more per contract will not go unexercised unless the clearing member provides to OCC contrary exercise instructions. By lowering the ex-by-ex threshold for yield-based treasury options carried in customer accounts from $25.00 to $1.00, OCC has reduced the burden placed on its clearing members to provide exercise instructions on yield-based Treasury options in-the-money by $1.00 or more that are due to expire. Reducing the ex-by-ex processing threshold to $1.00 per contract will mean that clearing members will have to manually identify for exercise only those customer-held yield-based Treasury options that are in-the-money by less than $1.00 per contract; therefore, the cost associated with manually exercising customer-held yield-based Treasury options should be reduced. The rule change also should reduce the risk that a clearing member will fail to exercise a customer-held yield-based Treasury option because under the new lower threshold only those options that are in-the-money by less than $1.00 will not be exercised.[6]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Yield-based Treasury option contracts are sometimes referred to as ''interest rate option contracts'' in the rules of various national securities exchanges and the National Association of Securities Dealers.

[4] Ex-by-ex processing presumes that clearing members want to exercise all options that are in-the-money by a specified threshold amount. Accordingly, all options subject to ex-by-ex processing are identified as being in-the-money, at-the-money, or out-of-the-money in a report provided to the clearing member electronically through OCC's Clearing/Management and Control system or by hard copy. This report reflects that the clearing member instructs OCC to exercise all options that are in-the-money by the threshold amount. However, the clearing member is able to issue contrary instructions to OCC by notating on the report additional contracts it wishes to exercise and in-the-money contracts that it does not want to exercise.

[5] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[6] Clearing members can issue contrary exercise advice instructions to exempt specified customer-held yield-based Treasury options from ex-by-ex processing.

Originally, the $25.00 threshold was established because of the anticipation of transaction costs related to the exercise and settlement of yield-based Treasury options. Because yield-based treasury options are cash settled and the exercise fees for such options either do not exist, are waived, or are not expected to exceed the exercise proceeds, OCC believes that a lower ex-by-ex threshold can be applied and that its clearing members will not charge a fee for the cash settlement of a yield-based Treasury option where a customer will be left with a loss.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause because accelerated approval will permit OCC to immediately implement the lower threshold amount for the ex-by-ex processing of customer-held yield-based Treasury options which will bring the treatment of such options in line with the procedures already in place for yield-based Treasury options held by non-customers and for index options.[7] Moreover, because no comment letters were received with regard to OCC's recent modification of its ex-by-ex processing procedures involving index options, which similarly adjusted the exercise threshold for customer-held index options, the Commission does not expect to receive any adverse comments on the present rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–19 and should be submitted by April 10, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–19) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6642 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[7] For a complete description of the modification of OCC's threshold amount used in the ex-by-ex processing of index options, refer to Securities Exchange Act Release No. 35982 (July 18, 1995), 60 FR 38072 [SR–OCC–95–03] (order approving proposed rule change).

[Release No. 34–36960; File No. SR–OCC–95–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Issuance, Clearance, and Settlement of Buy-Write Options Unitary Derivatives

March 13, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 27, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–20) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On February 5, 1996, OCC filed an amendment to the proposed rule change.[2] 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 purpose of the proposed rule change is to amend certain OCC By-Laws and Rules and to add new sections to OCC By-Laws and rules and to add new sections to OCC's By-Laws and Rules to provide for the issuance, clearances, and settlement of a new equity derivatives product referred to as Buy-Write Options Unitary Derivatives (''BOUNDs'').

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from James C. Young, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (February 5, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend certain OCC By-Laws and Rules and to add new sections to OCC's By-Laws and Rules to provide for the issuance, clearance and settlement of a new equity derivatives product referred to as BOUNDs. The Commission recently approved proposed rule changes filed by the American Stock Exchange (''Amex''), the Chicago Board Options Exchange (''CBOE''), and the Pacific Stock Exchange (''PSE'') (collectively referred to as the ''exchanges'') to list and trade BOUNDs.[4]

1. Organization of Proposed Rule Change

The proposed rule change consists of five sections: (i) a description of BOUNDs; (ii) amendments to existing By-Laws; (iii) a new Article XXIV of the By-Laws applicable only to BOUNDs; (iv) amendments to existing Rules; and (v) a new Chapter XXV of the Rules applicable only to BOUNDs.

2. Description of BOUNDs

The purchase of a BOUND is intended to be substantially equivalent to a ''buy-write'' transaction (*i.e.*, the simultaneous writing of a call option and purchase of the underlying stock). However, unlike an actual buy-write transaction, the purchase of a BOUND is effected in a single exchange transaction. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of

[3] The Commission has modified the text of the summaries submitted by OCC.

[4] For a complete description of the characteristics of BOUNDs, refer to Securities Exchange Act Release No. 36710 (January 11, 1996), 61 FR 1791 [File Nos. SR–AMEX–94–56, SR–CBOE–95–14, and SR–PSE–95–01] (order approving proposed rule change relating to BOUNDs).

every such order will increase the open interest in BOUNDs.[5] The exchanges have indicated that BOUNDs will be listed on the same securities on which Long-Term Equity Option Series (''LEAPS'')[6] are listed because the criteria used for stocks underlying BOUNDs will be the same criteria that is used for stocks underlying LEAPS. The exchanges expect that BOUNDs will be listed with a duration equal to that of LEAPS, which is currently thirty-nine months from the date of issuance.

A BOUND holder will be in essentially the same economic position as a covered writer of a European-style call option. BOUND holders will profit from the stock's movement up to the strike price and will receive payments equivalent to the cash dividends paid on the underlying stocks. Non-cash distributions may be reflected either through the delivery of the distributed property or by means of ''adjustments'' in the terms of the BOUNDs as described more fully below.

BOUNDs are ''European'' style options because the holder cannot exercise a BOUND prior to expiration. In contrast, LEAPS are ''American'' style options, which can be exercised at any time prior to expiration. At the expiration of a BOUND, either delivery of the underlying stock or payment of the strike price is always required, and notice of ''exercise'' is not required. Therefore, the concepts of ''exercise'' and ''assignment'' are not used in relation to BOUNDs.

Like put and call options, BOUNDs ordinarily will trade in standardized contract units of one hundred shares of underlying stock per BOUND contract. At expiration, if on the last day of trading the underlying stock closes at or below the strike price, BOUND holders will receive one hundred shares of the underlying stock for each BOUND contract held. If at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to one hundred times the BOUND's strike price for each BOUND contract held. In either case, the BOUND holder ordinarily will be left in the same economic position as a covered call writer that holds the position until the expiration of the call option. At expiration, depending on the price of the underlying stock at that time, writers of BOUND contracts will be required to deliver either one hundred shares of the underlying stock for each BOUND contract or payment equal to one hundred times the BOUND's strike price for each BOUND contract.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration date and exercise price will closely approximate the market price of the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying stock, it is anticipated that arbitrage activity will bring the price relationships back into line.

3. Proposed Amendments to OCC By-Laws

The proposed rule change defines the term BOUND as a security issued by OCC pursuant to Article XXIV of the By-Laws and Chapter XXV of the Rules. The proposed rule change also amends OCC's By-Laws by modifying several defined terms to indicate how those terms apply to BOUNDs. For example, the definition of ''clearing fund'' is amended to provide that the clearing fund pool for BOUNDs will be the same fund pool used for stock options. The proposed amendment to the definition of a ''clearing member'' defines a ''stock clearing member'' as a clearing member approved to clear transactions in stock options and BOUNDs. Accordingly, stock clearing members will be qualified automatically to engage in transactions in BOUNDs without any additional qualification.

The proposed amendment to the definition of the term ''trade price'' in the By-Laws defines that term to mean the price agreed upon in a BOUND transaction. Technically there is no ''premium'' in a BOUND transaction because that term generally is used to denote the purchase price of an option. However, in order to accommodate transactions in BOUNDs, the proposed amendment to the term ''premium'' defines it broadly to permit the term to include the trade price with respect to BOUNDs.

The proposed amendments to Article VI of the By-Laws include minor additions to several sections in order to make the By-Laws pertaining to the clearance of exchange transactions applicable to contracts in BOUNDs. The proposed amendment to Article VI, Section 6 provides that BOUNDS are issued by OCC and that the rights and obligations attaching to purchasing clearing members and writing clearing members are contained in new Article XXIV. Interpretations and Policies (''Interpretation'') .01 to Article VI, Section 9 has been amended to make clear that the general rights and obligations of options writers and holders outlined by Section 9 apply only to stock option contracts and not to BOUNDs. Parallel provisions for BOUNDs are in Article XXIV.

Old subsection (c) of Article VI, Section 10 is being deleted because subsection (a) is being modified by adding the more generic term ''cleared securities'' in place of the term ''option contract.'' A new subsection (d) has been proposed for Article VI, Section 10 to set forth rules governing the opening by the exchanges of new series of BOUNDs. These procedures are parallel to rules governing opening of new series of options.

Section 11 of Article VI has been amended only in order to provide that OCC's Securities Committee shall have the authority to make adjustments in BOUNDs contracts through the same procedures as in the case of option adjustments. Although other provisions of Section 11 also are applicable to BOUNDs, the precise way in which those provisions are applied is set forth in Article XXIV.

Proposed amendments to Article VIII of the By-Laws include minor additions to several sections to include BOUNDs in the stock clearing fund. Certain other changes in the text of these sections are purely technical and not intended to affect the meaning. The added reference to ''IPs'' in Interpretation .02 following Section 5 corrects and apparent omission in an earlier filing.

4. Proposed Article XXIV of OCC By-Laws

The introduction to proposed Article XXIV makes it clear that the By-Laws in Articles I through XI are also applicable to BOUNDs except where expressly modified or made inapplicable by Article XXIV. The effect on other By-Laws of each By-Law Section in Article XXIV is stated in brackets at the end of each By-Law section in Article XXIV.

Proposed Article XXIV, Section 1, adds certain new definitions relevant to BOUNDs and redefines certain terms defined in Article I of the By-Laws to assign different meanings when those terms are used with respect to BOUNDs. With respect to BOUND contracts, the term ''ex dividend date'' has been defined to mean the ''ex'' date for the corresponding dividend on the underlying security. The proposed term ''dividend payable date'' has been defined to mean the date on which the dividend equivalent is required to be paid by the writer of a BOUND to OCC

[5] Open interest refers to the total number of contracts that have neither been closed out nor been allowed to expire.

[6] Generally, LEAPS are long-term equity option securities that expire up to 39 months from the date of issuance. For a complete description of LEAPS, refer to Securities Exchange Act Release No. 28890 (February 15, 1991), 56 FR 7439 [File No. SR–CBOE–90–32] (order approving proposed rule change regarding the listing of LEAPS).

and by OCC to the holder of a BOUND. Consequently, the right of a BOUND holder to receive and the obligation of a BOUND writer to pay or deliver a dividend equivalent will be fixed at the close of trading on the business day preceding the ex dividend date. The actual payment of the dividend equivalent may occur days or weeks later to coincide with the payable date for the corresponding dividend on the underlying stock. It is desirable to harmonize the payable dates for the BOUNDs and the underlying stock in order to make hedging and other strategies involving combined positions in BOUNDs and the underlying stock most efficient. As a result, it is possible that an obligation to pay or a right to receive a dividend equivalent that accrued prior to the expiration date of a BOUND will remain outstanding after the expiration date and even after expiration settlement has been completed. OCC simply will continue to carry the dividend equivalent right or obligation in a manner similar to a settlement obligation or an exercised option. It will be margined and marked to the market each day similar to other settlement obligations.

As defined in Article XXIV, the ''expiration settlement date'' of a BOUND contract is specified in Rule 2502 and currently is the third business day following the expiration date. The expiration settlement date for a particular BOUND contract will not depend on whether the contract is to be settled by cash or by the delivery of stock.

The term ''closing price'' has been defined to mean the closing price for the underlying security on the primary market on the business day prior to the expiration date of the BOUND contract. However, the exchange(s) on which a BOUND trades may provide that the closing price of a BOUND be based on an average of prices of the underlying security near the close on that day. The exchange(s) must specify that an average of prices will be used prior to the opening of trading in any BOUNDs series.

The proposed definition of ''strike price'' provides that any reference to ''exercise price'' in the By-Laws or Rules will refer to the ''strike price'' of a BOUND contract. As stated earlier, notice of exercise is not required at the expiration of a BOUND, and the concept of ''exercise'' has no relevance to BOUNDs.

Proposed Article XXIV, Section 2 sets forth the general rights and obligations of holders and writers of BOUND contracts. Proposed Article XXIV, Section 3 sets forth the agreements of a writing clearing member when effecting an opening writing transaction in a BOUND.

Section 4 of Article XXIV describes the application of the adjustment rules of Article VI, Section 11 to BOUNDs. BOUNDs ordinarily will be adjusted according to existing adjustment rules, and adjustments are expected to ordinarily conform to adjustments made with respect to LEAPs on the same underlying stock. Where an adjustment results in a change in the number of option and BOUND contracts outstanding, which usually occurs to reflect a stock split or stock dividend, that event also will not be reflected in a dividend equivalent. Similarly, where the unit of trading of a BOUND is adjusted to require delivery of additional shares of the underlying security or other property that was distributed with respect to each share of the underlying security, that distribution also will not be reflected in a dividend equivalent. However, when the strike price of a BOUND is reduced to reflect the value of a distribution, a dividend equivalent also will be paid. This will occur because, unlike in the case of adjusting an option, lowering the strike price of a BOUND will not give the holder the benefit of the distribution because the holder does not pay the strike price. (The strike price of a BOUND caps the value that the holder will receive upon expiration of the BOUND.) Therefore, it is appropriate to give the holder the benefit of certain extraordinary distributions through a dividend equivalent at the time the distribution is made and also to reduce the strike price so that the BOUND holder cannot again receive the benefit of the distribution when the BOUND expires.

In the case of a ''cash-out'' merger or similar transaction, a BOUND will be adjusted to require the writer to pay at expiration an amount per share equal to the lesser of the price paid for the underlying security in the merger or the strike price of the BOUND. Because there will no longer be an underlying security, the expiration date of the BOUND will be accelerated so that the cash will be paid to the BOUND holder at or about the same time that payment of the cash-out value is paid to holders of the underlying security. While the mechanics are somewhat different from the adjustment ordinarily made for the same event in the case of an option, the economic result is quite similar. Because the value of an option becomes fixed as the result of adjusting for a cash-out merger, in-the-money options are effectively terminated because they have no time value and holders have every incentive to exercise them immediately to receive the cash. The expiration date of the BOUND will be accelerated because BOUNDs are European style and cannot be exercised prior to expiration.

Proposed Article XXIV, Section 5 sets forth the steps OCC may take in the event the closing price for an underlying security is unavailable. In addition to any other actions OCC may be entitled to take under the By-Laws and Rules, OCC may suspend settlement obligations for the affected BOUNDs. OCC also will have the authority to fix the closing price for BOUNDs by means of a panel consisting of exchange representatives and OCC's Chairman.

The provisions in Article VI, Section 19 relating to ''shortages of underlying securities'' are applicable to BOUNDs except that restrictions on exercises cannot be applied to BOUNDs because BOUNDs are not exercisable.

5. Proposed Amendments to Existing OCC Rules

Proposed amendments to existing rules include minor additions to several rules in order to indicate how those rules will apply to BOUNDs. Many changes are self-explanatory and are not described in this notice.

The proposed amendment to Rule 601 in Chapter VI, which governs margin, sets forth that BOUNDs will be margined in a clearing member's accounts as part of the ''stock option product group,'' and BOUNDs will be included in the same ''class group'' with put and call options on the same underlying stock. Special provisions have been added to the definition of ''premium margin'' to provide an appropriate definition of the term when applied to an expired but unsettled BOUND contract. The added provisions reflect that the expired contract may call for either the delivery of stock or the payment of the strike price depending upon the closing price of the underlying stock when the BOUND expires.

The definition of ''marking price'' in Rule 601 is being changed to reflect that OCC will use the highest reported asked quotation in valuing an underlying security if no last sale price is available. This is appropriate because the product group minimum margin includes protection against the bid/offer spread; therefore, it is not necessary to use a different quotation for puts than for calls.

Rule 1001 in Chapter X provides that positions in BOUNDs will be included in the formula to determine a clearing member's proportionate share of the contribution to the stock clearing fund. This is consistent with BOUNDs also

being included with stock options for purposes of margin calculations and clearing member qualifications.

Rules 1104 and 1106 in Chapter XI regarding the liquidation of an account of a clearing member upon suspension of that clearing member have been amended to include reference to positions in BOUNDs. Rule 1106(b)(2) contains a reference to specific or escrow deposits with respect to BOUNDs. No provisions for such deposits have been included in the present filing; therefore, these references will have no application until such time as OCC provides for escrow deposits with respect to BOUNDs.

6. Proposed Chapter XXV of OCC Rules

The introduction to proposed Chapter XXV makes it clear that the rules in Chapters I through VII and IX through XII also are applicable to BOUNDs except where expressly modified or made inapplicable by Chapter XXV. The effect on other rules by each section in Chapter XXV is stated in brackets at the end of each section in Chapter XXV.

Proposed Rule 2501 of Chapter XXV sets forth the rights and obligations of holders and writers of BOUNDs with respect to the payment of dividend equivalents. Under the proposed rule, the holder of a BOUND is entitled to the dividend payments of a shareholder with a comparable position (*i.e.*, one hundred shares per contract). The writer is obligated to pay or deliver the dividend equivalent of either a cash dividend or a non-cash distribution to the holder of the BOUND. As noted earlier, certain distribution may result in an adjustment of the BOUND in lieu of a dividend equivalent while other distributions may give rise to only a dividend equivalent or both a dividend equivalent and an adjustment.

Proposed Rule 2501 specifies that on the dividend payable date OCC will notify each clearing member having a position in BOUNDs of the net sum or securities it is required to pay or deliver and the net sum or securities it is entitled to receive. Proposed Rule 2502 sets forth that the settlement date for a BOUND contract will be the third business day following the expiration date. Although BOUNDs that settle in cash (*i.e.*, when the underlying stock price closes above the strike price) could be settled earlier then BOUNDs that settle by delivery of the underlying stock (*i.e.*, when the underlying stock price closes at or below the strike price), it has been determined that the preferable product design is to have the same settlement period for both types of settlements. In the event the BOUND transaction cannot be settled through regular-way settlement (*i.e.*, on the third business day following the expiration date), the contract will be settled on a broker-to-broker basis as governed by Rules 902 through 910A in Chapter IX.

Proposed Rule 2503 sets forth the procedures for settlement of BOUNDs at expiration. These procedures are straightforward in that BOUNDs to be settled in cash will be settled through OCC's cash settlement system. BOUNDs that are to be settled by delivery of stock ordinarily will be settled in the same manner that exercised stock options are settled (*i.e.*, through stock clearing corporations).

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal should facilitate the prompt and accurate clearance and settlement of BOUNDs. OCC also believes the proposed rule change is consistent with the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible because it will apply to BOUNDs a system of safeguards which is substantially the same as which OCC currently applies to options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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, 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 OCC. All submissions should refer to the file number SR–OCC–95–20 and should be submitted by April 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarlane,

Deputy Secretary.

[FR Doc. 96–6643 Filed 3–19–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1995).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: The Impact of Structural Change in the Banking Industry on Small Business Lending.

Type of Request: New Collection.

Description of Respondents: Banks Involved in Mergers or Acquisitions.

Annual Responses: 350.

Annual Burden: 175.

Comments: Send all comments regarding this information collection to Charles Ou, Small Business Administration, Office of Advocacy 409 3rd Street, S.W., Washington, D.C. 20416. Phone No.: 202–205–6966. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: Small Business Administration Applicant Survey.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Individuals Seeking Employment.

Annual Responses: 7,500.

Burden: 1,275.

Comments: Send all comments regarding this information collection to Carol Cordova, Small Business Administration, Office of Human Resources, Suite 4000, 409 3rd Street, S.W., Washington, D.C. 20416: Phone: 202–205–6162.

Title: Procurement Automated Source.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Small businesses interested in federal procurement opportunities.

Annual Responses: 219,500.

Annual Burden: 48,000.

Comments: Send all comments regarding this information collection to Glen Harwood, Small Business Administration, Office of Government Contracting, Suite 8000, 409 3rd Street, S.W., Washington, D.C. 20416, Phone: 202–205–6469.

Title: Request for Financial Statements.

Type of Request: Extension of a currently approved collection.

Description of Respondents: 8(a) Participating Firms.

Annual Responses: 3,100.

Annual Burden: 3,100.

Title: SBDC On Site Review and Record keeping Requirements.

Type of Request: Extension of a currently approved collection.

Annual Responses: 29.

Annual Burden: 3,976.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–6599 Filed 3–18–96; 8:45 am]

BILLING CODE 8025–01–M

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC. 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: SBA Guaranty Lender's Customer Satisfaction.

Type of Request: New Information collection.

Description of Respondents: Guaranty Lenders.

Annual Responses: 8337.

Annual Burden: 2779.

Comments: Send all comments regarding this information collection to George Price, Office of Marketing and Customer Service, Small Business Administration, 409 3rd Street, SW., Washington, DC. 20416. Phone No.: 202–205–7124. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–6715 Filed 3–19–96; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Ruling SSR 82–43 Relationship—Presumption of the Validity of the Last Marriage

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Ruling SSR 82–43.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 82–43.

EFFECTIVE DATE: March 20, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedent final decisions, opinions, and orders relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on claim decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82–43, issued in 1982, was published in the 1981–1985 Cumulative Edition of the Rulings on page 92. SSR 82–43 involves Kansas law on the presumption of the validity of the last marriage and rebutting the presumption. The Ruling holds that whether the presumption is rebutted depends on knowledge of divorce records about the worker from all places where he lived for the entire period of separation from the spouse who is challenging the last marriage and the existence of a divorce.

The Supreme Court of Kansas in *Harper* v. *DuPree*, 345 P.2d 644 (Kan. 1959), established a very high burden of proof on the party who attacks a marriage as invalid on the grounds that one of the spouses was not previously divorced. In *Harper*, the burden of proof is one of leaving ''no room for reasonable doubt.'' In *Elms* v. *Bowen*, 702 F. Supp. 273 (D. Kan. 1989), the district court, relying on *Harper*, concluded that the absence of divorce records concerning a prior marriage was not sufficient to prove the invalidity of a subsequent marriage.

The presumption under Kansas law is so strict that it precludes a blanket rebuttal policy that the absence of a divorce decree among the public records of places the insured lived constitutes sufficient evidence that no divorce occurred. Therefore, each claim involving the rebuttal of the presumption of the last marriage under Kansas law must be evaluated and decided individually. SSR 82–43 is rescinded because it does not reflect Kansas law at this time and a general policy statement on rebutting the presumption of the validity of the last marriage where the claim is governed by Kansas law is not possible, at least until Kansas law is clarified.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners.)

Dated: March 8, 1996.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 96–6674 Filed 3–19–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA–15(R)]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Houston, Texas, Requirements on the Storage, Use, Dispensing and Handling of Hazardous Materials

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

ACTION: Public Notice and Invitation to Comment.

SUMMARY: The Association of Waste Hazardous Materials Transporters (AWHMT) has applied for an administrative determination whether Federal hazardous materials transportation law preempts certain requirements of the City of Houston, Texas, relating to the storage, use, dispensing, and handling of hazardous materials.

DATES: Comments received on or before May 6, 1996, and rebuttal comments received on or before June 18, 1996, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–15(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Mr. Charles Dickhut, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. Gene L. Locke, City Attorney, City of Houston Legal Department, P.O. Box 1562, Houston, TX 77251. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I hereby certify that copies of this comment have been sent to Messrs. Dickhut and Locke at the addresses specified in the Federal Register.'')

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. AWHMT'S Application for a Preemption Determination

AWHMT has applied for a determination that the Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas (Houston Fire Code), as adopted May 15, 1995, in Ordinance No. 95–279. The challenged provisions concern the storage, use, dispensing and handling of hazardous materials. The Houston Fire Code consists of the Uniform Fire Code (1991 edition), as modified by a ''Conversion Document.''

The parts of the Houston Fire Code challenged by AWHMT are: sections in Article 4 concerning inspections and fees for obtaining a permit; sections in Article 79 containing requirements for tank vehicles used for flammable and combustible liquids; and the definition of ''hazardous materials'' in Articles 9 and 80. In its application, AWHMT states that one of its members has been cited for violations of the Houston Fire Code. AWHMT has separately provided copies of additional citations written to its members for loading or unloading corrosive hazardous materials without a permit, memoranda of the Texas Tank Truck Carriers Association concerning enforcement of the permit requirement, and the ''Conversion Document.'' Copies of these materials have been placed in the docket.

Inspections and fees. Sec. 4.104 authorizes the fire chief to inspect and approve vehicles before a permit is issued, and Sec. 4.109 sets annual fees for the permit and inspection at amounts ranging from $75 to $250, depending on the hazardous material and activity involved. According to AWHMT, inspections are scheduled only after the submission of an application for a permit and conducted only between 7:00 a.m. and 8:00 a.m., Monday through Friday. AWHMT states it is uncertain whether multiple fees must be paid when a vehicle transports more than one hazardous material, or a hazardous material meeting more than one permit requirement.

Permit requirements are contained in (at least) Articles 4, 79 and 80. Sec. 4.108 makes it unlawful for any person to engage in numerous specified activities without having a permit, including (1) operating a tank vehicle used for the transportation of flammable or combustible liquids, and (2) storing, transporting on-site, dispensing, using or handling hazardous materials in excess of limited amounts. Permits to store, dispense, use or handle flammable and combustible liquids, and hazardous materials in general, in excess of the quantities specified in Sec. 4.108, are also required by Secs. 79.103(a) and 80.103(a), respectively. However, excepted from the scope of Articles 79 and 80 are the transportation of flammable and combustible liquids ''when in accordance with DOT regulations'' and ''[o]ff-site hazardous materials transportation in accordance with DOT requirements.'' Secs. 79.101(a), 80.101(a) (exceptions).

Tank vehicles. Tank vehicles are defined in Sec. 9.110 to include a vehicle, other than a rail car or boat, with a cargo tank as an integral part and used for transporting flammable or combustible liquids, liquefied petroleum gas, or hazardous chemicals. However, the sections in Article 79 challenged by AWHMT relate only to tank vehicles used for flammable and combustible liquids:

—79.1201—providing that tank vehicles used for flammable and combustible liquids must be designed, constructed, equipped and maintained in accordance with Uniform Fire Code Standard No. 79–4.

—79.1203(d)—requiring ''bonding'' in accordance with Sec. 79.808(a)3. The latter section concerns static protection at tank vehicle loading racks and requires a ''metallic bond wire permanently electrically connected to the fill stem or to some part of the rack structure in electrical contact with the fill stem'' to prevent the accumulation of static charges.

—79.1203(n)—requiring the following signs and identification on tank vehicles: (1) a serial number issued by the fire chief painted on the vehicle; (2) ''FLAMMABLE'' signs on each side and the rear, and ''NO SMOKING'' signs at draw-off valves, at least four inches high and in a color that contrasts with the background; and (3) the company name or corporate symbol of the tank vehicle's owner or operator permanently displayed in a conspicuous location. AWHMT's application states that a ''permit sticker'' must also be placed immediately below the fire department's serial number. AWHMT also states that the exception in Sec. 79.1203(n), for ''[s]ignage and identification that complies with U.S. Department of Transportation regulations,'' is interpreted by the fire department only as permitting DOT-required placards to be substituted for the ''FLAMMABLE'' markings.

—79.1205(b)—prohibiting leaving tank vehicles unattended at any time on residential streets, or within 500 feet of a residential area, apartment or hotel complex, educational facility, hospital, or health care facility, or, ''at any other place that would, in the opinion of the [fire] chief, present an extreme life hazard.''

—79.1207—requiring tank vehicles to be equipped with at least two fire extinguishers having a minimum rating of 2–A, 20–B:C, located as far apart on the vehicle as possible.

Definition of hazardous materials. Sec. 9.110 defines ''hazardous materials'' as chemicals or substances that are physical or health hazards ''as defined and classified in Article 80 whether the materials are in usable or waste condition.'' Sec. 80.101(b) classifies as ''hazardous materials'' the chemicals or substances ''defined as such in Article 9. See Appendix VI-A for the classification of hazard categories and hazard evaluations.'' AWHMT states that the hazard classification in Appendix VI–A is based on rules of the U.S. Department of Labor concerning occupational health and safety, rather than the Hazardous Materials Regulations, 49 CFR Parts 171–180.

The text of AWHMT's application and a list of the attachments are set forth in Appendix A. The attachments (which include extracts from the Houston Fire Code) and Houston's ''Conversion Document'' may be examined at RSPA's Dockets Unit, and copies of these items will be provided at no cost upon request to the RSPA's Dockets Unit (see the address and telephone number set forth in ''Addresses'' above). The Uniform Fire Code and Standards are published by the International Conference of Building Officials and the Western Fire Chiefs Association. Copies may be purchased from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601, telephone 800–284–4406.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Subsection (f) provides that a State, political subdivision, or Indian tribe may—

impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

These statutory preemption provisions carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable.

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, the HMTA was revised, codified and enacted ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a). This administrative determination has replaced RSPA's process for issuing inconsistency rulings. RSPA maintains a subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued. A copy of this index will be provided at no cost upon request to the individual named in ''For Further Information Contact'' above.

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the Federal Register. Following the receipt

and consideration of written comments, RSPA publishes its determination in the Federal Register. *See* 49 C.F.R. 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the provisions of the Houston Fire Code challenged by AWHMT. Comments should:

(1) Specifically address (a) the preemption criteria set forth in Part II, above, and (b) whether the challenged provisions of the Houston Fire Code are ''authorized by another law of the United States.''

(2) Explain in detail the manner in which the challenged provisions of the Houston Fire Code are applied and enforced.

(3) Discuss in detail the scope and meaning of the exceptions in Secs. 79.101(a) and 80.101(a) of the Houston Fire Code, applicable to transportation in accordance with DOT requirements, including the relationship of the permit requirement in Sec. 4.108 to the exceptions in Secs. 79.101(a) and 80.101(a) from the permit requirements in Secs. 79.103(a) and 80.103(a), respectively.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on March 13, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A

February 20, 1996

Application of the Association of Waste Hazardous Materials Transporters to initiate a proceeding to determine whether various requirements imposed by the City of Houston, Texas on persons involved in transporting hazardous materials to or from points in the City are preempted by the Hazardous Materials Transportation Act

Interest of the Petitioner

The Association of Waste Hazardous Materials Transporters (AWHMT) represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous wastes, throughout the United States, including points to and from the City of Houston, TX (City). Despite full compliance with the hazardous materials regulations (HMRs), members of the AWHMT are precluded from transporting hazardous materials to or from points in the City unless certain requirements of the Fire Code of the City of Houston, TX, adopted pursuant to City Ordinance 95–279 (Ordinance), are met. The AWHMT asserts that the City requirements are in contravention to the Hazardous Materials Transportation Act (HMTA).

The Ordinance was enacted March 15, 1995 to be effective in May of that year. However, we only recently become aware of the Ordinance as it pertains to permits and requirements for the loading, unloading and storage of hazardous materials incidental to motor vehicle transportation when a member company received a notice of violation in December 1995, apparently within the week of the Fire Department training a team to enforce the hazardous materials provisions of the Ordinance. Failure to comply with the Ordinance carries penalties up to $2,000 per violation, and each day a violation continues is counted as a separate violation.[1] In addition, violations may result in the suspension, revocation, cancellation or denial of a permit.[2]

City Requirements For Which A Determination Is Sought

The Ordinance adopts the Uniform Fire Code U.F.C., 1991 Edition, published by the International Conference of Building Officials with amendments as the ''Fire Code of the City of Houston, Texas'' (Code). The Code authorizes the Houston Fire Chief (Chief) ''to administer and enforce this code * * * pertaining to * * * [t]he storage, use and handling of hazardous materials.''[3] The Code defines ''handling'' to mean ''the deliberate transport of material by any means to a point of storage or use.''[4] ''Use'' is defined as ''the placing in action or making available for service by opening or connecting anything utilized for confinement of material whether a solid, liquid or gas.''[5] ''Storage'' is not defined in Article 9, Definitions, but a definition does occur in Article 79, Flammable and Combustible Liquids. In Article 79, ''storage'' means ''the keeping, retention or leaving of flammable or combustible liquids in closed containers, tanks or similar vessels.''[6] Article 9 defines ''tank'' as ''a vessel containing more than 60 gallons.''[7] It appears from the Fire Department's implementation of the Code that ''storage'' occurs whenever a motor vehicle is stopped off the City's designated hazardous materials route, including stoppage by a driver for rest, fuel, food, and/or comfort.

The Code requires persons that ''store, dispense, use or handle hazardous materials in excess of quantities specified in Section 4.108'' to obtain a permit.[8] The permit requirements of Article 4 ''constitute permission to * * * store, use or handle materials, or to conduct processes which produce conditions hazardous to life or property * * * ''[9] To obtain a permit, an application must be submitted and fees paid.[10] (Copy attached.) Also, ''before a permit is issued, the Chief is authorized, but not required, to inspect and approve * * * vehicles.''[11] The Chief, in his discretion, does require inspection of vehicles used to transport hazardous materials in quantities requiring a permit. (Copy of Fire Department check list for tank vehicle inspections is attached.) Additionally, ''tank vehicles''[12] transporting ''flammable and combustible liquids'' are required to be ''designed, constructed, equipped and maintained in accordance with U.F.C. Standard No. 79–4''; be ''bonded''; carry specified fire extinguishers; and be permanently marked with permit indicia and hazard warnings.[13] Drivers of such cargo tanks must comply with certain attendance and overfill protection requirements.[14]

The Code provides an exception from the requirements of Article 80 for ''[o]ff-site hazardous materials transportation in

[1] Code § 2.111(a).

[2] Code § 2.111(b).

[3] Code § 2.101(c).

[4] Code § 9.110.

[5] Code § 9.123.

[6] Code § 79.102.

[7] Code § 9.122.

[8] Code § 80.103(a).

[9] Code § 4.102(a).

[10] Code §§ 4.103 & 4.109.

[11] Code § 4.104.

[12] ''Tank vehicles'' are defined as vehicles ''other than a railroad tank car or boat, with a cargo tank mounted thereon or built as an integral part thereof used for the transportation of flammable or combustible liquids, LP-gas, or hazardous chemicals. Tank vehicles include self-propelled vehicles and full trailers and semitrailers, with or without motive power, and carrying part or all of the load.

[13] Code §§ 79.1201, .808(a), .1207, & .1203(n).

[14] Code §§ 79.1205(b) & .1203(f).

accordance with DOT requirements.'' [15] However, ''off-site'' does not include loading, unloading, or storage incidental to transportation.

Federal Law Provides for the Preemption of Non-Federal Requirements When Those Non-Federal Requirements Fail Certain Federal Preemption Tests

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the U.S. Department of Transportation (DOT) greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' [16] By vesting primary authority over the transportation of hazardous materials in the DOT, Congress intended to ''make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials.'' [17] As originally enacted, the HMTA included a preemption provision ''to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' [18] The Act preempted ''any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the Act], or in a regulation issued under [the Act].'' [19] This preemption provision was implemented through an administrative process where DOT would issue ''inconsistency rulings'' as to,

[w]hether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and [t]he extent to which the State of political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.'' [20]

These criteria, commonly referred to as the ''dual compliance'' and ''obstacle'' tests, ''comport[ed] with the test for conflicts between Federal and State statutes enunciated by the Supreme Court in *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).'' [21]

In 1990, Congress codified the dual compliance and obstacle tests as the Act's general preemption provision.[22] The 1990 amendments also expanded on DOT's preemption authorities. First, Congress expressly preempted non-federal requirements in five covered subject areas if they are not ''substantively the same'' as the federal requirements. These covered subject areas are:

- The designation, description, and classification of hazardous materials.
- The packing, repacking, handling, labeling, marking and placarding of hazardous materials.
- The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
- The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
- The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.[23]

''Substantively the same'' was defined to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted.'' [24] Second, non-federal highway routing requirements that fail to satisfy the federal standard under 49 U.S.C. § 5112(b) are preempted.[25] Third, non-federal registration and permitting forms and procedures that are not ''the same'' as federal regulations to be issued are preempted.[26] Fourth, non-federal fees related to the transportation of hazardous materials are preempted unless the fees are ''fair and used for a purpose related to transporting hazardous materials.'' [27] These preemption authorities are limited only to the extent that non-federal requirements are ''otherwise authorized'' by federal law. A non-federal requirement is not ''otherwise authorized by Federal law'' merely because it is not preempted by another federal statute.[28]

The hazardous materials regulations (HMRs) have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation ''issue regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce.'' [29] ''Transportation'' is defined as ''the movement of property and *loading, unloading, or storage* incidental to the movement.'' [30] (Emphasis added.)

Our review of federal statutes and the Code leads us to believe that the following specific Code requirements are subject to preemption pursuant to 49 U.S.C. 5125(a)(2), (b), and (g) absent further modification and/or clarification.

The Designation, Description, and Classification of Hazardous Material in Transportation Is Reversed to the Federal Government

As noted above, the HMTA provides that non-federal rules designating, describing, and classifying hazardous materials for transportation is preempted unless the non-federal rules are substantively the same as the federal rules. Article 9 of the Code defines ''hazardous materials'' as ''those chemicals or substances which are physical hazardous or health hazards as defined and classified in Article 80 whether the materials are in usable or waste condition.'' [31] Article 80 states that ''[h]azardous materials are those chemicals or substances defined as such in Article 9. See Appendix VI–A for the classification of hazard categories and hazard evaluations.'' [32]

Appendix VI–A designates hazard classes based on rules of U.S. Department of Labor concerning occupational health and safety, not the HMRs.[33] Moreover, the classification scheme relies on examples rather than objective tests to identify, for the regulated community, what materials are subject to the requirements of the Code. Clearly, the Code provisions relating to the ''designation, description, and classification of hazardous materials'' are not ''substantively the same'' as DOT's designation and classification system found at 49 CFR 172. We believe this classification scheme, as it affects hazardous materials in transportation, is preempted pursuant to 49 U.S.C. 5125(b)(1)(A).

The Design, Manufacturing, Fabrication and Maintenance of a Package or Container Which is Represented, Marked, Certified, or Sold as Qualified for Use in the Transportation of Hazardous Materials is Reserved to the Federal Government

As noted above, the HMTA preempts non-federal requirements concerning the construction and maintenance of cargo tanks. Article 79.1201 provides that ''tank vehicles shall be designed, constructed, equipped and maintained in accordance with U.F.C. Standard No. 79–4.''

U.F.C. Standard No. 79–4 is the 1990 version of the 1985 edition of the National Fire Protection Association (NFPA) standard for tank vehicles for flammable and combustible liquids [34] In transportation, the HMRs set the specifications for the construction and maintenance of cargo tanks.[35] Uniformity in the construction and maintenance of packagings, especially reusable packagings, is critical. For example, the Code, in its reference to the NFPA standard, requires that ''Class II or Class III liquids shall not be loaded into an adjacent compartment to Class I liquids unless double bulkheads are provided * * *.'' [36] No such requirement exists in the HMRs. For this reason, Congress authorized DOT to preempt non-federal requirements affecting the ''design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.'' Nowhere, does the Code or U.F.C. Standard No. 79–4 grant equivalency to the cargo tank construction and maintenance standards of the HMRs. Article 79.1201

[15] Code § 80.101(a)(1).

[16] Public Law 93–633 § 102.

[17] S. Rep. 1192, 93rd Cong., 2d Sess., 1974, page 2.

[18] S. Rep. 1192, 93rd Cong., 2d Sess., 1974, page 37.

[19] P.L. 93–633 § 112(a).

[20] 41 FR 38171 (1976).

[21] 41 FR 38168 (1976).

[22] 49 U.S.C. § 5125(a).

[23] 49 U.S.C. 5125(b).

[24] 49 CFR 107.202(d).

[25] 49 U.S.C. 5125(c).

[26] 49 U.S.C. 5119(c)(2).

[27] 49 U.S.C. § 5125(g).

[28] *Colo. Pub. Util. Comm'n* v. *Harmon, 951 F. 2d, 1571, 1581 n.10, (10th Cir. 1991).*

[29] 49 U.S.C. 5103(b).

[30] 49 U.S.C. 5102(12).

[31] Code § 9.110.

[32] Code § 80.101(b).

[33] See attached Appendix VI–A.

[34] See attached NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, as amended, 1990 Edition, hereinafter ''NFPA Standard''.

[35] 49 CFR 178 & 180.

[36] NFPA Standard, 6–1.7.

should be preempted pursuant to 49 U.S.C. 5125(b)(1)(E) because it is not ''substantively the same as'' the federal cargo tanks standards found at 49 CFR 173, 178, and 180.

The Code Requirement for Multiple Fire Extinguishers is Subject to Review Under the Obstacle Test

Article 79.1207 provides that tank vehicles transporting hazardous materials be equipped with ''at least two fire extinguishers having a minimum rating of 2–A, 20–B:C.'' The federal motor carrier safety regulations (FMCSRs) provide that vehicles used to transport hazardous materials be equipped with one fire extinguisher having an Underwriters' Laboratories rating of at least 10 B:C.[37] The Code does not provide any justification to support its view that the federal standard is inadequate. If it is permissible for the City to require multiple fire extinguishers at ratings different that the federal requirement, then it is permissible for other jurisdictions to do the same. For an interstate carrier of hazardous materials, such diverse requirements cannot be tolerated particularly when they are non-reciprocal, either recognizing comparable federal standards, or even other non-federal standards if they exist. We believe this requirement poses an unnecessary and unreasonable burden on motor carriers of hazardous materials that operate in multiple jurisdictions and that the requirement should be preempted pursuant to 49 U.S.C. 5125(a)(2).[38]

The Code Requirements for Periodic Vehicle Inspections Are Preempted by the HMTA

Article 4.104 provides for the inspection of vehicles prior to the issuance of permits to transport hazardous materials. The inspection is valid for one year. The inspection is scheduled after the Fire Department receives an application for a permit. The inspection is to be scheduled within 20 days of receiving confirmation from the City that an ''H.F.D.'' (Houston Fire Department) number has been assigned to the vehicle. The inspection takes place at one fire station in the City. The regularly scheduled inspections take place Monday through Friday from 7:00 am to 8:00 am.

Recently, DOT preempted inspection requirements imposed by the State of California on cargo tanks carrying flammable and combustible materials. California's annual inspection requirement was preempted because the inspection could not be accomplished without ''unnecessary delay'' within the meaning of 49 CFR 177.853(a) and consequently failed the obstacle test of the HMTA. Vehicles were diverted out of the route of travel to inspection locations and, in some cases, vehicles had to wait pending the arrival of an inspector.[39] We believe that the City's periodic inspection requirements, as distinguished from random, roadside inspections, are likewise preempted pursuant to 49 U.S.C. 5125(a)(2).

Non-Federal Marking Requirements on Cargo Tanks Carrying Hazardous Materials Are Preempted

Article 79.1203(n) provides for several vehicle marking requirements for vehicles transporting flammable or combustible liquids. First, cargo tanks must be marked with an H.F.D. serial number that must be permanently affixed and located on the left forward part of the tank in letters at least 3 inches in height. Second, the City Hazardous Material Transport Permit sticker is to be placed immediately below the H.F.D. number. (Permit sticker example attached.) The sticker indicates the expiration date. Third, cargo tanks must have a sign posted on each side and at the rear that reads ''FLAMMABLE'' in lettering that is a minimum of 4 inches in height and a color that contrasts with the background. The Code does provide an ''exception'' for ''signage and identification that complies with U.S. Department of Transportation regulations.''[40] The Fire Department interprets this exception to substitute placards for the FLAMMABLE marking. Fourth, the vehicle must be marked with ''the company name . . . of the company that owns or operates the vehicle.'' We believe this marking requirement comports with 49 CFR 390.21 concerning the marking of commercial motor vehicles. Fifth, the words ''NO SMOKING'' must be marked at ''draw-off valves'' in letters 4 inches in height and of a color that contrasts with the background.

The HMTA provides that non-federal marking of a package or container which is marked or otherwise certified pursuant to the HMRs as qualified for use in the transportation of hazardous materials is preempted unless the non-federal requirements are substantively the same as federal requirements. We believe this preemption standard—49 U.S.C. 5125(b)(1)(E)—is appropriate for review of the first and second listed Code marking requirements. In fact, similar cargo tank marking requirements imposed by the State of California were preempted under this standard.[41] The HMTA also provides for the preemption of non-federal hazard warning marking requirements for hazardous materials when such markings are substantively different than the federal standard. We submit that the ''NO SMOKING'' marking requirement is such a hazard warning. The ''NO SMOKING'' marking is permanent and displayed even when non-flammable materials are being transported or when the vehicle is empty. Permanent hazard warning vehicle markings not substantively the same as federal requirements have been preempted pursuant to 49 U.S.C. 5125(b)(1)(B).[42]

Non-Federal Financial Bonds Fail the Obstacle Test

Article 79.1203(d) provides that ''[b]onding shall be in accordance with Section 79.808(a)3.'' We do not have access to § 79.808(a)3. Consequently, we are unable to determine if the bonding requirement is a financial bond or a bond to conduct electric charge. We have reason to believe the bond requirement may refer to a financial bond because bonding requirements for static electricity are addressed at paragraphs 79.1203 (l) and (m). Also, the permit application asks whether or not a ''bond/insurance'' is required. We have asked the City to clarify the nature of the bond required by § 79.808(a)3, but have not received a response.[43]

DOT has preempted non-federal bonding requirements under the obstacle test. DOT has concluded that non-federal bonding requirements are a barrier to the safe transportation of hazardous materials. In a series of inconsistency rulings between 1984 and 1989, DOT found that bonding requirements divert shipments from jurisdictions with such requirements, thereby increasing transit time and, ultimately, increasing overall exposure to the risks of transporting hazardous materials.[44] Moreover, DOT's review of non-federal bonding requirements has found that ''there is no reciprocity, offset, credit or other

[37] 49 CFR 393.95.

[38] Here and in other sections of this application, the AWHMT cites to standards of the FMCSRs as examples of federal rules to which the City requirements might be compared. We realize that these requirements are not *de facto* repeated in the HMRs. However, they are certainly given *de jure* meaning pursuant to 49 CFR 177.804. Surely Congress meant the Secretary to consider the entire regulatory scheme required of a motor carrier in determining what rules were necessary to ensure the safe transportation of hazardous materials. We could have just as easily cited to the Secretary's silence in terms of a regulatory standard in the HMRs as an affirmative determination that some type of requirement was not necessary to the safe transportation of hazardous material. We believe it is appropriate and necessary that RSPA consider the rules of other federal agencies or departments within DOT and the meaning of regulatory silence within the HMRs in determining matters of hazardous materials preemption particularly when the challenged non-federal requirements are applicable *only* to persons who transport or offer for transport hazardous materials. Without such a view, any number of non-federal conditions in areas such as planning, emergency response, or vehicle accoutrements could be envisioned which would just as effectively frustrate the transportation of hazardous materials in interstate, intrastate, or foreign commerce as non-federal rules concerning shipping papers, packaging standards, or other more traditional forms of hazardous materials regulation. We believe that any non-federal requirement that pertains only to the transportation of hazardous waste, or some aspect thereof, is within the RSPA's purview to consider under the preemptive authority of the HMTA. In fact, 49 U.S.C. 5125(a)(b)—the ''obstacle test''—provides that non-federal requirements are preempted if ''the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter *or* a regulation prescribed under this chapter.'' In other words, a specific HMR does not have to be the basis from which a determination of preemption is made.

[39] 58 FR 48933 (September 20, 1993), affirmed on reconsideration 60 FR 8800 (February 15, 1995).

[40] Code § 79.1203(n).

[41] 58 FR 48933 (September 20, 1993), affirmed on reconsideration 60 FR 8800 (February 15, 1995).

[42] 59 FR 6186 (February 9, 1994).

[43] Letter to Bob Lanier, Mayor, City of Houston, TX, from Charles Dickhut, Chairman, AWHMT, dated January 18, 1996.

[44] Inconsistency Ruling (IR)–10, IR–11, IR–15, IR–18, IR–25, IR–31. State may not require proof of insurance meeting the Federal requirements. *Colo. Pub. Util. Comm'n* v. *Harmon*, 951 5.2d 1571 (10th Cir. 1991).

recognition for a bond posted in another [jurisdiction]. This means that, in each [jurisdiction] with a bonding requirement in which a transporter picks up or delivers hazardous [materials], it must post a separate bond.'' [45] If the City bonding requirement proves to be a financial bond, we see no reason why this bonding requirement should also be preemptive pursuant to 49 U.S.C. 5125(a)(2).

Driver Attendance Requirements Exceed Federal Requirements and Are an Obstacle to the HMTA

Article 79.1205(b) provides that ''[t]ank vehicles shall not be left unattended at any time on residential streets, or within 500 feet of a residential area, apartment or hotel complex, educational facility, hospital, or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the chief, present an extreme life hazard.'' Federal attendance requirements appear at 49 CFR 177.834(i) and 397.5. Neither of these standards is as stringent as the standard in the Code. The FMCSRs provide that ''motor vehicle[s] containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the [DOT] and which impose a more stringent obligation or restraint.[46] Our concerns with this section of the Code is that the ''in the opinion of the chief'' standard is unreasonably subjective, and the 500 foot standard may not be able to be met at a ''hotel complex'' where a driver may seek rest, and because of ''hours of service'' constraints may not be able to search for a hotel with appropriate parking space. These Code standards would be an incentive for drivers to bypass the City, and thus export ''risk'' to other jurisdictions that ''may not be aware or prepared for a sudden, possibly permanent, change in traffic patterns'', rather than park in the City for food, fuel, rest, or comfort.[47] We request review of this standard under 49 U.S.C. 5125(a)(2).

The Fees Imposed by the Code are not ''Fair'' and Subject to Preemption Under the Obstacle Test

Article 4.109 sets forth fees to be paid for permits and inspections. The schedule of fees is confusing as it appears that the same vehicle could be subject to multiple fee requirements. For example, the fee for a hazardous materials permit is $175. However, the fee for a flammable or combustible liquids permit is also listed at $175. The permit for cryogens is $125. The permit for radioactive materials is $175. The permit for compressed gases is $125. These later materials are all subsets of hazardous materials in the federal classification scheme. It appears, but is not clear, that motor carriers must computer multiple fees for each vehicle used in the City depending on the cargo the carrier anticipates will be carried in the vehicle over the duration of the permit. We have asked the City to clarify how permit fees are computed, but have not yet received a response.[48]

However the City's fees are computed—one or multiple fee assessments per vehicle—it is clear that the fees are flat and unapportioned. The U.S. Supreme Court has declared fees which are flat and unapportioned to be unconstitutional under the Commerce Clause because such fees fail the ''internal consistency'' test.[49] The Court reasoned that a state fee levied on an interstate operation violates the Commerce Clause because, if replicated by other jurisdictions, such fees lead to interstate carriers being subject to multiple times the rate of taxation paid by purely local carriers even though each carrier's vehicles operate an identical number of miles and create the same overall risk of hazardous materials incidents.[50] In addition, because they are unapportioned, flat fees cannot be said to be ''fairly related'' to a feepayer's level of presence or activities in the fee-assessing jurisdiction.[51] In a number of subsequent cases, courts have relied on these arguments to strike down, enjoin, or escrow flat truck taxes and fees.[52] The City's per vehicle fee rate is comparable to that assessed by many states. The substantial financial burden of meeting multiple state fee requirements is magnified many times if local entities are permitted to impose fees on carriers in every jurisdiction in which they operate.

We believe flat fees will also run afoul of the HMTA because some motor carriers, otherwise in compliance with the HMRs, will inevitably be unable to meet multiple flat per vehicle fees to the exclusion of such carriers from some sub-set of fee-imposing jurisdictions. While the ''choice'' of which communities to operate in would be a decision of the motor carrier, the bar to hazardous materials transportation that localities cannot do directly in light of the Commerce Clause would be accomplished indirectly.[53] The result would be not only a generally undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation would increase transfers of hazardous materials from one company to another at jurisdictional borders. The increased transfers would pose a serious risk to safety, since ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap.'' [54] The HMTA provides that a ''political subdivision * * * may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material.'' [55] We assert that flat fees are inherently ''unfair'' and that the City's fee scheme would fall to the obstacle test pursuant to 49 U.S.C. 5125(a)(2).

Conclusion

The Ordinance imposes requirements on the transportation of hazardous materials which we believe are preempted by federal law.[56] Inasmuch as we have evidence that the City is indeed enforcing the above suspect requirements, we provided the City written notice of our concerns and our intention of file this application if we had not heard back from the City within a specified period of time.[57] In our notice to the City, we offered to withdraw our application if the City acts on its own to repeal the above referenced section of the Code. Despite our offer, however, we request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to: The Honorable Bob Lanier Mayor, City of Houston, 900 Bagby, Houston, TX 77002.

Respectfully submitted,

Charles Dickhut,

Chairman.

Enclosures

ATTACHMENTS

- City Ordinance 95–279
- Applicable Sections Fire Code of the City of Houston, TX.
- Hazardous Materials Permit Application
- Vehicle Inspection Scheduling Letter
- Permit Sticker Example
- Vehicle Inspection Check List
- Appendix VI–A
- U.F.C. Standard No. 79–4

Note: Copies of these Attachments may be examined at RSPA's Dockets Unit and can be provided at no cost upon request to RSPA's Dockets Unit; see the **ADDRESSES** section of this notice.

[FR Doc. 96–6593 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–60–P

[45] 57 FR 58848 (December 11, 1992), on appeal D.C. Cir. 1995.

[46] 49 CFR 397.2.

[47] 46 FR 18921 (1981).

[48] Letter to Bob Lanier, Mayor, City of Houston, TX, from Charles Dickhut, Chairman, AWHMT, dated January 18, 1996.

[49] *American Trucking Assn's* v. *Scheiner, 483 U.S. 266 (1987).*

[50] *Ibid.*, 284–86.

[51] *Ibid.*, 290–291 (citing *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 629 (1981).

[52] *American Trucking Assn's Inc.* v. *Secretary of Administration,* 613 N.E.2d 95 (Mass. 1993); *American Trucking Assn's Inc.* v. *Secretary of State,* 595 A.2d 1014 (Me. 1991); *Smith* v. *American Trucking Assn's, Inc.,* 781 S.W.2d 3 (Ark. 1989); *American Trucking Assn's, Inc.* v. *Goldstein,* 541 A.2d 955 (Md. 1988).

[53] *Chemical Waste Management, Inc.* v. *Hunt,* 504 U.S. 334, 338 (1992).

[54] *Missouri Pac. R.R. Co.* v. *Railroad Comm'n of Texas,* 671 F. Supp. 466, 480–81 (W.D. Tex. 1987).

[55] 49 U.S.C. 5125(g).

[56] We note that the Code provides limited authority for the Chief to waive Article 80 requirements ''related to health hazardous as classified in Division II [if] preempted by other * * * statutes.'' (Code § 80.101(c).) Inasmuch as this waiver authority is so narrowly defined, we are uncertain whether this authority is sufficient to address the range of preemptive concerns we have raised absent amendatory language.

[57] Letter to Bob Lanier, Mayor, City of Houston, TX, from Charles Dickhut, Chairman, AWHMT, dated January 18, 1996.

Surface Transportation Board [1]

[Finance Docket No. 32788]

North Coast Railroad Authority—Purchase Exemption— Southern Pacific Transportation Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 11343–45 North Coast Railroad Authority's purchase from Southern Pacific Transportation Company of 74.3 miles of rail line, known as the Willits segment, from milepost 142.5, near Outlet, CA, to milepost 68.2, at Healdsburg, CA, in Mendocino and Sonoma Counties, CA, subject to standard labor protective conditions.

DATES: This exemption will be effective on March 27, 1996. Petitions to reopen must be filed by April 9, 1996.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32788 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Christopher J. Neary, 110 South Main Street, Suite C, Willits, CA 95490.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6671 Filed 3–19–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 241 (Rev. 2)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Authority is delegated from the Commissioner of Internal Revenue to the Assistant Commissioner (Employee Plans and Exempt Organizations) to administer, in addition to the Voluntary Compliance Resolution Program described in Rev. Proc. 94–62 (1994–2 C.B. 778) (for which the authority was previously delegated), the Tax Sheltered Annuity Voluntary Correction Program (TVC program) described in Rev. Proc. 95–24 (1995–18 I.R.B. 7). The delegated authority may be redelegated to the Director, Employee Plans Division, with authority to redelegate such authority to the Chief of the TVC program, and the authority to approve correction statements under Rev. Proc. 95–24 may be redelegated by the Director of the Employee Plans Division to Branch Chiefs within the Division.

EFFECTIVE DATE: February 19, 1996.

FOR FURTHER INFORMATION CONTACT: John H. Turner, CP:E:EP:P:2, room 6702, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6214 (not a toll-free number).

Order No. 241 (Rev.2)

Effective date: February 19, 1996.

Voluntary Compliance Resolution Program and Similar Programs

(1) Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10, there is hereby delegated to the Assistant Commissioner (Employee Plans and Exempt Organizations) the authority to administer the following programs—

(a) The Voluntary Compliance Resolution Program described in Rev. Proc. 94–62 and its successors; and

(b) The Tax Sheltered Annuity Voluntary Correction Program (TVC program) described in Revenue Procedure 95–24 and its successors.

(2) The authority delegated in paragraph (1)(a) may be redelegated to the Director, Employee Plans Division, and may be further redelegated to the Chief, Voluntary Compliance Resolution Staff, Employee Plans Division. The Director of the Employee Plans Division may redelegate to Branch Chiefs within the Division the authority to approve compliance statements under Rev. Proc. 94–62 and its successors.

(3) The authority delegated in paragraph (1)(b) may be redelegated to the Director, Employee Plans Division, and may be further redelegated to the Chief of the TVC program, Employee Plans Division. The Director of the Employee Plans Division may redelegate to Branch Chiefs within the Division the authority to approve correction statements under Rev. Proc. 95–24 and its successors.

(4) To the extent that the authority consistent with this order may require ratification, it is hereby approved and ratified.

(5) Delegation Order No. 241 (Rev. 1), effective May 19, 1995, is superseded.

Dated: February 19, 1996.

James E. Donelson,

Acting Chief Compliance Officer.

[FR Doc. 96–6717 Filed 3–19–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

VA Residency Realignment Review Committee, Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the VA hereby gives notice of the establishment of the Residency Realignment Review Committee. VA has determined that this action is in the public interest.

The objectives of the Committee are to advise the Under Secretary for Health about the scope and structure of Veterans Health Administration's Residency Program, and about changes necessary to ensure that the program is effective in a future health care setting. The Committee will review various options for restructuring residency programs presently existing with VA and will provide the Under Secretary for Health a report with recommendations for restructuring VHA's graduate medical education programs.

The committee members will be selected on the basis of professional expertise in graduate medical education. Committee members will also represent various constituencies served by VA's Residency Program, including other

Federal and private sector health care related organizations, university-based academic communities, and Veteran Service Organizations. Some members will be selected from within VA to assure current policies and procedures are incorporated in the context of new recommendations developed by the Committee. Appointments will be for the duration of the Committee unless otherwise directed by the Secretary Veterans Affairs. The Committee will be terminated by the end of fiscal year 1996.

The Designated Federal Official for the Committee is Jan Lamoreaux, Office of Policy, Planning, and Performance (phone number: 202–565–7961).

Dated: March 11, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–6621 Filed 3–19–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 55
Wednesday, March 20, 1996

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

Correction

In rule document 96–1432 beginning on page 3226, in the issue of Wednesday, January 31, 1996, make the following correction:

§120.220 [Corrected]

On page 3243, in the second column, in §120.220, in the table, under the heading entitled ''Fee measured as percentage of guaranteed portion'', ''25%'' should read ''.25%''.

BILLING CODE 1505–01–D

federal register

Wednesday
March 20, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 570

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–3978–F–01]

RIN 2506–AB77

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Streamlining Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Community Development Block Grant (CDBG) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the CDBG regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the CDBG regulations clearer and more concise.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Deirdre Maguire-Zinni, Director, Entitlement Communities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–1577. (This telephone number is not toll-free). Hearing- or speech-impaired persons may access this number via TDD by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. While the Community Development Block Grant regulations serve as important program guidance, HUD has determined that the regulations can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the CDBG regulations repeat statutory language from the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act), and other statutes. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Other provisions in the CDBG regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts within part 570. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this final rule will consolidate these duplicative provisions.

Some provisions in the CDBG regulations are obsolete. For instance, Congress has not appropriated funds for the Urban Development Action Grant (UDAG) program since Fiscal Year 1988. While several approved grants have not yet reached the final close-out stage, it is unnecessary for HUD to maintain all of the regulations for these grants. Therefore, this rule removes many of the UDAG provisions from subpart G of part 570, such as those related to the submission and approval of applications for new grants. This rule also removes obsolete regulations regarding Urban Renewal projects in subpart N. Loans and grants are no longer authorized under the Urban Renewal program. All of the existing projects are the subject of close-out agreements that contain all the regulatory provisions. Therefore, HUD can remove the obsolete regulations in subpart N.

This final rule makes the following specific amendments:

1. Amends § 570.1 by updating paragraphs (a)(4) and (b) to refer to Special Purpose Grants, rather than the Secretary's Fund program;
2. Moves the essential language of § 570.2 into a new paragraph (c) in § 570.1, and removes the unnecessary remainder of § 570.2;
3. Amends § 570.3 by removing the statutory language from several definitions, by updating the definition of ''*CDBG funds*'' to include funds received under § 570.405 or under section 108(q) of the Housing and Community Development Act of 1974, and by updating the definition of ''*Discretionary grant*'' to refer to Special Purpose Grants, rather than to the Secretary's Fund;
4. Adds a streamlined § 570.5, which contains a reference to HUD's waiver authority in the CDBG program. This section was inadvertently removed in the General HUD Program Requirements final rule, published in the Federal Register on February 9, 1996 (61 FR 5198);
5. Amends § 570.200(a)(3) by removing the statutory language and clarifying the requirements for the HUD-administered Small Cities Program. This rule also corrects § 570.200(a)(3), which was recently amended in a final rule published on November 9, 1995 (60 FR 56892), to clarify that Insular areas must use 70 percent of their CDBG funds for activities that benefit low- to moderate-income persons each year;
6. Removes obsolete provisions regarding the New Communities program, maintaining a savings clause in § 570.403;
7. Corrects § 570.420(e)(2) to refer to § 570.208(d)(5) or (6), in addition to § 570.208(a);
8. Removes obsolete provisions regarding the UDAG program from subpart G;
9. Consolidates, to the extent possible, the provisions in §§ 570.488 and 570.606, which are essentially the same. In effect, this rule removes most of the information in § 570.488, maintaining a cross-reference to § 570.606, and makes minor conforming changes to § 570.606 so that it applies both to grantees and States/state recipients. This rule makes no substantive changes to the requirements in § 570.606;
10. Removes the statutory and other repetitive language in §§ 570.600, 570.601, 570.603, 570.604, 570.605, 570.608, 570.701, and 570.706, maintaining statutory citations for easy reference;
11. Makes conforming changes to §§ 570.703(d) and 570.704 to reflect the consolidation of §§ 570.488 and 570.606;
12. Removes obsolete provisions regarding Urban Renewal projects from subpart N, maintaining a savings clause in § 570.800; and
13. Makes conforming changes to § 570.904 to reflect this rule's amendment to § 570.601.

This final rule will eliminate approximately 34 pages of unnecessary regulations from the CFR.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines the Community Development Block Grant regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. At the time of development of regulations in part 570, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

Subpart A—General Provisions

2. Section 570.1 is amended by revising the section heading, paragraph (a)(4), and the second sentence of paragraph (b); and by adding a new paragraph (c), to read as follows:

§ 570.1 Purpose and primary objective.

(a) * * *

(4) Special Purpose Grants (subpart E);

* * * * *

(b) * * * In the application of the subparts to Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term *''CDBG funds''*, as defined in § 570.3, shall mean the grant funds under those programs. * * *

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)).

§ 570.2 [Removed]

3. Section 570.2 is removed.

4. Section 570.3 is amended by adding introductory text; and by revising the definitions of *''Age of housing''*, *''Buildings for the general conduct of government''*, *''CDBG funds''*, *''Discretionary grant''*, *''Extent of growth lag''*, *''Extent of housing overcrowding''*, *''Indian tribe''*, *''Metropolitan area''*, *''Metropolitan city''*, *''Microenterprise''*, *''Nonentitlement area''*, *''State''*, *''Unit of general local government''*, and *''Urban county''*; to read as follows:

§ 570.3 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

* * * * *

Age of housing means the number of year-round housing units, as further defined in section 102(a)(11) of the Act.

* * * * *

Buildings for the general conduct of government shall have the meaning provided in section 102(a)(21) of the Act.

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D, F, or § 570.405 of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part, urban renewal surplus grant funds, and program income as defined in § 570.500(a).

* * * * *

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with subpart E of this part.

* * * * *

Extent of growth lag shall have the meaning provided in section 102(a)(12) of the Act.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

* * * * *

Indian tribe shall have the meaning provided in section 102(a)(17) of the Act.

* * * * *

Metropolitan area shall have the meaning provided in section 102(a)(3) of the Act.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act.

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

* * * * *

Nonentitlement area shall have the meaning provided in section 102(a)(7) of the Act.

* * * * *

State shall have the meaning provided in section 102(a)(2) of the Act.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

Urban county shall have the meaning provided in section 102(a)(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

* * * * *

5. Section 570.5 is revised to read as follows:

§ 570.5 Wavers.

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

Subpart C—Eligible Activities

6. Section 570.200 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 570.200 General policies.

(a) * * *

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, Entitlement recipients and recipients of the HUD-administered Small Cities program in Hawaii must ensure that over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or § 570.208(d)(5) or (6) for benefitting low- and moderate-income persons; Insular area recipients must meet this requirement for each separate grant. The requirements for the HUD-administered Small Cities program in New York are in § 570.420(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are in § 570.430(e). In determining the percentage of funds expended for such activities:

* * * * *

7. Section 570.403 is revised to read as follows:

§ 570.403 New Communities.

The regulations for New Communities grants in this section, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to grants under the New Communities program.

Subpart F—Small Cities

8. Section 570.420 is amended by revising the first sentence of paragraph (e)(2) to read as follows:

§ 570.420 General.

* * * * *

(e) * * *

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities Program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of § 570.208(a) or § 570.208(d)(5) or (6). * * *

* * * * *

Subpart G—Urban Development Action Grants

9. Section 570.450 is revised to read as follows:

§ 570.450 Purpose.

The purpose of urban development action grants is to assist cities and urban counties that are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. This subpart G contains those regulations that are essential for the continued operation of this grant program.

§§ 570.451, 570.452, 570.453, 570.454, 570.455, 570.458, 570.459, and 570.460 [Removed]

10. Sections 570.451, 570.452, 570.453, 570.454, 570.455, 570.458, 570.459, and 570.460 are removed.

11. Section 570.461 is revised to read as follows:

§ 570.461 Post-preliminary approval requirements; Lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of notification, inspection, testing, and abatement as described in § 570.608, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

§ 570.462 [Removed]

12. Section 570.462 is removed.

13. Section 570.463 is amended by revising the undesignated sentence of paragraph (a) to read as follows:

§ 570.463 Project amendments and revisions.

(a) * * * The applicant must hold at least one public hearing prior to making a significant revision to the application.

* * * * *

14. Section 570.466 is revised to read as follows:

§ 570.466 Additional application submission requirements for Pockets of Poverty—employment opportunities.

Applicants for Action Grants under the Pockets of Poverty provision must describe the number and, to the extent possible, the types of new jobs (construction and permanent) that will be provided to the low- and moderate-income residents of the Pocket of Poverty as a direct result of the proposed project. If the application calls for job training programs (such as those related to the CETA program) or job recruiting services for the pocket's residents, then such proposed activities must be clearly and fully explained. HUD requires applicants to ensure that at least 75 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income persons and that at least 51 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income residents from the pocket. HUD encourages applicants to ensure that at least 20 percent of all permanent jobs are filled by persons from the pocket qualified to participate in the CETA program on a continuous basis. HUD requires all applicants to continuously use best efforts to ensure that at least 75 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income persons and that at least 51 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include:

(a) Provisions requiring lessees to follow hiring practices that the private participating party has determined will enable it to meet these requirements in the aggregate; and

(b) Provisions that will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

§ 570.467 [Removed]

15. Section 570.467 is removed.

Subpart I—State Community Development Block Grant Program

16. Section 570.480 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 570.480 General.

(a) * * * Other subparts of part 570 are not applicable to the State CDBG Program, except as expressly provided otherwise.

* * * * *

17. Section 570.488 is revised to read as follows:

§ 570.488 Displacement, relocation, acquisition, and replacement of housing.

The requirements for States and state recipients with regard to the displacement, relocation, acquisition, and replacement of housing are in § 570.606 and 24 CFR part 42.

Subpart K—Other Program Requirements

18. Section 570.600 is amended by revising paragraph (a) to read as follows:

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular areas program in § 570.405, with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

* * * * *

19. Section 570.601 is revised to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

20. Section 570.603 is revised to read as follows:

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

21. Section 570.604 is revised to read as follows:

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

22. Section 570.605 is revised to read as follows:

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

23. Section 570.606 is revised to read as follows:

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

(2) *Displaced person.* (i) For purposes of paragraph (b) of this section, the term ''*displaced person*'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as

applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the ''initiation of negotiations'' if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(*1*) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(*2*) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(*3*) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term ''*displaced person*-'' does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term ''*initiation of negotiations*'' means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) *Residential antidisplacement and relocation assistance plan.* In accordance with section 104(d) of the Act, each grantee must adopt, make public, and certify (or, as applicable, each State must ensure that each state recipient adopts, makes public, and certifies to the State) that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (c)(1) of this section), and relocation assistance (paragraph (c)(2) of this section). As applicable, section 106(d)(5)(A) of the Act requires the state recipient also to certify to the State that it will minimize displacement of persons as a result of assisted activities. Except with regard to the State CDBG Program, the plan shall also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any activities assisted under this part.

(1) *One-for-one replacement of low/moderate-income dwelling units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units.

(ii) Replacement low/moderate-income dwelling units may be provided by any government agency or private developer, and must meet the following requirements:

(A) The units must be located within the jurisdiction of the grantee (or the state recipient, as applicable). To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(B) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee (or state recipient, as applicable) may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the grantee (or state recipient, as applicable) has provided the information required under paragraph (c)(1)(iii)(G) of this section.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

(*1*) No person was displaced from the unit as a direct result of an assisted activity (see definition of ''*displaced person*'' in paragraph (c)(3)(ii) of this section; and

(*2*) The unit was vacant for at least three months before execution of the agreement between the grantee and the property owner.

(D) The units must initially be made available for occupancy at any time during the period beginning one year before the grantee's (or state recipient's, as applicable) submission of the information required under paragraph (c)(1)(iii) of this section and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

(E) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy. Replacement low/moderate-income dwelling units may include, but are not limited to, public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937.

(iii) Before the grantee (or state recipient, as applicable) enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee (or state recipient, as applicable) must make public, and submit the

following information in writing to the HUD Field Office (or State, as applicable) for monitoring purposes:

(A) A description of the proposed assisted activity;

(B) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and

(G) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the HUD-approved consolidated plan; or, for purposes of the State CDBG program, consistent with the housing needs of low- and moderate-income households in the jurisdiction. A grantee that is not required to submit a consolidated plan to HUD must submit information demonstrating that the proposed replacement is consistent with the housing needs of low- and moderate-income households in the jurisdiction.

(iv)(A) The one-for-one replacement requirement of paragraph (c)(1) of this section does not apply to the extent the Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the jurisdiction of the grantee (or state recipient, as applicable). In determining the adequacy of supply, HUD will consider whether the demolition or conversion of the low/moderate-income dwelling units will have a material impact on the ability of low- and moderate-income households to find suitable housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors: the housing vacancy rate in the jurisdiction; the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted); the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction; the needs analysis contained in any applicable HUD-approved consolidated plan; and relevant past or predicted demographic changes.

(B) HUD may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the jurisdiction of the grantee (or state recipient, as applicable). Such additional dwelling units shall be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee (or state recipient, as applicable) must submit the request for determination under paragraph (c)(1)(iv) of this section directly to the Field Office (or State, as applicable). Simultaneously with the submission of the request, the grantee (or state recipient, as applicable) must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD (or to the State, as applicable) additional information supporting or opposing the request. For purposes of the State CDBG program, if the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to HUD.

(2) *Relocation assistance under section 104(d) of the Act.* Under section 104(d), each ''*displaced person*'' (defined in paragraph (c)(3)(ii) of this section) is entitled to choose to receive either assistance at URA levels (see paragraph (b) of this section) or the following relocation assistance:

(i) Advisory services at the levels described in 49 CFR part 24, subpart C (General Relocation Requirements). Tenants shall be advised of their rights under the Fair Housing Act (42 U.S.C. 3601–19) and of replacement housing opportunities in such a manner that, to the extent feasible, will provide a choice between relocating within their neighborhoods and other neighborhoods consistent with the responsibility of the grantee (or the state recipient, as applicable) to affirmatively further fair housing;

(ii) Payment for moving expenses at the levels described in 49 CFR part 24, subpart D.

(iii) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(iv) Interim living costs. The grantee (or state recipient, as applicable) shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:

(A) The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or

(B) The person is displaced from a ''low/moderate-income dwelling unit,'' none of the comparable replacement dwelling units to which the person has been referred qualifies as a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section), and a suitable low/moderate-income dwelling unit is scheduled to become available in accordance with paragraph (c)(1) of this section. (Because a ''comparable replacement dwelling unit'' may be made affordable to a person through a rental assistance payment and its market rent may exceed the Fair Market Rent (FMR) under the Section 8 Existing Housing Program, it may not meet the definition of a ''*low/moderate-income dwelling unit*''.)

(v) Replacement housing assistance. Persons are eligible to receive one of the following two forms of replacement housing assistance:

(A) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the ''Total Tenant Payment,'' as determined under § 813.107 of this title. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance (if available) provided through the Local Public Agency under Section 8 of the United States Housing Act of 1937. If a Section

8 certificate or housing voucher is provided to a person, the grantee (or state recipient, as applicable) must provide referrals to comparable replacement dwelling units for which the owner is willing to participate in the Section 8 Existing Housing Program. To the extent that cash assistance is provided, it will be provided in installments.

(B) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the ''Total Tenant Payment,'' as determined under § 813.107 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a Federally insured bank or savings and loan institution conducting business within the jurisdiction of the grantee (or state recipient, as applicable). To the extent necessary to minimize hardship to the household, the grantee (or state recipient, as applicable) shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(C) Displaced low/moderate income tenants shall be advised of their right to elect relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the regulations appearing at 49 CFR part 24 as an alternative to the relocation assistance available under paragraph (c)(2) of this section.

(3) *Definitions.* For purposes of providing section 104(d) assistance under paragraph (c) of this section:

(i) *Comparable replacement dwelling unit.* The term ''*comparable replacement dwelling unit*'' means a dwelling unit that:

(A) Meets the criteria of 49 CFR 24.2(d) (1) through (6); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the ''Total Tenant Payment'' determined under § 813.107 of this title, after taking into account any rental assistance the household would receive.

(ii) *Displaced person.* (A) The term ''*displaced person*'' means any low/moderate-income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iv) of this section) or demolition in connection with an activity assisted under this part. A permanent involuntary move for an assisted activity includes a permanent move from real property that is made:

(*1*) After notice by the grantee (or state recipient, as applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD for grant, loan, or loan guarantee funds under this part that are later granted; or, for purposes of the State CDBG Program, if the move occurs after the initial submission of an application to the State by the recipient requesting assistance under this subpart that is later granted for the requested activity.

(*2*) After notice by the property owner, to move permanently from the property, if the move occurs after the date of submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(*3*) Before the date described in paragraph (c)(3)(ii)(A) (*1*) or (*2*) of this section, if either HUD or the grantee (or State or state recipient, as applicable) determines that the displacement directly resulted from the conversion of a low/moderate-income dwelling unit or demolition in connection with the requested activity.

(*4*) After the execution of the agreement by the grantee (or state recipient, as applicable) covering the rehabilitation or demolition, if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(*i*) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the execution of such agreement (or, for purposes of the State CDBG Program, before the ''initiation of negotiations''), or the ''Total Tenant Payment'' for the person as determined under § 813.107 of this title; or

(*ii*) The tenant, required to relocate temporarily for the activity, does not return to the building/complex; and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary location (including the cost of moving to and from the temporary location and any increased housing costs), or other conditions of the temporary relocation are not reasonable; or

(*iii*) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(B) Notwithstanding the provisions of paragraph (c)(3)(ii)(A) of this section, the term ''*displaced person*'' does not include:

(*1*) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(*2*) A person who moves into the property after the date of the notice described in paragraph (c)(3)(ii)(A) (*1*) or (*2*) of this section, but received a written notice of the expected displacement before commencing occupancy.

(*3*) A person who is not displaced as defined under 49 CFR 24.2(g)(2).

(*4*) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the conversion of a low/moderate-income dwelling or demolition in connection with an assisted activity. For a grantee or State to exclude a person on this basis, HUD must concur in that determination.

(C) A grantee may, at any time, request HUD to determine whether a person is a displaced person under paragraph (c) of this section.

(iii) *Low/moderate-income dwelling unit.* The term ''*low/moderate-income dwelling unit*'' means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.

(iv) *Standard condition and substandard condition suitable for rehabilitation.* (A) If the grantee has a HUD-approved consolidated plan, the definitions of ''*standard condition*'' and ''*substandard condition suitable for rehabilitation*'' established in the plan will apply.

(B) For purposes of the State CDBG program, a State may define the terms ''*standard condition*'' and ''*substandard condition suitable for rehabilitation*'', or

it may allow the state recipient to establish and make public its definition of these terms. If a State permits the recipient to establish its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(v) *Vacant occupiable dwelling unit.* The term ''*vacant occupiable dwelling unit*'' means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement by the grantee (or state recipient, as applicable) covering the rehabilitation or demolition.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) *Responsibility of grantee or State.* (1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506–0102.)

24. Section 570.608 is amended by revising paragraph (a) to read as follows:

§ 570.608 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and regulations in 24 CFR part 35, subpart B apply to residential structures constructed or rehabilitated with assistance provided under this part 570.

* * * * *

Subpart M—Loan Guarantees

25. Section 570.701 is amended by revising the definition of ''Public entity'', to read as follows:

§ 570.701 Definitions.

* * * * *

Public entity shall have the meaning provided for the term ''*Eligible public entity*'' in section 108(o) of the Act.

* * * * *

26. Section 570.703 is amended by revising paragraphs (d)(1) and (d)(2), to read as follows:

§ 570.703 Eligible activities.

* * * * *

(d) * * *

(1) Required under the provisions of § 570.606(b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of § 570.606(d).

* * * * *

27. Section 570.704 is amended by revising paragraphs (a)(2)(i)(D), (b)(8)(vii), and (e); to read as follows:

§ 570.704 Application requirements.

(a) * * *

(2) * * *

(i) * * *

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under § 570.606 for minimizing displacement of persons as a result of its proposed activities.

* * * * *

(b) * * *

(8) * * *

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.606.

* * * * *

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition, and replacement of low/moderate-income housing requirements in § 570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

28. Section 570.706 is revised to read as follows:

§ 570.706 Federal guarantee; subrogation.

Section 108(f) of the Act provides for the incontestability of guarantees by HUD under subpart M of this part in the hands of a holder of such guaranteed obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

Subpart N—Urban Renewal Provisions

29. Section 570.800 is revised to read as follows:

§ 570.800 Urban Renewal regulations.

The regulations governing urban renewal projects and neighborhood development programs in subpart N of this part, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to such projects and programs.

§§ 570.801, 570.802, 570.803, and 570.804 [Removed]

30. Sections 570.801, 570.802, 570.803, and 570.804 are removed.

Subpart O—Performance Reviews

31. Section 570.904 is amended by revising the introductory text of paragraph (b), and by revising paragraph (c), to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review Criteria.

* * * * *

(b) *Review for equal opportunity.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1, together with section 109 of the Act (see § 570.602), prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

* * * * *

(c) *Fair housing review criteria.* See the requirements in the Fair Housing Act (42 U.S.C. 3601–20), as well as § 570.601(a), which sets forth the grantee's responsibility to certify that it will affirmatively further fair housing.

* * * * *

Dated: March 7, 1996.

Mark C. Gordon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 96–6418 Filed 3–19–96; 8:45 am]

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Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180
Hazardous Materials in Intrastate Transportation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

[Docket No. HM–200; Notice No. 96–6]

RIN 2137–AB37

Hazardous Materials in Intrastate Transportation

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

ACTION: Supplemental notice of proposed rulemaking (SNPRM) and notice of public meeting.

SUMMARY: Based on the merits of comments received in response to a notice of proposed rulemaking (NPRM) to apply the Hazardous Materials Regulations (HMR) to intrastate commerce by motor vehicle, RSPA is issuing these additional proposals. In this document RSPA proposes: Exceptions from the HMR for certain small quantities of hazardous materials transported and used by carriers, particularly private carriers, in the conduct of their businesses; exceptions for the continued use of non-specification smaller cargo tank motor vehicles (i.e., less than 13,250 liters (3,500 gallons) capacity) used exclusively in intrastate transportation of flammable liquid petroleum products; and an exception from certain requirements that address registered inspections of these smaller cargo tank motor vehicles, used exclusively for transporting flammable liquid petroleum fuels. These proposed actions are aimed at reducing regulatory burdens on persons subject to the HMR where costs may be disproportional to safety benefits. This proposal may affect certain State variances.

RSPA also is announcing a public meeting to solicit comments on the proposals contained in this docket.

DATES: *Written comments.* Comments must be received on or before June 17, 1996.

Public Meeting. A public meeting will be held from 9:00 a.m. to 4:00 p.m. on May 14, 1996 in Washington, DC. Exceptions for materials of trade will be discussed from 9:00 a.m. to 12 noon. Cargo tank and registered inspection exceptions will be discussed from 1:00 to 4:00 p.m.

ADDRESSES: *Comments.* Address comments to Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–200) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone: 202–366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday except Federal holidays.

Public Meeting. The public meeting will be held at the Federal Aviation Administration Auditorium, Third Floor, 800 Independence Avenue, SW, Washington, DC. Any person wishing to attend and/or present an oral statement at the public meeting should notify Diane LaValle, by telephone or in writing, at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number; and anticipated length of the presentation, not to exceed 10 minutes. Written text or oral statements should be presented to the hearing officer prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Jackie Smith or Diane LaValle, 202–366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) do not apply to highway transportation by intrastate carriers with the exception of registration requirements and transportation of hazardous substances, hazardous wastes, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks. The HMR apply to all hazardous materials transported in commerce by rail car, aircraft or vessel. A July 1986 report by the Office of Technology Assessment (OTA) entitled ''Transportation of Hazardous Materials'' highlighted the need for national uniformity in the regulation of hazardous materials transportation and packaging requirements. The reporting of hazardous materials incidents was specifically mentioned in the report as a prime area for extending the HMR to intrastate transportation. Of particular concern is a potential for lack of uniform communication and a potential for miscommunication to emergency responders in identifying the presence of hazardous materials regardless of whether transportation of the hazardous materials is intrastate or interstate. Based on this report and a requirement in the Federal hazardous materials transportation law (49 U.S.C. 5103(b)(1)) that RSPA regulate the transportation of hazardous materials in intrastate commerce, RSPA proposed to extend the application of the HMR to all intrastate transportation of hazardous materials in commerce in a notice of proposed rulemaking (NPRM) on July 9, 1993 [58 FR 36920] and a correction to the NPRM on July 15, 1993 [58 FR 38111].

RSPA proposed that all intrastate shippers and carriers comply with the HMR. The NPRM requested comments on the need for, and potential consequences of, extending the application of the HMR to all intrastate transportation in commerce. Except for bulk packagings, RSPA proposed to require compliance within one year after publication of the final rule. RSPA proposed a three-year transition period (from October 1, 1993) for continued use of certain bulk packagings used to transport hazardous materials not currently regulated in intrastate commerce, provided these packagings are used exclusively by intrastate carriers and are specifically authorized by the State in which they are operated. RSPA believed that the proposed three-year transition period would provide adequate time for intrastate motor carriers to bring their bulk packagings into conformance with the HMR.

More than 230 comments were received in response to the NPRM, a significant number addressing matters that were not raised in response to the advance notice of proposed rulemaking RSPA published on June 29, 1987 [52 FR 24195]. This SNPRM is responsive to many of those matters, including concerns raised in regard to the operation of smaller cargo tank motor vehicles.

II. Issues Addressed in This Supplemental Notice

The issues addressed in this supplemental notice of proposed rulemaking (SNPRM) are exceptions for: (1) ''materials of trade,'' (2) non-specification smaller cargo tank motor vehicles (i.e., less than 13,250 liters (3,500 gallon) capacity) used exclusively in intrastate transportation of flammable liquid petroleum products, and (3) certain requirements addressing use of registered inspectors for these smaller cargo tank motor vehicles used to transport flammable liquid petroleum fuels only.

A. Materials of Trade

If the proposals in the July 1993 notice were adopted without change, all applicable regulations in the HMR would apply to the carriage of many materials of trade. RSPA received approximately a dozen comments on the issue of materials of trade.

The HMR currently provide certain limited exceptions for hazardous materials that are transported by private carriers as ''materials of trade.'' For example, § 173.5 provides exceptions from certain marking and packaging requirements for private carriers transporting specified quantities of formulated agricultural chemicals. However, the commenters requested that RSPA consider additional regulatory exceptions to allow for the transportation of hazardous materials that are used in support of business operations, particularly with regard to transportation by private carriers in intrastate commerce, many of whom are small business entities.

The Conference on Safe Transportation of Hazardous Articles, Inc., and the Edison Electric Institute's Utility Nuclear Waste and Transportation Program strongly encouraged RSPA to not regulate local movements of relatively small quantities of hazardous materials used in the field (e.g., those carried by plumbers, doctors, roofers and lawn service personnel). The Utility Solid Waste Group submitted a petition for rulemaking (P–1248) proposing exceptions from the HMR for materials of trade. Other petitions addressing certain exceptions for materials of trade include the Georgia Public Service Commission (P–1209), the Association of American Railroads (P–1058), and the Maryland Department of Transportation (P–1098). These commenters suggest that thousands of intrastate businesses affected by HM–200 would face impracticable regulatory requirements. As an example, they cite a routine situation involving a consumer commodity (class ORM–D) hazardous material (e.g., a can of spray paint) transported in a service vehicle. Under the current regulations, when transported for use by the carrier, the consumer commodity would have to be transported in a closed and marked outer box, thereby making it impractical to use.

Prompted by comments submitted to the docket and petitions for rulemaking, RSPA is proposing to limit regulatory requirements for the transportation of certain hazardous materials used as materials of trade. Factors leading to RSPA's determination include: (1) The relatively small quantity of these hazardous materials that are normally carried on a motor vehicle; (2) the general reliance on a DOT specification or U.N. standard packaging (or components thereof) as the principal packaging; and (3) a motor vehicle operator's familiarity with the hazardous material.

These materials of trade would include, subject to certain limitations, hazardous materials carried on a motor vehicle for protecting the health and safety of the motor vehicle operator, such as insect repellant or self-contained breathing apparatus or for supporting the operation or maintenance of a motor vehicle, such as a spare battery or engine starting fluid. They would also include certain hazardous materials carried by a private motor carrier engaged in a principal business which is other than transportation, such as lawn mowing, plumbing, welding, and door-to-door sale of consumer goods.

In proposed § 173.6, RSPA has identified types and quantities of certain categories of hazardous materials commonly carried as materials of trade for which exceptions would be provided. Specific limitations and provisions are proposed to strike a balance between safety and costs. Each hazard class and division has been considered to determine how the materials of trade exception may be applied to maximize the number of entities and operations that would be covered by it, while minimizing the risks to hazmat employees, emergency responders, and members of the general public who may be exposed to these hazardous materials during transportation.

Proposed § 173.6 applies limitations on the maximum quantity per packaging and the total quantity per motor vehicle. For example, § 173.6 proposes to allow a gross mass of up to 30 kg (66 pounds) per packaging for a Class 8, packing group II or III material, and a gross mass of up to 75 kg (165 pounds) for a Division 2.1 material. Furthermore, the aggregate gross weight of all materials of trade on a motor vehicle, as proposed, may not exceed 150 kg (330 pounds). Proposed § 173.6 would exclude the following materials that present significant risk: (1) Self-reactive (see § 173.124(a)(2)); (2) poisonous-by-inhalation (see § 173.133); and (3) specific UN identification numbers associated with the hazardous materials description in the § 172.101 Table.

Additional provisions in § 173.6 include packaging and hazard communication requirements. The packaging for a material of trade must be either the manufacturer's original packaging or a packaging of equal or greater strength and integrity. For example, a flammable liquid from a 55-gallon polyethylene drum could be repacked in a smaller polyethylene drum or a steel drum that provides equal or greater strength and integrity. In addition, § 173.6 proposes to except receptacles (e.g., cans and bottles) from the outside packaging requirement if they are secured against movement in cages, carts, bins, boxes or compartments.

For gasoline, packaging must be made of metal or plastic and conform to requirements of the HMR, or those of the Occupational Safety and Health Administration specified in 29 CFR 1910.106. By the action it is proposing in this SNPRM, RSPA intends that State and local fire codes that prohibit use of glass containers for gasoline not be preempted.

A cylinder or other pressure vessel containing a Division 2.1 or 2.2 material must fully conform to the packaging requirements of the HMR and the qualification, maintenance and use of cylinder requirements in § 173.34. An exception from the requirements for use of an outer packaging is provided in proposed § 173.6(d)(3).

Hazard communication requirements proposed in § 173.6 specify that DOT specification cylinders, with the exception of the DOT–39, would continue to be subject to marking and labeling requirements specified in the HMR. Each DOT–39 cylinder must display the markings specified in § 178.65–14. Any other packaging must be marked with an indication of the hazardous material that it contains. The hazard communication requirement specifies that a vehicle operator be informed that a material of trade is being carried on the motor vehicle and of the requirements pertaining to the transportation of the material of trade, e.g., packaging and vehicle quantity limitations, packaging markings and securement of packagings to protect against damage.

When transported by motor vehicle in conformance with § 173.6, materials of trade would not be subject to any other requirements of the HMR except as stated in the section. A provision is proposed in paragraph (f) of § 173.6 to clarify that both materials of trade and other hazardous materials could be transported on the same motor vehicle without affecting the applicability of the exception provided for the material of trade. By providing an exception for materials of trade, RSPA believes it is taking a common sense approach in regard to applicability of the HMR to

small and local business entities. The anticipated beneficiaries of materials of trade exceptions would primarily be small businesses that perform services such as plumbing, welding, lawn care, painting, pest control, swimming pool maintenance and a number of different activities related to farming. Companies, such as public utilities, will also benefit in regard to operation of their service vehicles. In addition, the proposed exception would apply to any type of carriage by motor vehicle (including common motor carriers) if the material, such as engine starting fluid, is used in association with the operation of the motor vehicle in which it is transported. RSPA is proposing application of these exceptions to both interstate and intrastate carriage. No new or additional cost burdens are anticipated.

B. Exceptions for Non-Specification Bulk Packagings Used in Intrastate Transportation

RSPA received more than 100 comments from petroleum carriers and farmers and their trade associations regarding the elimination of exceptions authorized by the States. Many of these commenters recommended that States be allowed the flexibility to determine who would be subject to the regulations. Petroleum marketers from several States contended that, if the proposal to regulate the transportation of hazardous materials in intrastate commerce replaces current State regulations, they would be forced to remove cargo tanks from hazardous materials service or retrofit them to conform to the applicable DOT specifications at prohibitive costs. In comments responding to the NPRM, the Petroleum Marketers Association of American (PMAA) urged—

* * * RSPA to provide an exemption from the requirements of 49 CFR part 180 and subparts D and F of part 173 for non-specification bulk packagings with capacities less than 3,500 gallons used to transport Hazard Classes 2.1 and 3 materials in intrastate commerce only where (1) the packaging is used exclusively in a State where its use for the material being transported was specifically authorized by statute or regulation of that State, and was specifically and continuously authorized on or before October 1, 1993; (2) the packaging complies with all requirements of the State; and (3) each shipment is offered in conformance with all other applicable requirements of this subchapter.

PMAA believes that—

Providing an exemption from the specification cargo tank requirements for small business petroleum marketers, as outlined above, would hardly create a glaring loophole in the HMR.

If RSPA denies this request for an exemption, then PMAA respectfully requests that a ten to fifteen year transition period be given in proposed subpart 171.1(c) to allow affected small business petroleum marketers to fully utilize their current cargo tanks.

In an attempt to maintain an acceptable level of safety without unduly burdening the many small businesses that operate smaller cargo tank motor vehicles, RSPA is proposing in paragraph (b) of § 173.8 to except from the HMR's cargo tank specification requirement certain cargo tank motor vehicles that have a capacity of less than 13,250 liters (3,500 gallons). As provided in paragraph (c) of § 173.8, excepted cargo tanks may only be operated by intrastate motor carriers for transportation of flammable liquid petroleum products in conformance with the laws of the States in which they are operated. RSPA believes that this proposed exception is responsive to PMAA's request, thereby minimizing the economic impacts on those small intrastate businesses that currently operate non-specification smaller cargo tank motor vehicles. Since the exception applies only to those smaller cargo tank motor vehicles in operation prior to July 1, 1996, no additional non-specification smaller cargo tank motor vehicles would be authorized after that date. As these small businesses replace equipment, they would be required to replace such equipment with specification cargo tank motor vehicles. Comments are requested on the proposal to allow continued use of these non-specification smaller cargo tank motor vehicles beyond the three years initially proposed and the 10 to 15 years requested by PMAA. If comments on this issue provide sufficient justification to adopt any specific time limitation after October 1, 1996, e.g., a three year or a 10 to 15 year limitation, RSPA may revise the final rule issued under this docket accordingly.

It must be noted that, although RSPA is proposing to provide an exception from the specification requirements for smaller cargo tanks used to transport liquid petroleum products, all other applicable requirements of the HMR would apply. These include marking and placarding vehicles, hazmat training requirements, shipping paper and emergency response information requirements, and the applicable modal requirements. The extended (October 1, 1996) compliance period proposed in § 173.8(b) covers only parts 173 and 178 (for non-specification petroleum cargo tank motor vehicles) and part 180. In addition, the provisions of part 180 that apply to a DOT MC–306 cargo tank for an annual external visual and leakage test, a five year visual and hydrostatic or pneumatic test, would be applicable to smaller cargo tanks that are otherwise excepted from the specification requirements; however, the cargo tank manhole assembly requirements in § 180.405(g) would not apply. If periodic maintenance, inspections and repairs are being performed on smaller non-specification tanks, as indicated by PMAA and other commenters, then any incremental costs associated with this rulemaking would be minimal. If they are not being performed, RSPA believes those costs associated with ensuring an acceptable level of continuing cargo tank integrity (e.g., no leakage, secure closures, and no significant damage) are justifiable when considering such cargo tank motor vehicles are used for transportation of gasoline.

PMAA also requested that an exception be provided for cargo tanks of less than 13,250 liters (3,500 gallons) used to transport Class 2.1 materials. RSPA has not proposed to include cargo tank motor vehicles with a capacity of less than 13,250 liters (3,500 gallons) used to transport Class 2.1 in the exception. The HMR provide an exception for the use of non-specification cargo tanks for transporting liquefied petroleum gas (see § 173.315(k)) and there is no proposal to revise or eliminate that exception. Therefore, providing the additional exception requested by PMAA is not necessary.

Also proposed in § 173.8 is an authorization for the use of other non-specification bulk packagings authorized by State regulations until June 30, 1999, as initially proposed in the NPRM. Those bulk packagings would not be required to conform to the requirements specified in § 173.8(c), including the requirements in part 180 as they were MC 306 cargo tanks. After June 30, 1999, these bulk packagings must be in full compliance with the requirements of the HMR.

C. Registered Inspector Exception

Prior to January 1, 1991, the HMR's inspection and periodic retest requirements did not apply to cargo tank motor vehicles with a capacity of 3,000 gallons or less used exclusively in flammable liquid service. This exception was fully evaluated and ultimately removed in a final rule published June 12, 1989 under Docket HM–183 [54 FR 24982]. Commenters to Docket HM–183 representing the petroleum marketing industry (i.e., distributors of gasoline, fuels and other petroleum products) opposed the change. Some of these commenters also objected to the proposal in this rulemaking to apply the inspection and periodic retest

requirements to cargo tanks used in intrastate transportation.

PMAA commented that compliance with Federal cargo tank regulations as adopted under HM–183 for inspection and testing would result in the loss of a substantial amount of work and service hours for employees and cargo tanks. Currently, a motor carrier must employ a registered inspector or must have the cargo tank inspected by a registered inspector. PMAA said that this may result in a significant loss of revenue due to removal of a cargo tank from service and payment of fees to a registered inspector.

Several commenters stated that they had already performed periodic maintenance and inspection of their smaller cargo tanks and, therefore, the proposal to subject these vehicles to periodic inspections was unnecessary. One commenter asserted that its vehicles were inspected annually by State fire marshals and, therefore, the exception should be retained. RSPA believes that only a few State and local agencies have enacted regulations governing the maintenance and testing of smaller cargo tanks.

RSPA proposes to revise § 180.409 to allow a person to perform an annual external visual inspection and leakage test on a cargo tank motor vehicle of less than 13,250 liters (3,500 gallons) capacity that is used exclusively for transportation of flammable liquid petroleum fuels (e.g., gasoline and diesel fuel) without being a registered inspector. Under this proposal, that person would be permitted to use one of its employees to perform the visual inspection and leakage test as required by § 180.407(c). The employee would not be required to be a registered inspector, although the employee would have to be trained and be familiar with the inspection requirements (§ 180.407) for the cargo tank being inspected, how to identify defects and the proper performance of the leakage test. The documentation required to be maintained by § 180.417(b) could be signed by the employee rather than a registered inspector. The employee performing the annual visual inspection and leakage test would be subject to the appropriate training required in part 172, subpart H—Training. Routine cargo tank maintenance could be performed by the operator. Other tests required for a cargo tank by § 180.407(c) would still be performed by a registered inspector. Cargo tank repair, modification, stretching and rebarreling would be performed by a registered facility. RSPA believes that this proposal will provide savings to both interstate and intrastate motor carriers who operate these smaller cargo tank motor vehicles.

III. Discussion of Other Comments to the NPRM

Many commenters to the NPRM mistakenly believe that issuance of a final rule under this docket will require intrastate motor carriers to comply with the provisions of the Federal Motor Carrier Safety Regulations (FMCSR). For example, commenters stated that additional costs would be incurred by farmers to obtain a Commercial Driver's License (CDL) with a hazardous materials endorsement, and insurance.

RSPA does not believe that the proposed rule, if adopted, will subject any additional carriers to the FMCSR. All intrastate motor carriers that meet the criteria in 49 CFR 383.23 are already required to possess a CDL, unless a waiver is granted pursuant to 49 CFR 383.7 (and the proposed rule would not change this waiver authority). Intrastate carriers of hazardous materials in bulk are already required to meet the financial responsibility requirements in 49 CFR Part 387, and this will not change.

RSPA has not proposed to extend the authority of the FMCSR to cover all intrastate motor carriers, but assumes confusion may have resulted from the provision in § 177.804, which states that persons subject to the HMR must comply with the provisions in the FMCSR, to the extent those regulations apply. Section 177.804 does not broaden the application of requirements for motor carriers beyond those specifically required by the FMCSR. (See 49 CFR part 390.) For example, drivers of commercial motor vehicles may not drive in interstate commerce unless they meet certain medical qualification requirements. A driver for an intrastate motor carrier would only need to comply with those requirements if the State in which the carrier operates has adopted such requirements. If commenters believe that this rule would impose any additional costs, from application of the FMCSR or another agency's requirements, they should explain those costs and quantify them in detail.

Several commenters objected to applying the HMR to the intrastate transportation of anhydrous ammonia. Again, RSPA does not believe that this proposed rule would make any change in the HMR's applicability to the transportation of anhydrous ammonia in intrastate commerce. Anhydrous ammonia is regulated as a hazardous substance when transported in quantities of 100 pounds or more and that the transportation of hazardous substances in intrastate commerce has been subject to the HMR since 1980. RSPA is required by law to regulate all hazardous substances designated by the Environmental Protection Agency (EPA) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). In carrying out the statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA.

Other comments reflected a misunderstanding regarding RSPA's intentions for current exceptions provided in the HMR for certain motor carrier operations. Currently, the HMR provide exceptions for use of non-specification ammonia/liquified petroleum gas cargo tanks in § 173.315, paragraphs (k), (m), and in Note 17 of the table. Section 173.315(k) authorizes the use of non-specification cargo tanks for the transportation of liquified petroleum gas in intrastate commerce, under specified conditions. Non-specification cargo tanks are authorized for anhydrous ammonia in § 173.315(m) and Note 17 of the table. Other exceptions for agricultural operations and oil field service vehicles are found in §§ 173.5 and 173.7, respectively. RSPA has not proposed to eliminate these exceptions from the HMR. Accordingly, if a final rule is issued under this docket, the provisions authorizing the use of non-specification packagings provided in those sections would remain valid under the conditions specified.

Comments have been received under this proceeding and under Docket HM–222 [60 FR 17049], expressing the view that business entities, such as those engaged in agriculture, should be permitted to conduct their operations under the provisions of State rather than Federal law if they choose. For many years, DOT has encouraged States to adopt the HMR. RSPA sponsors an outreach program called the Cooperative Hazardous Materials Enforcement Development Program (COHMED) that fosters coordination, cooperation, and communication between Federal and State agencies and Indian Nations having regulatory and enforcement responsibilities for the safe transportation of hazardous materials. The Federal Highway Administration (FHWA) requires States to adopt and enforce its Federal Motor Carrier Safety Regulations (FMCSR 49 CFR parts 390–397) and highway-related portions of the HMR, or comparable State rules and regulations, to qualify for grants under

FHWA''s Motor Carrier Safety Assistance Program (MCSAP).

All States have adopted the HMR for highway transportation however, some have provided exceptions from their application, particularly in regard to intrastate highway carriers. Some States have provided substantial exceptions from all regulation. For example, one State provides exceptions for significant quantities of hazardous materials when transported from retailer to final agricultural end user, or between final end users from farm to farm. Included in the exceptions are (1) 16,000 pounds (aggregate gross weight) or less ammonium nitrate fertilizer, (2) certain agricultural pesticides in Class 3 or Division 6.1 when moved in quantities of 5,000 pounds or less or 500 gallons or less volume in solution, and (3) gasoline and liquefied petroleum gas in quantities of 3,000 gallons or less. These materials are not subject to marking, labeling, placarding, shipping paper, emergency response information, or training requirements, except that vehicles transporting gasoline and liquefied petroleum gas must be placarded. RSPA has been asked to recognize such exceptions. RSPA believes that such broad exceptions are not in the public interest and are contrary to the Congressional intent that there be a uniform system of regulation for the safe transportation of hazardous materials. Of particular concern is the potential for lack of uniform communication and miscommunication to emergency responders in any location where they may encounter hazardous materials incidents.

On the other hand, RSPA does provide an opportunity for States to obtain authorization for requirements that differ from those in the Federal regulations. A State may apply for a waiver of preemption for requirements that otherwise would be preempted by the Federal hazardous materials transportation law. This waiver provision, in 49 U.S.C. 5125(e), authorizes RSPA to waive preemption for a State requirement that provides at least an equivalent level of safety as the Federal law and regulations and is not an unreasonable burden on commerce. RSPA has established procedures for this waiver process in 49 CFR 107.215–227.

IV. Regulatory Reinvention Initiative

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''get out of Washington and create grassroots partnerships'' with people affected by agency regulations. RSPA conducted an extensive review of the HMR to identify regulations that should be eliminated or revised. RSPA also has held 11 public meetings requesting comment on its hazardous materials program during 1995 at various locations nationwide and anticipates having more public meetings in 1996. Commenters at the public meetings addressed issues such as the need for exceptions for materials of trade and expressed concerns regarding the potential impacts of this rulemaking proceeding. Several stated that elimination of exceptions provided by States could cause them extreme hardships. A number of those concerns are addressed in this preamble and proposal. The proposals in this SNPRM are consistent with the President's goal to minimize regulatory requirements on industry, while maintaining an acceptable level of safety.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This supplemental notice of proposed rulemaking (SNPRM) is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to review by the Office of Management and Budget. The SNPRM is considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034] due to significant public and congressional interest. A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This supplemental notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This proposed rule concerns packaging, labeling, marking, placarding, and shipping documentation for hazardous materials. If adopted, this rule would preempt State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. RSPA lacks discretion in this area and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA proposed that the effective date of Federal preemption for these requirements be one year after publication of the final rule.

C. Regulatory Flexibility Act

This supplemental notice of proposed rulemaking would have minimal impact on shippers and carriers, some of whom may be small business entities. Based on information concerning the size and nature of entities likely affected by this rule, I certify that this supplemental notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Many information collection requirements contained in the HMR are subject to approval by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and OMB implementing regulations in 5 CFR 1320. RSPA is reevaluating information collection requirements for accuracy and conformance with the new law. Although neither this supplemental notice nor the preceding July 1993 notice specifically address sections of the regulations containing information collection requirements, applying the HMR to previously unregulated persons has the effect of making those persons subject to any applicable information

collection requirements of the HMR, such as those requiring preparation of shipping papers. RSPA intends to make adjustments to current assessments of burden hours based on the effects of this rulemaking action, and anticipates publishing in the near future one or more notices in the Federal Register inviting comments on adjustments to currently approved collections and any new collections needed to comply with OMB requirements.

DOT cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. RSPA intends to obtain current OMB control numbers for any new or revised information collection requirements resulting from this rulemaking action prior to implementation of a final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 173, and 180 are proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. Section 171.1 would be revised to read as follows:

§ 171.1 Purpose and scope.

(a) This subchapter prescribes requirements of the Department of Transportation governing—

(1) Offering of hazardous materials for transportation, and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, motor vehicle, and vessel (except as delegated at § 1.46(t) of this title).

(2) Representation that a hazardous material is present in a package, container, rail car, aircraft, motor vehicle, or vessel.

(3) The manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold for use in transportation.

(b) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of a hazardous material shall be subject to and comply with all provisions of the Federal hazardous materials transportation law, all orders and regulations issued thereunder, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Federal hazardous materials transportation law or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

3. In § 171.8, a definition for ''Material of trade'' would be added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Material of trade means a hazardous material that is carried on a motor vehicle—

(1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers;

(2) For the purpose of supporting the operation or maintenance of the motor vehicle (including its auxiliary equipment) in which it is carried; or

(3) By a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. A new § 173.6 would be added to read as follows:

§ 173.6 Materials of trade exceptions.

(a) A material of trade (see § 171.8 of this subchapter) is not subject to any other requirements of this subchapter when transported by motor vehicle in conformance with this section. This section is limited to materials of trade that are—

(1) Classed in Division 2.1, 2.2, 4.1, 5.1, 5.2, 6.1, Class 3, 8, 9, or ORM–D; and

(2) Contained in a packaging having a gross mass or capacity of—

(i) Not over 0.5 L (1 quart) or 0.5 kg (1 pound), for a Packing Group I material;

(ii) Not over 30 kg (66 pounds) for solids or 30 L (8 gallons) for liquids, for a Packing Group II, Packing Group III, or ORM–D material; or

(iii) Not over 75 kg (165 pounds), for a Division 2.1 or 2.2 material.

(b) This section does not apply to a hazardous material that is—

(1) Self-reactive (see § 173.124);

(2) Poisonous by inhalation (see § 173.133); or

(3) Assigned any of the following UN identification numbers associated with the hazardous materials description in the § 172.101 Table: 1131, 1422, 1491, 1504, 1798, 1873, 2031, 2495, 2626, 2924, 2925.

(c) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 150 kg (330 pounds).

(d) *Packaging.* (1) Packagings must be leak tight for liquids and gases, sift proof for solids, securely closed, secured against movement, and protected against damage.

(2) Each material must be packaged in the manufacturer's original packaging, or a packaging of equal or greater strength and integrity.

(3) Outer packagings are not required for receptacles (e.g., cans and bottles) that are secured against movement in cages, carts, bins, boxes or compartments.

(4) For gasoline, a packaging must be made of metal or plastic and conform to requirements of this subchapter or requirements of the Occupational Safety

and Health Administration of the Department of Labor contained in 29 CFR 1910.106.

(5) A cylinder or other pressure vessel containing a Division 2.1 or 2.2 material must conform to packaging, qualification, maintenance, and use requirements of this subchapter, except that outer packagings are not required when transported as specified in paragraph (d)(3) of this section.

(e) *Hazard communication.* (1) Except for a DOT specification cylinder, each package or receptacle (including a receptacle transported without an outer packaging) must be marked to indicate the hazardous material it contains.

(2) A DOT specification cylinder (except DOT Specification 39) must be marked and labeled as prescribed by this subchapter.

(3) The operator of a motor vehicle that contains a material of trade must be informed of the presence of the hazardous material and must be informed of the requirements of this section.

(f) A material of trade may be transported on a motor vehicle under the provisions of this section with hazardous materials other than materials of trade without affecting the eligibility for exceptions provided by this section.

6. A new § 173.8 would be added to read as follows:

§ 173.8 Exceptions for non-specification bulk packagings used in intrastate transportation.

(a) *Non-specification bulk packagings.* Notwithstanding requirements for specification packagings in subpart F of this part 173 and parts 178 and 180 of this subchapter, a non-specification bulk packaging that is used in accordance with the provisions of paragraph (c) of this section may be used for transportation of a hazardous material by an intrastate motor carrier until June 30, 1999.

(b) *Cargo tanks for petroleum products.* Notwithstanding requirements for specification packagings in subpart F of this part 173 and part 178 of this subchapter, a non-specification cargo tank motor vehicle, that has a capacity of less than 13,250 liters (3,500 gallons) and that is used in accordance with the provisions of paragraph (c) of this section, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product.

(c) *Additional requirements.* A packaging used under the provisions of paragraph (a) or paragraph (b) of this section must—

(1) Be operated exclusively by an intrastate motor carrier and used as a packaging for hazardous material prior to July 1, 1996;

(2) Conform to requirements of the State in which it is used;

(3) Be authorized by a State statute or regulation in effect on and before July 1, 1996, for use as a packaging for the hazardous material being transported;

(4) Conform to all requirements in part 180 (except for § 180.405(g)) of this subchapter in the same manner as required for a DOT specification MC 306 cargo tank motor vehicle. A cargo tank motor vehicle that is used under the provisions of paragraph (b) of this section must meet these provisions on and after July 1, 1999;

(5) Be offered for transportation and transported in conformance with all other applicable requirements of this subchapter; and

(6) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

7. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 180.409, the introductory text of paragraph (a) would be revised, paragraph (b) would be redesignated as paragraph (c), and a new paragraph (b) would be added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) Except as otherwise provided in this section, any person performing or witnessing the inspections and tests specified in § 180.407(c) must—

* * * * *

(b) A person who performs only annual external visual inspections and leakage tests on a cargo tank motor vehicle with a capacity of less than 13,250 liters (3,500 gallons) used exclusively for flammable liquid petroleum fuels is not required to be registered in accordance with subpart F of Part 107 of this chapter. In addition, the person who signs the inspection report required by § 180.417(b) of this subpart for such cargo tank motor vehicles is not required to be registered. Although not required to register, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter.

* * * * *

Issued in Washington, DC on March 13, 1996 under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–6577 Filed 3–19–96; 8:45 am]

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federal register

Wednesday
March 20, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28081; Notice No. 95–18]

RIN 2120–AF63

Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This action extends the comment period on Notice No. 95–18; Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements, and publishes questions received from commenters and the FAA's response to those questions. The comment period is extended from March 19, 1996, to June 19, 1996. This action is in response to a request from several associations and individuals that the FAA allow all affected parties additional time to comment. The extension of the comment period is warranted because of the scope and complexity of the proposal and the need to allow time for commenters to consider the agency's response to the above questions.

DATES: The comment period on Notice No. 95–18 is extended until June 19, 1996.

ADDRESSES: Comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel (Attention: Rules Docket, AGC–200), Docket No. 28081, 800 Independence Ave., SW, Washington, DC 20591. Comments on this notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591 Telephone (202) 267–3755.

SUPPLEMENTARY INFORMATION: On December 20, 1995, the Federal Aviation Administration (FAA) issued Notice No. 95–18; Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements [60 FR 65951]. Comments to Notice. 95–18 were to be received on or before March 19, 1996.

By letter dated December 27, 1995, the National air Transportation Association (NATA) requested that the FAA extend the comment period for Notice No. 95–18 for 90 days. NATA stated that on-demand, air taxi operators need additional time to analyze and respond to the proposal. In addition, the National Air Carrier Association, the Air Transport Association, the Allied Pilot Association, the National Business Aircraft Association, and several individuals also requested that the comment period be extended.

Due to the complexity and extensive nature of the proposal, the FAA has determined that operators and affected crewmembers should be given additional time to comment on the proposal. In response to NATA's request, the FAA invites specific comments on costs in sufficient detail to determine the burden for all operators. To allow time for commenters to provide this information, the FAA has determined that a 90-day extension of the comment period is in the public interest.

In addition, in response to questions raised by Federal Express Corporation on January 17, 1996, and American Airlines on January 16, 1996, the FAA publishes as an attachment to this notice, those questions and the FAA's responses so that all interested parties may benefit from this additional information.

Several commenters have expressed concern that the docket on this rulemaking is not complete, in that it specifically lacks a second NASA document referenced in the preamble to the notice. For this reason, the commenters feel that they are not yet able to comment fully on the proposed rule. In the notice, the FAA stated that it was basing its proposal on, among other things, the 1995 NASA Technical Memorandum, ''Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation,'' and the NASA Technical Reports supporting that memorandum, which the agency placed in the public docket. The 1995 memorandum summarizes NASA findings and recommendations on fatigue and fatigue countermeasures. The FAA noted that this concise document focused on operational considerations and provided specific scientific input on this complex issue.

The preamble to the notice also noted that NASA was preparing a second document that would provide specific scientific references that support the principles and guidelines outlined in the 1995 memorandum. The FAA did not feel that this further scientific discussion was needed to support its proposal. The scientific conclusions and recommendations of the panel of experts who studied the underlying data are already contained and thoroughly explained in the 1995 memorandum. Moreover, NASA has assured the FAA that the Technical Reports now in the docket contain the data on which the results and conclusions of the first document are based. The FAA did not mean to imply that the second NASA document would be ready prior to the close of the comment period. The FAA does not anticipate that the second NASA document will be available before the final rule is issued.

The FAA based Notice No. 95–18 not only on the 1995 NASA technical memorandum, which contains conclusions of independent experts, but also on other documents to be found in Docket No. 28081, on the industry input provided by ARAC, and on the FAA's own experience with the current regulations.

Finally, several commenters requested that the NPRM be withdrawn, and the agency will consider these petitions in further evaluating the proposal. As it would with any notice of proposed rulemaking, if the agency finds in the light of comments received that the proposed rulemaking is not warranted, the notice would be withdrawn.

In a preliminary review of the comments received thus far, it would appear that some commenters do not realize that if this rulemaking does not result in a final rule, the FAA will ensure that the current rules would be enforced. This may be contrary to the current understanding of those rules by some operators and airmen. For example, this would mean that under the ''lookback'' provisions of the current rules, a flight crewmember on reserve could not take a flight assignment unless he or she had a scheduled rest period in the previous 24 hours. Commenters may want to consider the impact this would have on their operations.

Issued in Washington, DC on March 15, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Questions and Responses to the NPRM, Flight Crewmember Duty Period, Flight Time Limitations, and Rest Requirements

This is the FAA's response to the American Airlines January 22, 1996 letter requesting clarification of Notice No. 95–18 Flight Crewmember Duty Period Limitations and Rest Requirements. American Airlines questions and the FAA's responses are stated below.

Question 1: Is the duty period extension in actual operation up to 16

hours, or up to 2 additional hours beyond scheduled, as page 65958 says?

FAA Response: The duty period extension in actual operation is up to 2 hours more than the maximum scheduled duty period for that crew compliment, not 2 hours more than the scheduled termination of that duty period as stated on page 65958. The wording on page 65958 was incomplete. It should have stated ''If at any time during a duty period it is determined that, due to operational delays, a scheduled flight will not terminate within the maximum scheduled duty period, then the flight crewmembers must be relieved of duty before initiating that flight segment.'' The explanation on page 65961 under ''Additional Duty Period Limitations and Reduced Rest'' section is correct in the rule language at sections 121.473, 121.475 and 135.263.

Question 2: If we release a flight crewmember assigned to reserve time for one reserve day in the middle of a reserve block can we then change reserve categories?

FAA Response: A reserve time option and its associated rest requirements as stated in proposed section 121.477 may be changed by removing the flight crewmember from a reserve time assignment. Page 65959, ''Reserve and Standby Assignments'', states that reserve time ends when the crewmember is released, the crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the flight crewmember reports for a duty period. It should be noted that the only requirement prior to assigning a flight crewmember to another reserve time option is the 10-hour rest requirement stated in proposed section 121.477(b).

Question 3: Can't we change reserve categories fairly by either extending the rest period or shortening the duty day? Shouldn't some degree of shift in category from one reserve day to the next be reasonable? In fact, wouldn't a shift from the 18-hour type to the sliding scale type always be reasonable? A shift from the sliding scale to an 18-hour day if notified the day before?

FAA Response: Reserve categories can be changed from one reserve assignment to the next reserve assignment as outlined above in question 2.

Question 4: If we can assign a flight crewmember to a reserve time assignment the day before, why should there be any limitations on the duty period he can fly? e.g., Someone is serving reserve on the 10th–13th days of the month. For the 10th day, he was assigned a 0000–0600 rest period, but was not given a trip. On the 11th, shouldn't we be able to assign him a trip on the 12th which terminates at 0100? Clearly he would have more time to be rested.

FAA Response: The NPRM provides a certificate holder the flexibility to assign a flight crewmember on reserve time a duty period with no reduction in the maximum scheduled duty time providing the flight crewmember is advised of the assignment and released from all duty or responsibilities to rest for a minimum of 10 hours (taken off reserve time) before reporting for that assignment (section 121.477(b)(1)). This provision is applicable to a flight crewmember on reserve time regardless of which reserve assignment option the crewmember is assigned.

Question 5: If a flight crewmember on reserve time is being assigned to an augmented crew, shouldn't he have a longer duty period, just like the regular augmented crew members have? Otherwise you get into some non-sensical situations. This question applies to both types of reserve.

FAA Response: The proposed NPRM does permit longer duty periods for flight crewmembers on reserve time when serving on an augmented crew providing the flight crewmember is given 10 hours notification of the assignment and released from all duty or responsibilities until report time for that assignment. Flight crewmembers on the 6/18-hour reserve time option may have their duty periods extended provided the duty period is scheduled for completion before the expiration of the 18-hour reserve time.

Question 6: Concerning table 1 on page 65959, isn't footnote 1 inappropriate for augmented crews? For example, in a 4-pilot crew, the duty period can go up to 24 hours and minimum scheduled rest is 22 hours. The rest can be reduced to 20 hours in actual operation, but the compensatory rest must start no later than 24 hours after the beginning of the reduced rest, i.e. within 4 hours after the end of the reduced rest. A 4-hour duty period is inconsistent with this kind of flying and is not reasonable.

FAA Response: The flexibility to extend the length of duty periods and allow reduced rest is included in the NPRM. The NPRM requires that any compensatory rest period be scheduled to begin no later than 24 hours after the beginning of the reduced rest. This is different from the current rule that says the compensatory rest must begin within 24 hours of the compensatory rest.

In the case of a 4-pilot crew, the subsequent duty following a reduced rest would be limited to 4 hours because of the requirement to schedule the compensatory rest period within 24 hours of the commencement of the reduced rest period. Clearly, this is limiting. The carrier needs to consider this limitation when exercising the flexibility to reduce the required rest period, especially when the duty period for 4 pilots may be up to 24 hours.

Question 7: The ''36-in-7'' rule states that a flight crewmember must be relieved from all duty for 36 consecutive hours during any 7 consecutive calendar days. Duty is defined as involving flight time. Therefore, if a pilot has been on reserve but not assigned a trip for 36 hours, doesn't that satisfy 36-in-7? What if he had been to training for 2 days—that does not involve flight time either, so doesn't that also satisfy 36-in-7? What if the flight crewmember had a 36-hour rest period followed by 7 days of reserve duty, during the first 5 of which he was not assigned a trip. Would the flight crewmember have to be removed from flying on the 6th and 7th days to satisfy ''36-in-7'' or would the flight duty 7-day clock not start until he was actually assigned a trip (Flight Attendant Duty Act interpretation)?

FAA Response: Proposed sections 121.483(e) and 135.271(e) state that ''Each certificate holder must provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days.'' Therefore, flight crewmembers on standby duty or reserve time, even if no assignment involving flight time is given (duty period), must be given a rest of 36 consecutive hours in each 7-day period. Assigned time, which includes training, is not included in the requirement of the 36 hour rest. Therefore a flight crewmember could be assigned training on the 7th day without a 36 hour rest (and the 8th day, etc.). However, before being assigned a duty period, standby duty, or reserve time, the flight crewmember would be required to be given a 36-hour rest period, free from all duty. In essence, the application of this provision would be that a flight crewmember could perform assigned time on the 7th day of a 7 consecutive day period without a 36-hour rest but could not be assigned a duty period, reserve period, or standby duty. This NPRM differs considerably from the recent final rule applicable to flight attendants.

Question 8: The economic analysis suggests that there are some cost savings included within the NPRM to offset or partially offset the costs of the reserve time rest requirements. Did the FAA

consider that the airline would have to get union approval to obtain virtually any of these benefits?

FAA's Response: The economic analysis assumes that most certificate holders will benefit from any productivity measures included in the NPRM, if not immediately, at some time in the future when agreement is obtained through labor management agreements.

Question 9: In the event of operational delays, particularly something like a creeping mechanical delay, a regular crewmember's duty period can be extended up to 16 hours. Would a reserve crewmember be allowed to fly into his 6-hour rest period under those circumstances? A problem based on this question is that regulars and reserves will now have different legalities, ref: creeping delay.

Answer: A flight crewmember on reserve assignment option 2 (section 121.477(b)(2)) cannot be scheduled for a duty period that intrudes on the 6 hours of protected time. In the case of operational delays as stated on page 65960 under ''Reserve and Standby Assignments'', any duty period must be scheduled to be completed within the 18-hour reserve time.

Question 10: Does military leave qualify as being free from all duty for ''36-in-7'' purposes?

FAA Response: Yes, military leave, sick leave, family leave, and other types of personal leave are for the purpose of this NPRM classified as ''rest''. As stated in ''Terms and Definitions'' on page 65956, these are periods of time free of all restraint or duty for the certificate holder and free of all responsibility for work or duty should the occasion arise.

Question 11: Does military flying count towards ''32-in-7'' flight time limits? If so, who keeps track of it?

FAA Response: Proposed 121.487 and 135.275 apply only to flying conducted for one or more air carrier certificate holders. It does not apply to private or military flying.

Question 12: Will ''commuting flight crewmembers'' have to be responsible for reporting duty period violations or is that ''personal business''?

FAA Response: By ''commuting flight crewmembers'' we assume American is describing those who travel to work from a location which is not the same as their domicile, not the deadhead transportation described in proposed section 121.485. This NPRM proposes duty period and flight time limits and rest requirements. It does not propose any restrictions on a flight crewmember's activities during a rest period. Flight crewmembers are expected to use rest periods for obtaining rest.

Question 13: For a flight crewmember assigned to reserve time whose protected time is 0000–0600, can we expect him to sign in for a trip at 0601 if notified the day before? If only contacted at 0601, when can we expect him to sign in? 0800? If so that reduces his effective availability to 16 hours.

FAA Response: In order to require a reserve whose protected time is from 0001–0600 to report at 0601, the certificate holder would have to change the crewmember's reserve time category by methods previously addressed in the response to question #4. Flight crewmembers assigned to reserve time must be given 1 hour or more to report after notification of a duty assignment (section 121.471(b)(7)). Therefore, if a crewmember was contacted at 0601, the earliest he could report would be 0701.

Question 14: How far in advance must we notify an 18-hour reserve of his protected time (or the ''sliding scale reserve'' of his status)?

FAA Response: Before beginning a reserve time assignment as stated in proposed 121.477(b).

Question 15: What constitutes valid reasons for operational delays? Air traffic control? Company air traffic control? Deicing? Maintenance calls for non-essential (non-MEL) items, e.g. passenger light bulb burned out? Baggage belt jam? Computer outage? Ramp congestion delay? Fuel topoff? Precautionary check ground interrupt or aircraft precautionary inspection? Local noise curfews?

FAA Response: The definition of operation delays is stated in proposed section 121.471(b)(5). Delays that are associated with air traffic control, weather, or aircraft maintenance would be considered beyond the certificate holder's control.

Questions and Responses to the NPRM, Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements

This document responds to questions received from Federal Express Corporation (FedEx) January 17, 1996.

Question 1: ''Reserve Time'' is defined as a period of time when a flight crewmember must be available to report upon notice for a duty period. The NPRM implies a reserve period is a 24-hour period(s). Is a reserve period considered (required) to be a 24-hour period of time?

FAA Response: The NPRM defines reserve time as a period of time that a flight crewmember is required by the certificate holder to be available to report upon notice for duty involving flight time and the certificate holder allows at least 1 hour to report. Reserve time assignments are at the discretion of the certificate holder. The NPRM does not require any specific length of time for reserve time assignments. Reserve time assignments end whenever a flight crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the crewmember reports for a duty assignment, or the crew member is relieved of the reserve time assignment by the certificate holder for other assignments or rest. The NPRM defines 5 different categories of time. A flight crewmember is always in one of these categories. The NPRM defines these under ''Terms and Definitions'' on page 65965. They include ''assigned time'', duty involving flight time (referred to as ''duty period''), reserve time, rest (referred to as ''rest period''), and ''standby duty''.

Question 2: If a non-reserve pilot is assigned a hotel standby activity, is his duty limit treated like a standby reserve?

FAA Response: ''Standby duty'' is defined in proposed section 121.471(a)(9). If a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification the flight crewmember is assigned to ''standby duty''. If the flight crewmember is required to report in 1 hour or more, the flight crewmember is not on ''standby duty''. If the certificate holder provided hotel accommodations with the provision that report for a flight assignment would be 1 hour or more from the time of assignment, then such assignment would be considered reserve time, and the provisions outlined in proposed section 121.477(b)(1) or (b)(2 would apply.

Question 3: If a reserve period for a carrier is defined to be a 12-hour period, is each 12-hour period a ''reserve time assignment'' requiring a 6-hour free window during that 12-hours under this option? Is a number of consecutive A-period (12 hrs) R-days one reserve time assignment?

A A A A A

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The above represents 5 consecutive reserve days, where each day is a 12-hour period followed by 12 hours of rest. Are these 5 R-days considered to be 1 reserve time assignment or 5 reserve time assignments?

FAA Response: Under the example, the certificate holder could determine if these 5 reserve days are to be considered as one consecutive or 5 separate reserve time assignments. However, the flight

crewmember must be advised in advance of how each of these days are to be considered and the method of assignment to be used, i.e., assignment under section 121.477(b)(1) or 121.477(b)(2).

This option exists because the NPRM requires 10 hours of rest before beginning reserve time and 6 hours of protected time in each 24-hour period of reserve time. The structure of 12 hours rest and 12 hours duty could satisfy both requirements. The protected time would have to be established in advance and be consistent for each reserve time period. If the 5 days are designated as separate periods, the method of assignment could be varied for each period. If the 5 days were designated as one consecutive reserve time assignment, the method of assignment for the entire 5 days must be consistent.

Question 4: Clarify the requirement that the intent of any duty period assignment must be scheduled to be completed within the 18-hour reserve time, exclusive of the 6 hours of protected time.

FAA Response: Flight crewmembers on reserve time under § 141.477(b)(2) are guaranteed 6 hours of protected time for uninterrupted rest. Outside of the protected time, flight crewmembers are available for an assignment to a duty period with 1 or more hours of notice to report.

Question 5: Under the 6-hour of protected rest option, does any trip assigned to a reserve during his block of R-days (reserve time assignment) have to contain uninterrupted rest during that 6-hour window for all days of the trip?

FAA Response: No, this requirement is applicable only to the time that a flight crewmember is on reserve time. When given a duty assignment, the first duty period must terminate within the 18-hour reserve period. The length of the duty period and the subsequent rest time, duty time, and flight time for the remainder of the trip would be in accordance with 121.473 or 121.475.

Question 6: At the end of a trip assignment to a reserve, one that begins and ends within a block of R-days (one reserve time assignment) can the 6-hour window be changed for the remainder of the R-day block?

FAA Response: Yes. When released from a duty period, the flight crewmember must be given rest appropriate to that duty period, but no less than 10 hours before being placed back on reserve time. It is the certificate holder's prerogative as to which reserve time option will be used. The certificate holder must advise the flight crewmember of any changes in a subsequent reserve time assignment and release the flight crewmember for a minimum of 10 hours of rest before beginning the new reserve time assignment with the different protected time.

Question 7: What is a subsequent reserve assignment considered to be? For example, in 5 consecutive R-days, could the 6-hour period of protected time be 1800–2400 for R1 and R2, but for R3, R4, and R5, be 0000–0600? (R1 represents the first R-day, R2 represents the second R-day, etc.)

FAA Response: No, the 6 hours of protected time must be the same for the entire reserve time assignment. Changing the 6 hours of protected time is discussed in Question 6 above.

Question 8: If deadhead can be considered to be ''assigned time'' following a duty period, is there any limit on how long the deadhead travel time can be? Based on the example cited, is there a need for an intervening rest period between the duty period and the deadhead?

For a 2 Pilot Crew:

		BLK	DTY	
	MEM–CDG	7:00	8:30	Duty Period.
DH	CDG–JFK	0.00	8:00	Assigned Time.
DH	JFK–MEM	0:00	2:00	Assigned Time.
	Rest Period			10 Hours.

FAA Response: The certificate holder has the option of considering assigned time as part of a duty period and scheduling the appropriate rest for that duty period after completion of the assigned time, or considering assigned time exclusively as assigned time and ensuring that the flight crewmember is given at least 10 hours of rest before commencing a subsequent duty period. If assigned time is considered part of a duty period and attached to the end of that duty period, the rest before commencing a subsequent duty period must be appropriate to the duty period as required in proposed § 121.473 or 121.475 but no less than 10 hours. In the example above, there is no requirement for an intervening rest period before the deadhead.

Question 9: Does the ''48 consecutive hours in a time zone'' include block time, or is it just ground time? When does the 48-hour clock start and stop?

	Dept	Arrive	Layover
MEM–CDG	1800	0200	
Layover			47:30
CDG–MEM	0130	0830	
Taxi/Ground Time@CDG 0:45			1:30
			49:00

Does pilot receive 48 hours of rest upon return to MEM?

FAA Response: The 48-hour clock commences with ''block in'' time in a time zone who set time is 6 hours or more different than the flight crewmember's domicile time and ends with ''block out'' time in a time zone less than 6 hours different than the flight crewmember's domicile. Assuming a :30 debrief period on arrival at CDG and a 1:00 report time before departure at CDG, this flight crew did not remain in the CDG time zone for 48 consecutive hours. Therefore a 48-hour rest on return to domicile is not required.

Question 10: Does 36 hours of rest in 7 consecutive days apply to ''assigned time''?

F F F F F AT AT AT
1 2 3 4 5 6 7 8
(F—flight duty, AT—assigned time)

In the above example where a pilot has 5 days of flight duty with no layover greater than 36 hours, is a 36 hour rest

period required during day 6, 7, or 8 which are scheduled as assigned time such as deadhead or training?

FAA Response: A 36-hour rest is not required during days 6, 7, or 8. However, before the flight crewmember could be assigned a duty period, a standby period, or reserve time, 36 consecutive hours of rest would be required.

Question 11: How are management pilots and instructor pilots to be treated? Are they considered to be on ''assigned time'' when at work performing administrative function or training functions?

BILLING CODE 4910–13–M

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      Admin Duties          Flight Time

I<<<<<<<>>>>>>>I<<<<<<<<>>>>>>>I

2300              0200              0500
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BILLING CODE 4910–13–C

Is it permissible for a management pilot to perform flight duty after performing 3 hours of Administrative duties as indicated above?

FAA Response: Administrative duties and ground training accomplished by management pilots and instructor pilots is considered assigned time. Assigned time may be included as part of a duty period (scheduled in accordance with proposed § 121.473) or considered separately and a rest period provided prior to any subsequent duty period.

Question 12: Why do reserves rest before work and non-reserves rest after work?

FAA Response: Rest periods are provided to give the flight crewmember a predetermined opportunity to rest prior to duties which could involve flight time (duty periods). Rest periods are provided between duty periods, reserve time assignments, and standby duty assignments. If assigned time was accomplished, a rest period is required prior to a duty period.

Question 13: A carrier assigns a pilot to a trip with the first duty period consisting of a deadhead to a field location, followed by a legal rest period, and the second duty period containing flight time. If the pilot chooses, on his own accord, to deviate from the planned first duty period deadhead, does the carrier have to ensure that the pilot receives a legal rest period before any flight time?

FAA Response: First, deadhead is considered to be assigned time if it is not included as part of a duty period. Second, proposed § 121.473 states that ''A certificate holder may assign a scheduled duty period and a pilot may accept the assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met.'' It is the certificate holder's responsibility to schedule its flight crew members in accordance with the applicable regulations. It is the flight crewmember's responsibility to use scheduled rest periods so that they are rested for subsequent assignments.

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BILLING CODE 4910–13–M

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Universal Cotton Standards Advisory Committee recommendations; comments due by 3-29-96; published 2-28-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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Food and Consumer Service

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Food Safety and Inspection Service

Meat and poultry inspection:

Cooked roast beef products; sorbitol use; comments due by 3-28-96; published 2-27-96

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National Appeals Division procedure rules:

Adverse decisions appeals procedures and jurisdiction; comments due by 3-28-96; published 12-29-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

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Children and Families Administration

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HEALTH AND HUMAN SERVICES DEPARTMENT

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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