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Tuesday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[FV94–929–3FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Establishment of Late Payment Charges and Increase in Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the interest charge from 1 percent to 1½ percent per month and adds a late payment charge of 5 percent on delinquent assessments owed by handlers under Marketing Order No. 929 covering cranberries grown in ten states. This rule contributes to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order.

EFFECTIVE DATE: This final rule becomes effective February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Hessel or Patricia Petrella, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in ten states, hereinafter referred to as the ''order.'' The 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. This rule is not intended to have retroactive effect. 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 not 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 approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been 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 are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

The Cranberry Marketing Committee (committee), the agency responsible for local administration of the order, met on August 23, 1994, and unanimously recommended modifying the administrative rules in effect under the order concerning delinquent handler assessments. The modification increases the interest charge from 1 percent to 1½ percent per month and adds a late payment charge of 5 percent on delinquent handler assessments.

Under section 929.41 of the order, each person who first handles cranberries is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's acquisitions.

Section 929.41 also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both.

Section 929.152 of the rules and regulations in effect under the order specifies that delinquent assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the committee. The committee currently schedules two assessment payments during the crop year which begins on September 1. Assessments equal to 100 percent of the prior crop year's assessment obligation are due on October 1. If a handler's October 1 payment is not sufficient to meet the current crop year's assessment obligation then a second payment, making up the difference, is required by April 1. If the October 1 payment exceeds the current crop year's assessment obligation then the committee refunds the difference on or before April 15.

Assessments are the main source of funds to pay committee expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the committee. The committee has frequently encountered difficulty in

collecting assessments from some handlers. To attempt to collect, the committee must incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the committee.

The authority to levy late payment and interest charges on delinquent assessments was added in 1973 to address the failure of handlers to pay their assessments promptly. Consequently, in 1978 an informal rulemaking change [43 FR 29764, July 11, 1978] was approved which established a one percent interest charge per month to address this problem.

However, the current interest charge of one percent per month is not sufficient to induce handlers to comply with the assessment provisions. Competition in the cranberry industry has increased. The number of handlers regulated by the order has increased, and many of these additional handlers have been more reluctant to pay assessments in a timely manner. The increase in charges on delinquent assessments encourages these handlers to pay their assessments more promptly.

Charges will not be imposed until the end of the month if handler assessments are invoiced up to the 15th of the month and will be levied at the end of the following month if the handler assessment is invoiced later than the 15th of the month. Handlers have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler will be credited upon receipt in the committee office. These additional charges apply to any unpaid assessments which become due to the committee after the effective date of this rule change.

A proposed rule concerning this action was published in the **Federal Register** on November 10, 1994 [59 FR 56007], with a 30-day comment period ending December 12, 1994. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.152, is revised to read as follows:

§ 929.152 Delinquent assessments.

There shall be a late payment charge of five percent and an interest charge of 1½ percent per month applied to any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler: *Provided,* That if an assessment is first invoiced later than the 15th of the month, no late payment or interest charge shall be levied if such assessment is received at the committee office by the end of the following month in which the assessment was first invoiced to the handler.

Dated: December 27, 1994.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–32287 Filed 12–30–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV94–966–2FIR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

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 that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1994–95 fiscal period, which began August 1, 1994, and ends July 31, 1995. 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 requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this 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 the 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 orientation and compatibility.

There are approximately 250 producers of Florida tomatoes under this marketing order, and approximately 50 handlers. 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 Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 8, 1994, and unanimously recommended a 1994–95 budget of $2,215,000, $467,000 less than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $297,300 ($276,000); depreciation, $18,200 ($16,200); communications, $12,000 ($10,000); employee's retirement program, $46,600 ($37,300); insurance and bonds, $7,000 ($5,000); office rent, $24,700 ($22,600); social security tax, $20,000 ($19,000); supplies and printing, $7,500 ($6,500); and audit, $2,500 ($2,300); Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Research expense, $192,100 ($200,000); and education and promotion expense, $1,500,000 ($2,000,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 55,000,000 25-pound containers, will yield $2,200,000 in assessment income. This, along with $15,000 in interest and other income, will be adequate to cover budgeted expenses.

An interim final rule was published in the **Federal Register** on November 3, 1994 (59 FR 55020). That interim final rule added § 966.232 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through December 5, 1994. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on August 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 59 FR 55020 on November 3, 1994, is adopted as a final rule without change.

Dated: December 27, 1994.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–32288 Filed 12–30–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–227–AD; Amendment 39–9114; AD 95–01–03]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes. This action requires measurement of the clearance between the electrical bundles in the left-hand cabinet of the electrical panel and the counterbalancing actuator of the passenger door, and rerouting and clamping the wire bundles, if necessary. This amendment is prompted by a report of damage of the wire bundles between the actuator of the passenger door and the left-hand cabinet of the electrical panel. The actions specified in this AD are intended to prevent an electrical fire due to damage of the electrical wire bundles.

DATES: Effective on January 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before March 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Falcon Jet Corporation, P.O. Box 967, Little Rock, Arkansas 72203–0967. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 50 series airplanes. The DGAC advises that it has received a report of damage of the wire bundles between the actuator of the passenger door and the left-hand cabinet of the electrical panel. Investigation revealed that the cause of this damage may be attributed to insufficient clearance between the left-hand cabinet and the counterbalancing actuator of the passenger door. This condition, if not corrected, could result in the potential for an electrical fire due to damage of the electrical wire bundles.

Dassault Aviation has issued Alert Service Bulletin F50–A243 (F50–A39–1), Revision 1, dated November 10, 1994, which describes procedures for measuring the clearance between the electrical bundles in the left-hand cabinet and the counterbalancing actuator of the passenger door, and rerouting and clamping the wire bundles if the clearance is outside the limits specified in the alert service bulletin. The French DGAC classified this alert service bulletin as mandatory and issued French airworthiness directive 94–238–015(B), dated November 9, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent an electrical fire due to damage of the electrical wire bundles. This AD requires measurement of the clearance between the electrical bundles in the left-hand cabinet and the counterbalancing actuator of the passenger door, and rerouting and clamping of the wire bundles, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–227–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends 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 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–01–03 Dassault Aviation: Amendment 39–9114. Docket 94–NM–227–AD.

Applicability: Model Mystere-Falcon 50 series airplanes having serial numbers 2 through 232 inclusive, 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 use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical fire due to damage of the electrical wire bundles, accomplish the following:

(a) Within 20 days after the effective date of this AD, measure the clearance between the electrical bundles in the left-hand cabinet and the counterbalancing actuator of the passenger door, in accordance with Dassault Aviation Alert Service Bulletin F50–A243 (F50–A39–1), Revision 1, dated November 10, 1994.

(1) If the clearances are within the limits specified in the alert service bulletin, no further action is required by this AD.

(2) If the clearances are outside the limits specified in the alert service bulletin, prior to further flight, reroute and clamp the wire bundles in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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.

(d) The measuring, rerouting, and clamping shall be done in accordance with Dassault Aviation Alert Service Bulletin F50–A243 (F50–A39–1), Revision 1, dated November 10, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, P.O. Box 967, Little Rock, Arkansas 72203–0967. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 18, 1995.

Issued in Renton, Washington, on December 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–32036 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–35151]

Delegation of Authority

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending Rule 30–3 of the Rules of Practice and Investigations to delegate to the Director of the Division of Market Regulation (''Division'') certain functions relating to proposed bylaw and rule changes filed by the Securities Investor Protection Corporation (''SIPC''). This amendment is intended to conserve the Commission's resources and to relieve the Commission of the burden of considering routine matters relating to SIPC's operation.

EFFECTIVE DATE: January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, 202/942–0132, Harry Melamed, 202/942–0134, or Elizabeth K. King, 202/942–0140.

SUPPLEMENTARY INFORMATION:

I. Introduction

Sections 3(e)(1) and 3(e)(2) of the Securities Investor Protection Act of 1970 (''SIPA'') require SIPC to file proposed bylaw and rule amendments with the Commission, and require, among other things, the Commission to publish proposed rule amendments and certain proposed bylaw amendments. Because most proposed bylaw amendments are routine and do not merit the Commissions's attention, and because publication of proposed rule changes, along with certain proposed bylaw changes, is statutorily required, the Commission is delegating certain of the functions relating to the proposed bylaw and rule change filings to the Director of the Division.

II. Requirement Under SIPA Regarding Bylaw and Rule Changes Proposed by SIPC

Section 3(e)(1) of SIPA requires SIPC to file any proposed bylaw change with the Commission. Such a proposed bylaw amendment becomes effective thirty days after the date it is filed, unless the Commission either notifies SIPC that it disapproves the proposed bylaw change as being contrary to the public interest or to the purposes of SIPA, or that it has found that the proposed bylaw change involves matters of significant public interest. The Commission also has the authority to designate an effective date earlier than 30 days after filing. In those instances in which the Commission notifies SIPC that the proposed bylaw amendment involves matters of significant public interest, the Commission may, in accordance with the procedures set forth in section 3(e)(2) of SIPA, publish notice of the proposed bylaw amendment and provide opportunity for public comment. After public comment, the proposed bylaw change becomes effective only after it is approved by the Commission, or otherwise is permitted to become effective under section 3(e)(2) of SIPA.

SIPC, under section 3(e)(2) of SIPA, also must file proposed rule amendments with the Commission. The Commission is required to publish notices of proposed rule amendments and provide an opportunity for the public to comment. The proposed rule change may not take effect unless it is approved by the Commission, or otherwise is permitted to become effective under section 3(e)(2) of SIPA.

III. Delegation of Authority to the Director of the Division of Market Regulation

In the absence of a delegation of authority, the Commission is required to consider each bylaw and rule change proposed by SIPC. In order to relieve the Commission from the burden of considering routine matters regarding the operation of SIPC, the Commission is delegating certain of its authority under sections 3(e)(1) and (3)(e)(2) of SIPA to the Director of the Division.

Specifically, the Commission is delegating its authority under section 3(e)(1) to the Director of the Division to make a determination, and to notify SIPC of this determination, as to whether a proposed bylaw change (i) should not be disapproved and, therefore, become effective 30 days after filing or (ii) involves matters of such significant public interest that public comment should be obtained. In addition, the Commission is delegating authority to the Director of the Division to accelerate the effective date of a bylaw change. Finally, the Commission is delegating its authority to publish for comment, in accordance with section 3(e)(2) of SIPA, those proposed bylaw changes determined to be matters of significant public interest, as well as all proposed rule changes. The Commission, however, will retain its authority to approve proposed bylaw and rule amendments after the comment period is completed.

Accordingly, the Commission is amending Rule 30–3 of the Rules of Practice and Investigations (''Rule 30–3'').[1] Notwithstanding these delegations of authority, the Division will bring any significant proposed bylaw or rule amendments to the Commission's attention for its consideration.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedures Act,[2] that these amendments relate solely to agency organization and procedure, and do not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date also is unnecessary.

IV. Statutory Basis and Text of Amendments

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A continues, in part, to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by revising paragraph (f) to read as follows:

§ 200.30–3 Delegation of authority to director of division of market regulation.

* * * * *

(f) With respect to the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa, et seq. (''SIPA''):

(1) Pursuant to Section 3(a)(2)(B) of SIPA, to:

(i) Extend for a period not exceeding 90 days from the date of the filing of the determination by the Securities Investor Protection Corporation (''SIPC'') that a registered broker-dealer is not a SIPC member because it conducts its principal business outside the United States and its territories and possessions, the period during which the Commission must affirm, reverse or amend any determination by SIPC; and

(ii) Affirm such determination filed by SIPC.

(2) Pursuant to Section (3)(e)(1) of SIPA, to:

(i) Determine whether proposed bylaw changes filed by SIPC should not be disapproved or whether the proposed bylaw change is a matter of such significant public interest that public comment should be obtained, in which case the Division will notify SIPC of such finding and publish notice of the proposed bylaw change in accordance with Section 3(e)(2) of SIPA; and

(ii) Accelerate the effective date of proposed bylaw changes filed by SIPC.

(3) Pursuant to Section (3)(e)(2) of SIPA, to publish notice of proposed rule changes filed by SIPC.

By the Commission.

Dated: December 27, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32250 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3.

[2] 15 U.S.C. § 553(b)(A).

INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Implementing Rules for the Uruguay Round Agreements Act

AGENCY: United States International Trade Commission.

ACTION: Interim rules with request for comment.

SUMMARY: The Commission is amending its Rules of Practice and Procedure to conform with amendments made to sections 201–204 of the Trade Act of 1974 by the Uruguay Round Agreements Act. The amendments, among other things, conform U.S. law with the Uruguay Round Agreement on Safeguards and provide for limited disclosure of confidential business information under administrative protective order.

DATES: The interim amendment to section 206.17 is effective January 3, 1995. All other amendments are effective on January 1, 1995, the date on which the World Trade Organization (WTO) Agreement enters into force with respect to the United States, unless the United States Trade Representative announces prior to that date that the WTO Agreement will not enter into force on that date. Should the effective date of such other amendments not be January 1, 1995, the Commission will publish notice to such effect in the **Federal Register**.

To be assured of consideration, written comments must be received not later than April 3, 1995.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Donna R. Koehnke, Secretary, should be sent to the Commission, 500 E Street SW., room 112, Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: William Gearhart, Office of General Counsel, U.S. International Trade Commission [202–205–3091]. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The Uruguay Round Agreement on Safeguards sets out specific conditions and rules for taking safeguard actions under the GATT 1947 safeguards provision, article XIX. Article XIX permits a country to impose import restrictions when increased imports are found to cause or threaten to cause

serious injury to a domestic industry, but otherwise provides few rules with respect to the circumstances under which such restrictions may be imposed and for how long. The new Agreement on Safeguards provides additional guidance on how and when safeguard measures may be applied. Among other things, it requires that contracting parties follow procedures to ensure transparency (including a public investigation and published report); limits measures to an 8-year maximum duration; requires progressive liberalization of safeguard measures; and provides for expedited procedures that may be applied in ''critical circumstances,'' including special provisions for proceedings concerning imports of perishable products. It also provides that for the first 3 years of any safeguard measure put in place to counter an absolute increase in imports, the exporting countries may not impose trade retaliation.

Sections 201–204 of the Trade Act of 1974 (Trade Act) implement article XIX in the United States. U.S. law was already largely consistent with the Agreement on Safeguards, and therefore only minor statutory changes were necessary to bring U.S. law into conformity with the Agreement. U.S. law and practice, in fact, served as a model for the drafters of the Agreement.

Subtitle A of title III of the Uruguay Round Agreements Act (URAA) amends sections 201–204 of the Trade Act to bring them into conformity with the Agreement on Safeguards. Section 301 of the URAA implements provisions of the Agreement that relate to investigations and determinations by the United States International Trade Commission (Commission) under section 202 of the Trade Act. Section 301 also amends section 202 to require the Commission to promulgate regulations to provide for limited disclosure of confidential business information under an administrative protective order in the course of investigations under section 202 of the Trade Act. Section 302 of the URAA implements provisions of the Agreement that relate to (1) actions by the President under section 203 of the Trade Act after he receives an affirmative Commission determination; and (2) Commission monitoring reports and investigations and determinations under section 204 of the Trade Act concerning extension of relief.

The amendments to these rules bring Commission procedures into conformity with the amendments to sections 202 and 204 of the Trade Act. The amendments to the rules—

(1) provide for the submission by parties of nonconfidential summaries of confidential business information and state the circumstances under which the Commission may disregard the submission if such summary is not provided;

(2) require petitioners to include within their petition information with regard to productivity;

(3) incorporate the new limitations in section 202(h) of the Trade Act concerning investigations with respect to articles the subject of a prior relief action or articles subject to the Textiles Agreement;

(4) provide for limited disclosure of confidential business information under administrative protective order;

(5) revise the time for making determinations and reports when critical circumstances are alleged;

(6) adjust the time for Commission monitoring reports; and (7) provide procedures for investigations and determinations concerning extension of relief actions.

Implementation of Interim Rules

Section 335 of the Tariff Act of 1930 (19 U.S.C. § 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. Additionally, section 103(a) of the URAA specifies that appropriate officers of the United States Government may issue such regulations as may be necessary to ensure that any provision of that act, or amendment made by the act, is appropriately implemented on the effective date of that act, and section 103(b) of the URAA directs that any interim regulations necessary or appropriate to carry out any action proposed in the Statement of Administrative Action approved under section 101(a) of the URAA to implement an agreement described in section 101(d)(7), (12), or (13) of the URAA be issued not later than 1 year after the date on which the agreement enteres into force with respect to the United States. Section 301(b) directs the Commission to promulgate regulations providing for the limited disclosure of confidential business information under administrative protective order in investigations under section 202 of the Trade Act, and the Statement of Administrative Action directs that the Commission promulgate interim regulations providing for such disclosure as soon as practicable.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. § 551 *et seq.*), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. § 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and became effective, with respect to the amendment to section 202 of the Trade Act providing for limited disclosure of confidential business information under administrative protective order, on the date of enactment, and in other respects was expected to become effective on January 1, 1995. Consequently, it was not possible to complete the section 553 rulemaking procedure prior to the effective date of the new legislation.

The Commission thus has determined to adopt interim rules that will go into effect when the provisions of the URAA amending sections 201–204 of the Trade Act become effective. These rules will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice and advance publication procedure for issuing such rules, taking into account any comments received in response to this notice.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from three sources: (1) section 335 of the Act (19 U.S.C. § 1335); (2) sections 103 and 301(b) of the URAA, and the Statement of Administrative Action approved by the URAA; and (3) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances. Because these interim rules comprehensively implement the rules changes required by the URAA, no additional notice of proposed rulemaking is necessary or contemplated at this time. However, as stated above, the public is invited to submit written comments to the Commission for the Commission's consideration in preparing final rules. To be assured of consideration, such comments should be received by the Commission not later than 90 days after publication of this notice in the **Federal Register**.

The Commission has determined that the need for interim rules is clear in this instance. The Commission notes that the new legislation alters practice and procedure in proceedings under sections 201–204 of the Trade Act, and

that the existing Commission rules do not encompass certain procedures required by the new legislation. The Commission finds that rulemaking is essential for the orderly administration of sections 201–204 of the Trade Act as amended by the new legislation. Furthermore, since the legislation becomes effective very shortly after enactment, the Commission has concluded that interim implementing rules should be in place as soon as practicable following the effective date of the new statute.

The Commission notes that an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) the proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. § 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules of statements of policy or (2) the agency finds that ''good cause'' exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. § 553(d)(3).

In this instance, the Commission has determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking which solicits public comment, the Commission finds that (1) the interim rules are ''agency rules of procedure or practice''; and (2) because the new legislation becomes effective on the date of enactment in the case of the administrative protective order provision, and is projected to become effective within 1 month in the case of the other provisions, it clearly would be ''impracticable'' for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission finds that the fact that the new legislation either becomes effective on the date of enactment or is expected to become effective within 1 month after enactment makes such advance publication impossible and constitutes ''good cause'' for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation. Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories:

(1) revision of a pre-existing rule that conflicted with the new legislation;

(2) a technical amendment to make a pre-existing rule conform to the language of the new legislation;

(3) rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or

(4) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule.

Because the interim regulations merely respond to exigencies created by the new legislation, the Commission has further determined that they do not meet the criteria described in section 3(f) of Executive Order (EO) 12866 (58 FR 51735, Oct. 4, 1993) and do not constitute a significant regulatory action for purposes of the EO.

In accordance with the Regulatory Flexibility Act (5 U.S.C. § 601 note), the Commission hereby certifies pursuant to 5 U.S.C. § 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities. In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking because it is not one in which a notice of proposed rulemaking is required under 5 U.S.C. § 553(b).

Explanation of Proposed Amendments

Section 206.2, which provides for the identification of type of petition or request, is amended to include a reference to petitions for extension of relief actions filed under section 204(c) of the Trade Act and Subpart F of Part 206 of the Commission's rules. Section 302(d) of the URAA amends section 204 to provide for the filing of such petitions.

Section 206.3, concerning institution of investigations, publication of notice, and availability of petitions for public inspection, is revised to add subheadings and to indicate that there are exceptions to the general rule that the Commission will institute an investigation after receipt of a petition—namely, as set out in section 206.15(b).

Section 206.5, concerning public hearings, is amended by adding a new paragraph (c) to state that the Commission will hold a public hearing in connection with each investigation under Subpart F of Part 206 of the Commission's rules concerning whether an action taken by the President under section 203 of the Trade Act should be extended. Section 204(c) of the Trade Act, as amended by section 302(d) of the URAA, requires that the Commission hold a public hearing in connection with each such investigation. Current paragraph (c) of rule section 206.5 is redesignated as paragraph (d). Two minor editorial changes are made in paragraphs (a) and (d).

Section 206.6, concerning Commission reports to the President, is amended by adding new subheadings and redesignating paragraphs, and by adding language to clarify what information will be included in all Commission reports to the President under Part 206, and what additional findings and information will be included in reports containing determinations under section 202(b) of the Trade Act and section 302(b) of the North American Free Trade Agreement Implementation Act.

Section 206.7, concerning confidential business information, is retitled and subdivided into two paragraphs. Paragraph (a) largely tracks the current rule and states that the Commission will not release confidential business information except under the circumstances indicated. Language is added to provide notice that the Commission, when appropriate, will include confidential business information in reports furnished to the President; this language reflects longstanding Commission practice, and Commission questionnaires issued in connection with investigations under section 202 of the Trade Act routinely provide notice of this possibility. Paragraph (b) is new. It requires, except as the Commission may otherwise provide, that parties submitting confidential business information must also submit nonconfidential summaries of such information. It further states the circumstances under which the Commission may disregard the information when the party does not provide a summary. Section 301(a) of the URAA amended section 202(a)(8) of the Trade Act to provide that the Commission may request that parties furnish such summaries and to authorize the Commission to disregard a confidential submission when it finds that a request for confidentiality is not warranted and the party concerned is either unwilling to make the information public or to authorize its

disclosure in generalized or summarized form.

Section 206.8 is new, and has been added to provide a general service, filing, and certification requirement to supplement the more specific service and filing requirements in new § 206.17 of these rules relating to documents subject to disclosure under administrative protective order. New § 206.8 parallels § 207.3 of current Commission rules, which performs a similar function in conjunction with § 207.7 of the rules. The Commission traditionally has provided for service of documents in investigations covered by this Part 206 in its notices of investigation published in the **Federal Register**. However, the Commission believes that the inclusion of specific requirements in § 206.17 for documents subject to an administrative protective order without including requirements of general application may give rise to confusion on the part of submitters of documents as to applicable Commission requirements. In general, new § 206.8 reflects current Commission practice in investigations under Part 206, and would be made applicable to all investigations conducted under this part.

Section 206.12, concerning definitions applicable to Subpart B of Part 206 of the Commission's rules, is amended to delete paragraphs (c) and (d), which provide cross references to the statutory provisions where the terms ''critical circumstances'' and ''perishable agricultural product'' are defined. Because of amendments made by section 301(d) of the URAA to the critical circumstances provision in section 202, the cross reference in paragraph (c) is no longer accurate. However, the inclusion of cross references was viewed as unnecessary.

Section 206.13, concerning who may file a petition, has been divided. As amended, it contains the text of what was formerly paragraph (a). The text formerly in paragraphs (b) and (c) of that section, which described two circumstances under which the Commission would not institute an investigation after receipt of a petition, was moved to new section 206.15, relating to institution of investigations, where it was combined with two additional circumstances.

Section 206.14, concerning contents of petitions, is amended in three respects. First, in the introductory paragraph, wording is added that directs petitioners, in stating whether provisional relief is sought, to state whether they are asserting that critical circumstances exist. Second, paragraph (e)(2)(i) is amended to include ''productivity'' in the list of economic factors relating to threat of injury for which a petitioner is directed to provide data in its petition. Section 301(e)(1) of the URAA added ''productivity'' to the list of economic factors in section 202(c)(1)(B)(i) of the Trade Act that the Commission is to take into account in determining whether an industry is threatened with serious injury. Third, paragraph (j), which describes the information to be provided in a petition when critical circumstances are alleged, is amended to reflect the new statutory standard relating to the critical circumstances in amended section 202(d)(2) of the Trade Act.

Section 206.15, concerning institution of an investigation, is a new rule. Paragraph (a) sets forth the general rule that the Commission will institute an investigation after receiving a petition, otherwise properly filed, under Subpart B of Part 206 of the rules. Paragraph (b) sets out four circumstances in which the Commission will not institute an investigation. These follow the limitations on Commission investigations set forth in section 202(h) of the Trade Act. Section 301(f) of the URAA amended section 202(h) to, among other things, clarify when a product subject to the WTO Agreement on Textiles and Clothing will become eligible for a Commission safeguard investigation.

Current rule section 206.15, which concerns industry adjustment plans and commitments, is redesignated as section 206.16, and current rule sections 206.16 and 206.17 are redesignated as sections 206.18 and 206.19, respectively.

Section 206.17, which sets forth rules for providing limited disclosure of confidential business information under administrative protective order, is new. Section 301(b) of the URAA amended section 202 of the Trade Act to add a new subsection (i) that requires the Commission to promulgate regulations to provide for disclosure of confidential business information, under an administrative protective order, to authorized representatives of interested parties who are parties to an investigation under section 202. The Statement of Administrative Action approved by the URAA states that it is expected that the Commission regulations will generally parallel the appropriate provisions of section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f) and the regulations issued under that section. New section 206.17 is modeled after Commission rule section 207.7, which sets forth rules providing for limited disclosure of confidential business information under administrative protective order in Commission investigations under the antidumping and countervailing duty laws in the Tariff Act of 1930. Section 206.17 includes wording that parallels amendments to section 207.7 of the rules scheduled to become effective on or about January 27, 1995. The term ''confidential business information'' is substituted for the term ''business proprietary information,'' and certain other changes are made to reflect the differences between the two statutes. The definition of ''interested parties'' in paragraph (a)(3)(iii) is based on that found in section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)).

Section 206.18 (formerly designated as section 206.16), which sets forth the times for Commission determinations and reports under Subpart B, is amended to reflect the new statutory times for determinations and reports when critical circumstances are alleged. As provided under section 202(d)(2) of the Trade Act, as amended by section 301(d) of the URAA, the Commission is required to make a critical circumstances determination within 60 days of the filing of a petition alleging such circumstances. When critical circumstances are alleged, the Commission will commence the regular 120-day injury phase of its investigation only after it completes the 60-day critical circumstances phase, and the Commission will submit its report on its investigation to the President not later than 240 days after the petition was filed, the request or resolution received, or the motion adopted.

Section 206.34, which sets forth the requirements concerning the contents of a petition filed under Subpart D of Part 206 with regard to imports from a NAFTA country, is amended in three respects. First, in the introductory paragraph, language is added that directs petitioners, in stating whether provisional relief is sought, to state whether they are asserting that critical circumstances exist. Second, paragraph (e)(2)(i) is amended to include ''productivity'' in the list of economic factors for which a petitioner is directed to provide data in its petition. Third, paragraph (i), which describes the information to be provided in a petition when critical circumstances are alleged, is amended to reflect the new statutory standard relating to the critical circumstances. These changes parallel changes made in section 206.14 of these rules with respect to petitions filed under Subpart B of Part 206. Section 302(c) of the NAFTA Implementation Act (19 U.S.C. 3352(c)) makes applicable to investigations conducted by the Commission under section 302(b) of the NAFTA Implementation Act the

factors applied in making determinations set forth in section 202(c) of the Trade Act and the provisional relief provisions in section 202(d) of the Trade Act.

Section 206.35, which sets forth the times for Commission determinations and reports under Subpart D with respect to imports from a NAFTA country, is amended at paragraph (c) to reflect the change in time for making and reporting determinations concerning whether critical circumstances exist.

Section 206.52, concerning monitoring, is amended to reflect the change in timing of Commission monitoring reports under section 204(a) of the Trade Act. Section 204(a), as amended by section 302(c)(1) of the URAA, requires the Commission to submit reports on monitoring at the mid-point of the initial period of relief or any extension thereof, provided that the initial period of relief or the extension exceeds 3 years in duration.

Section 206.53, concerning investigations to provide certain probable economic effect advice to the President, is amended to delete reference to the term ''extension,'' to reflect deletion of this term from section 204(b) of the Trade Act by section 302(c)(2) of the URAA.

Section 206.54 is new and provides for Commission investigations and determinations with respect to extension of relief actions in response to a request or petition under amended section 204(c) of the Trade Act. Section 204(c) of the Trade Act, as amended by section 302(d)(2) of the URAA, provides that the Commission, upon the request of the President or upon petition by the concerned industry, is to investigate to determine whether action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition. Industry petitions must be filed not earlier than 9 months or later than 6 months before action under section 203 is to terminate. The Commission is required to hold a public hearing in the course of its investigation and to transmit its report to the President not later than 60 days before the action under section 203 is due to terminate, unless the President specifies a different date. The rule provides for the institution of investigations, states who may file a petition and when, describes the information to be included in a petition, states when the Commission will make its report to the President, and states that the Commission will make its report available to the public (with the exception of confidential business information). Section 206.5(c) of these rules states that the Commission will hold a public hearing in connection with each investigation under section 204(c) of the Trade Act.

Section 206.54 also provides for the limited disclosure under administrative protective order of confidential business information in the same manner as provided under section 206.17 of these rules.

Former section 206.54, which concerns investigations to evaluate the effectiveness of relief, has been redesignated as section 206.55.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Investigations, Imports.

PART 206—[AMENDED]

19 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 is revised to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

2. Subpart A is revised to read as follows:

Subpart A—General

206.2 Identification of type of petition or request.
206.3 Institution of investigations; publication of notice; availability of petition for public inspection.
206.4 Notification of other agencies.
206.5 Public hearing.
206.6 Report to the President.
206.7 Confidential business information; furnishing of nonconfidential summaries thereof.
206.8 Service, filing, and certification of documents.

Subpart A—General

§ 206.2 Identification of type of petition or request.

An investigation under this Part 206 may be commenced on the basis of a petition, request, resolution, or motion described in section 202(a)(1), 204(c)(1), or 406(a)(1) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this Part 206 shall state clearly on the first page thereof ''This is a [petition or request] under section [202, 204(c), or 406 of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, or F] of Part 206 of the rules of practice and procedure of the United States International Trade Commission''.

§ 206.3 Institution of investigations; publication of notice; availability of petition for public inspection.

(a) *Institution of investigation and publication of notice.* Except as provided in § 206.15(b), the Commission, after receipt of a petition or request under Part 206, properly filed, will promptly institute an appropriate investigation and publish notice thereof in the **Federal Register**.

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information.

(c) *Availability for public inspection.* The Commission will promptly make such petition or request available for public inspection (with the exception of confidential business information).

§ 206.4 Notification of other agencies.

The Commission will promptly transmit copies of petitions or requests filed and notification of investigations instituted to the Office of the United States Trade Representative (hereinafter USTR), the Secretary of Commerce, the Secretary of Labor, and other Federal agencies directly concerned.

§ 206.5 Public hearing.

(a) *Investigations under subpart B of this part.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under Subpart B of this Part after reasonable notice thereof has been caused to be published in the **Federal Register**. A hearing on remedy is not necessary if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subparts C, D, and E of this part.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subparts C, D, and E of this part after reasonable notice thereof has been published in the **Federal Register**.

(c) *Investigations under subpart F of this part.* A public hearing on the subject of whether an action taken

under section 203 of the Trade Act of 1974 should be extended will be held in connection with each investigation instituted under subpart F of this part after reasonable notice thereof has been published in the **Federal Register**.

(d) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b) of the Trade Act of 1974, and to be heard at such hearings. All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

§ 206.6 Report to the President.

(a) *In general.* The Commission will include in its report to the President the following:

(1) The determination made and an explanation of the basis for the determination;

(2) If the determination is affirmative, to the extent appropriate, the recommendations for action and an explanation of the basis for each recommendation;

(3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

(b) *Additional findings and information.*

(1) In the case of a determination made under section 202(b) of the Trade Act, the Commission will also include in its report the following:

(i) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(ii) A copy of the adjustment plan, if any, submitted by the petitioner;

(iii) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(iv) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(v) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

(2) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the Commission will also include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in § 206.17, in the case of an investigation under Subpart B, C, D, or F of this Part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President and the Trade Representative; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

§ 206.8 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on the deadline and may file and serve the nonconfidential version of the document no later than one business day after the deadline for filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: ''Bracketing of CBI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as

the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

3. Subpart B is revised to read as follows:

Subpart B—Investigations Relating to Global Safeguard Actions

206.11 Applicability of Subpart.
206.12 Definitions applicable to Subpart B of this part.
206.13 Who may file a petition.
206.14 Contents of petition.
206.15 Institution of investigation.
206.16 Industry adjustment plan and commitments.
206.17 Limited disclosure of certain confidential business information under administrative protective order.
206.18 Time for determinations, reporting.
206.19 Public report.

Subpart B—Investigations Relating to Global Safeguard Actions

§ 206.11 Applicability of subpart.

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.12 Definitions applicable to subpart B of this part.

For the purposes of this Subpart, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.13 Who may file a petition.

A petition under this Subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 206.14 Contents of petition.

A petition under this Subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

§ 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this Subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the **Federal Register**.

(b) *Exceptions.*

(1) *Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the **Federal Register**.

(4) *Perishable agricultural product.* An entity of the type described in § 206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.*, all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''confidential business information'' is defined in § 201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five (5) days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in ''competitive decisionmaking'' includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(iii) For purposes of this § 206.17, the term ''interested party'' means:

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of an article which is the subject of an investigation under this section or a trade or business association a majority of the members of which are producers, exporters, or importers of such article;

(B) The government of a country in which such article is produced or manufactured;

(C) A manufacturer, producer, or wholesaler in the United States of a like or directly competitive article;

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale of a like or directly competitive article in the United States;

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like or directly competitive article in the United States; and

(F) An association, a majority of whose members is composed of interested parties described in paragraphs (a)(3)(iii) (C), (D), or (E) of this section with respect to a like or directly competitive article.

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of an interested party which is a party to the investigation; and who have submitted to the Secretary a signed statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party

represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of

(i) the date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) the completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) the recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) the recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period.

Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions which include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 206.8(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 206.8(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

(g) *Exemption from disclosure.*

(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in double brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in double brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 206.8, except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary

shall promptly be returned to the requester.

§ 206.18 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that—

(1) if the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days; or

(2) if critical circumstances are alleged, the Commission will make its determination within 120 days after completion of its investigation with respect to critical circumstances.

The Commission will make its report to the President at the earliest practicable time, but not later than 180 days (240 days if critical circumstances are alleged) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

§ 206.19 Public report.

Upon making a report to the President of the results of an investigation to which this Subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

4. Section 206.34 is revised to read as follows:

§ 206.34 Contents of petition.

A petition under this Subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, a Canadian or Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product.* In addition, such petition shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.*

(1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the Canadian or Mexican article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the Canadian or Mexican article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action

would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

5. Section 206.35 is revised to read as follows:

§ 206.35 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

6. Subpart F is revised to read as follows:

Subpart F—Monitoring; Advice as to Effect of Extension, Reduction, Modification, or Termination of Relief Action

206.51 Applicability of Subpart.
206.52 Monitoring.
206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.
206.54 Investigations with respect to extension of action.
206.55 Investigations to evaluate the effectiveness of relief.

Subpart F—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

§ 206.51 Applicability of subpart

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.52 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Reports.* Whenever the initial period of import relief, or any extension thereof, exceeds three (3) years, the Commission will submit a report on the results of such monitoring to the President and the Congress. Such report will be submitted not later than the date which is the mid-point of the initial period of import relief, or any extension thereof. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

§ 206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 of the Trade Act which is under consideration.

§ 206.54 Investigations with respect to extension of action.

(a) *Institution of investigations.* Upon the request of the President, or upon petition on behalf of the industry concerned, the Commission will investigate to determine whether an action taken under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(b) *Who may file a petition.* A petition under this § 206.54 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief action.

(c) *Time for filing.* Any petition filed on behalf of an industry for a determination under this § 206.54 must be filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 of the Trade Act is to terminate.

(d) *Contents of petition.* A petition under this § 206.54 shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) *Identification of relief action.* An identification of the action under section 203, or portion of such action, for which a determination under this § 206.54 is sought;

(2) *Representativeness.* (i) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(ii) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(iii) The names and locations of all other producers of the domestic article known to the petitioner;

(3) *Import data.* Import data on the foreign article concerned for each full year since action was taken under section 203 of the Trade Act, starting with the year in which action was taken;

(4) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (d)(3) of this section;

(5) *Efforts to adjust.* Specific information in support of the claim that action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is making a positive adjustment to import competition.

(e) *Limited disclosure of certain confidential business information under administrative protective order.* Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The

provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

(f) *Time for reporting.* The Commission will make its report to the President at the earliest practical time, but not later than 60 days before the action under section 203 of the Trade Act is to terminate, unless the President specifies a different date.

(g) *Public report.* Upon making a report to the President of the results of an investigation to which this § 206.54 relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

§ 206.55 Investigations to evaluate the effectiveness of relief.

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Trade Act.

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

By order of the Commission.

Issued: December 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–32126 Filed 12–30–94; 8:45 am]

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19 CFR Part 207

Notice of Interim Amendment to Rules of Practice and Procedure

AGENCY: United States International Trade Commission.

ACTION: Interim rules with request for comment.

SUMMARY: The Commission is amending its Rules of Practice and Procedure on an interim basis to conform with the Uruguay Round Agreements Act, (URAA). These rules govern investigations of whether domestic industries are injured by reason of imports sold at less than fair value or from subsidized imports to the United States.

The amendments provide, in particular, for new rules concerning comments on information obtained in investigations and for investigations concerning certain countervailing duty orders entered under section 303 of the Tariff Act of 1930 (the Act). Additionally, several rules are amended to conform their language with the provisions to the Act added or amended by the URAA.

DATES: The interim amendments become effective on January 1, 1995, the date on which the World Trade Organization (WTO) Agreement enters into force with respect to the United States, unless the United States Trade Representative (USTR) announces prior to that date that the WTO Agreement will not enter into force on that date. Should the effective date be other than January 1, 1995, the Commission will publish notice to such effect in the **Federal Register**.

To be assured of consideration, written comments must be received not later than April 3, 1995.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3087. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The URAA was enacted on December 8, 1994. This legislation contains provisions which, *inter alia,* amend Title VII of the Act (19 U.S.C. 1671 *et seq.*), concerning antidumping and countervailing duty investigations and review. The Commission's rules concerning Title VII practice and procedure need to be amended to conform to the new legislation.

Section 335 of the Act (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. Additionally, section 103(a) of the URAA specifies that appropriate officers of the United States Government may issue such regulations as may be necessary to ensure that any provision of that act, or amendment made by the act, is appropriately implemented on the effective date of that act, and section 103(b) of the URAA directs that any interim regulations necessary or appropriate to carry out any action proposed in the Statement of Administrative Action approved under section 101(a) of the URAA to implement an agreement described in section 101(d)(7), (12), or (13) of the URAA be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and will become effective when the WTO enters into force with respect to the United States, which will be January 1, 1995, unless USTR announces otherwise prior to that date. Consequently, it was not possible to complete the section 553 rulemaking procedure prior to the effective date of the new legislation.

The Commission thus determined to adopt interim rules that will go into effect when the provisions of the URAA amending Title VII become effective and will remain in effect until the Commission adopts final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from three sources: (1) section 335 of the Act (19 U.S.C. 1335), the pertinent portion of which was discussed above; (2) section 103 of the URAA and the Statement of Administrative Action approved by the URAA, the pertinent portions of which were also discussed above; and (3) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances.

The Commission determined that the need for interim rules is clear in this instance. The Commission noted that the new legislation alters Title VII practice and procedure and that the existing Commission rules do not encompass certain procedures required by the new legislation. The Commission found that rulemaking was essential for the orderly administration of Title VII as amended by the new legislation. Furthermore, since the legislation is to become effective very shortly after enactment, the Commission concluded that it would be imperative that implementing rules be in place on the effective date of the new statute.

The Commission noted that an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) the proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. § 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that ''good cause'' exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking which solicits public comment, the Commission found that (1) the interim rules are ''agency rules of procedure or practice''; and (2) since the new legislation is projected to become effective very shortly after enactment, and the time or fact of enactment could not be predicted in advance, it clearly would be ''impracticable'' for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission found that the fact that the new legislation is expected to become effective very shortly after enactment made such advance publication impossible and constituted ''good cause'' for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the more comprehensive final rules to follow will emerge as a result of the Congressionally-mandated policy of affording public participation in the rulemaking process.[1] Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories:

(1) revision of a pre-existing rule that conflicted with the new legislation;

(2) a technical amendment to make a pre-existing rule conform to the language of the new legislation;

(3) rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or

(4) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule. More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

Because the interim regulations merely respond to exigencies created by the new legislation, the Commission has further determined that they do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. § 601 note), the Commission hereby certifies pursuant to 5 U.S.C. § 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities. In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking because it is not one in which a notice of proposed rulemaking is required under 5 U.S.C. § 553(b).

Explanation of the Interim Amendments to 19 CFR Part 207

The amendments set forth below are intended to reflect changes in the law effected by the URAA.

Section 207.1 is amended to state that the Part 207 regulations are not applicable to investigations conducted pursuant to section 783 of the Act, which concerns antidumping petitions filed by third countries. Section 783 was added to the Act by section 232 of the URAA. Section 783(c) states that Commission determinations in investigations arising from antidumping petitions by third countries shall be made according to procedural requirements specified by the Office of the United States Trade Representative (USTR). Because the Commission is not the agency that has been accorded statutory authority to specify procedures with respect to section 783 investigations, section 207.1 must be amended to exclude section 783 investigations from its scope. Additionally, the U.S. Code citations in section 207.1 have been amended to reflect the new U.S. Code provisions added to Title VII of the Act by the URAA.

Section 207.2(e) is amended to change the reference to ''a class or kind of merchandise'' to ''subject merchandise.'' This reflects a change in statutory terminology pursuant to, *inter alia*, section 233(5) of the URAA.

Section 207.8 is amended to conform its terminology to changes made in the Act pursuant to section 231 of the URAA. The reference under clause (a) to ''best information otherwise available'' has been changed to ''the facts otherwise available,'' consistent with new section 776(a) of the Act. The language under clause (c) referencing adverse inferences has been amended to conform to that used in new section 776(b) of the Act.

Sections 207.10(a), 207.10(c)(2), and 207.11 are amended, and former section 207.10(d) is repealed, to eliminate references to petitions filed under section 303. Section 261 of the URAA repeals section 303 on its effective date, so no new section 303 petitions will be filed after the effective date of these regulations. Other references to section 303 have been retained in the regulations, inasmuch as section 261(b)(2) of the URAA states that the repeal does not affect pending proceedings under section 303, and the Commission may have section 303 investigations pending as of the effective date of these regulations.

A new section 207.29 is added concerning comments on information. This new section implements the provisions of section 782(g) of the Act, as amended by section 231(a) of the URAA. These new provisions require the Commission, before making a final determination in countervailing or antidumping duty investigations or review proceedings, to cease collecting information and provide parties to the proceeding with a final opportunity to

[1] *See American Federation of Government Employees, AFL-CIO* v. *Block*, 655 F.2d 1153, 1157–1158 (D.C. Cir. 1981) (''*AFGE*''). *See also United States* v. *Garner*, 767 F.2d 104, 120 (5th Cir. 1985) (quoting *AFGE*).

comment upon all information on which they previously had not had an opportunity to comment.

For purposes of these interim regulations, the Commission has proposed to implement section 782(g) by adopting relatively minor changes to the procedures it currently follows in final antidumping and countervailing duty investigations. The Commission is interested in receiving comments, however, concerning whether more extensive changes to its antidumping and countervailing investigation procedures are necessary or desirable to implement section 782(g). More extensive changes could entail one or several of the following: instituting final investigations at an earlier time; releasing the final confidential staff report prior to the parties' final opportunity to comment under section 782(g); implementing a multiple-stage comment procedure to permit the Commission and Commission staff to submit final questions to the parties and/or to allow the parties to submit rebuttal comments. The Commission is additionally interested in receiving comment concerning the scheduling of procedures it is adopting to implement section 782(g), i.e., concerning how long before the public vote the final disclosure of information should take place, and the amount of time after disclosure parties should be provided to file their comments. This could include submission of suggested model work schedules, particularly if the proposed dates for issuing questionnaires or scheduling a hearing need to be changed (e.g., if questionnaires are issued before Commerce's preliminary determination) as a result.

Section 207.29(a) concerns the Commission's first obligation under new section 782(g): to disclose information to parties to an investigation or review. Consequently, section 207.29(a) requires the Commission to specify in a final antidumping or countervailing duty investigation a date on which it will disclose to the parties to the investigation all information on which they have not previously had an opportunity to comment. This includes business proprietary information, which will be released pursuant to administrative protective order. It is anticipated that the disclosure date will be specified as soon as practicable after institution of the final investigation. Additionally, to ensure that all transcript corrections are received by the Commission prior to the disclosure date, section 207.23(c)(2) is amended to state that all proposed revisions to the hearing transcript be submitted to the Secretary at least one day prior to the information disclosure date.

Section 207.29(b) concerns the Commission's second obligation under new section 782(g): to provide the parties an opportunity to comment on the information disclosed. This section indicates that the Commission will specify a date on which the parties will have an opportunity to file comments on information disclosed to them pursuant to subsection (a). The comments can only concern the information disclosed pursuant to subsection (a) and shall not exceed 10 pages of textual material, double spaced and single-sided, on stationery measuring 8½ x 11 inches. To implement the requirement of section 782(g) that the Commission disregard comments containing any new factual information, the regulation requires that comments addressing the accuracy, reliability, or probative value of information disclosed by reference to information elsewhere in the record shall identify where in the record such information is found. Section 207.29(b) also states that the record shall close on the date the comments are due, except as provided in section 771(7)(G)(iii) with respect to staggered investigations.

Pursuant to section 207.29(c), the provisions of section 207.29 will be applicable to final countervailing duty and antidumping investigations under sections 705 and 735 to which the amendments made to Title VII of the Act by the URAA are applicable. Additionally, by virtue of section 207.45(d) and new section 207.46(d), the provisions of section 207.29 are also pertinent to changed circumstances investigations under section 751(b) and reviews of certain outstanding section 303 orders under new section 753.

In furtherance of new section 207.29, the Commission may adopt a practice of releasing staff reports on or before the disclosure date established pursuant to that section in the event that one or more parties to an investigation or review do not have access to business proprietary information subject to administrative protective order. Section 207.21(b) is therefore amended to delete the clause stating that the public version of the Commission's final staff report will be released ''after the Commission's final determination.'' The Commission does not take the position, however, that such a practice is required by section 207.29. Nor does the Commission anticipate that it will necessarily release public copies of staff reports on or before the disclosure date as a general matter.

There are two technical amendments to section 207.40. First, section 207.40(a) is amended by addition of the language ''upon withdrawal of the petition by the petitioner'' so it will conform more closely with sections 704(a)(3) and 734(a)(3), whose requirements it implements. This change is also needed because the URAA has amended the Act to specify that a Commission preliminary determination of negligible imports pursuant to new section 771(24) will have the effect of terminating an investigation. Second, section 207.40(b) is amended to reflect that the Department of Commerce may suspend antidumping investigations pursuant to section 734(l), as well as sections 734 (b) and (c).

A new section 207.46 is added to establish procedures for investigations under section 753 of the Act. Section 753, which was added to the Act by section 271 of the URAA, concerns countervailing duty orders that were issued under former section 303 of the Act without an injury determination being made by the Commission.

Section 207.46(a) contains definitions for terms used in that section. The first term, ''requesting party,'' merely references the type of parties eligible under section 753(a)(1) to request an investigation pursuant to that section. The second term, ''order,'' is taken directly from section 753(a)(2). The third term, ''WTO agreement,'' is taken directly from section 2(9) of the URAA.

Section 207.46(b) establishes requirements for requests for reviews under section 753. Such requests must be made by a ''requesting party''—that is, a party eligible to file a request under section 753(a)(1), and must be made within the time period established under section 753(a)(3). Paragraphs (1) through (4) specify additional material that should be included within the request to enable the Commission to facilitate and organize its investigation under section 753 and to formulate questionnaires. These encompass:

(1) A description of the relevant domestic like product and domestic industry on which the requesting party believes the Commission should focus in conducting its section 753 investigation, and identification of the individual members of that domestic industry.

(2) Information concerning the names and addresses of all known enterprises believed to be manufacturing, producing, exporting, or importing the subject merchandise.

(3) Information reasonably available to the requesting party documenting how that domestic industry is likely to be materially injured by reason of subject imports if the section 303 order

at issue is revoked. The provision specifies certain types of information concerning both the domestic industry and entities that produce or export the subject imports that should be included within the request, to the extent possible, to facilitate the Commission's determination.

(4) Information concerning any scope and anticircumvention rulings issued by the Department of Commerce with respect to the section 303 order at issue.

When the Commission receives a timely request for a section 753 investigation satisfying these requirements, section 207.46(c)(1) provides that it will publish a notice of initiation of the investigation in the **Federal Register**. Such notice is required by section 753(d). Section 207.46(c)(2) implements the policy of section 753(b)(1)(B) that the Commission should issue determinations in section 753 investigations within one year of initiation to the extent possible. The statute, however, provides an exception to the one-year policy in section 753(b)(1)(C) for investigations initiated within one year after the date on which the WTO Agreement enters into force with respect to the United States. This exception is reflected at section 207.46(c)(3) of the new regulations, which pursuant to the statute, states that all investigations must be completed within four years of the date the WTO Agreement enters into force and that the Commission shall confer with the Department of Commerce in determining whether to extend a completion date. Section 207.46(c)(3) also provides a description of grounds that may justify the Commission extending a completion date; the grounds specified are not intended to be exclusive.

Section 207.46(d) specifies that the procedures set forth pertaining to final antidumping and countervailing duty investigations shall also be applicable to section 753 investigations. This is consistent with section 753(b)(1)(A) of the Act.

Section 207.46(e) reflects the requirements of section 753(b)(4) with respect to section 303 orders for which no request for review is filed. Similarly, section 207.46(f) reflects the requirements of section 753(c) for section 303 investigations without an injury test that are pending or have been suspended when a country has become a signatory to the WTO's Agreement on Subsidies and Countervailing Measures.

Section 207.46(g) concerns review requests made under section 753(e). That section permits a requesting party to file, simultaneously with its request for review under section 753, a request for an expedited ''sunset'' review under section 751(c) of countervailing or antidumping duty orders involving the same or comparable subject merchandise. Sections 753(e)(1)(A) and 753(e)(3) indicate that if the Department of Commerce, after consultation with the Commission, should determine to initiate a review pursuant to the request, the Commission shall conduct a consolidated review pursuant to the procedures applicable to section 751(c) reviews.

The Commission has determined not to issue detailed regulations for section 751(c) investigations as part of these interim rules. Instead, the Commission anticipates that it will promulgate such regulations pursuant to notice-and-comment rulemaking procedures promptly after the URAA's amendments to the Act become effective. Nevertheless, section 207.46(g) contains a brief specification of how any section 751(c) reviews initiated by Department of Commerce pursuant to requests made under section 753(e) will be conducted. Section 207.46(g)(1) authorizes requests for expedited review, and states that the request for review under section 751(c) should set forth evidence to establish why revocation of the order to be reviewed under section 751(c) would be likely to lead to continuation or recurrence of material injury. Again, the Commission intends to promulgate more detailed regulations concerning the content of requests for review under section 751(c) as part of subsequent notice-and-comment rulemaking.

Section 207.46(g)(2) states that if the Department of Commerce should determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 under the procedures set forth in Subparts A and C of Part 207. This implements the requirements of section 753(e)(3) pending the promulgation of more detailed procedural rules pertaining to section 751(c) investigations. Section 207.46(g)(3) states that if Commerce should determine not to initiate a section 751(c) review, the Commission will proceed with the section 753 review request pursuant to the procedures stated elsewhere in section 207.46.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

PART 207—[AMENDED]

Part 207 is amended as set forth below:

1. The authority citation for Part 207 is revised to read as follows:

Authority: 19 U.S.C. 1303, 1336, 1671–1677n, 2482; sec. 103, Pub. L. 103–465, 108 Stat. 4809.

1a. Section 207.1 is revised to read as follows:

§ 207.1 Applicability of part.

Part 207 applies to proceedings of the Commission under section 303, section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n) (the Act), other than investigations under section 783 (19 U.S.C. 1677n), which will be conducted pursuant to procedures specified by the Office of the United States Trade Representative.

2. Paragraph (e) of section 207.2 is revised to read as follows:

§ 207.2 Definitions applicable to part 207.

* * * * *

(e) The term *injury* means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of imports into the United States of subject merchandise which is found by the administering authority to be subsidized, or sold, or likely to be sold, at less than its fair value.

* * * * *

3. Section 207.8 is revised to read as follows:

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any investigation under section 303 or title VII of the Act, may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may:

(a) Use the facts otherwise available in making its determination;

(b) Seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333;

(c) Make inferences adverse to such person's position, if such person is an interested party that has failed to cooperate by not acting to the best of its ability to comply with a request for information; and

(d) Take such other actions as necessary to obtain needed information.

4. Paragraphs (a) and (c)(2) of Section 207.10 are revised to read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or 732(b) of the Act shall file copies of the petition, pursuant to section 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of section 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date. Notwithstanding section 201.11 of this chapter, a petitioner need not file an entry of appearance in the preliminary investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance, although the petitioner must file an entry of appearance in any final investigation corresponding to that preliminary investigation.

* * * * *

(c) * * *

(2) When not made in the petition, any allegations of critical circumstances under section 703 or 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

§ 207.10 [Amended]

5. Paragraph (d) of section 207.10 is removed.

6. Section 207.11 is revised to read as follows:

§ 207.11 Contents of petition.

The petition shall be signed by the petitioner or his duly authorized officer, attorney, or agent, and shall set forth the name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation. The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations. Petitioners are advised to refer to the administering authority's regulations concerning the contents of petitions.

7. Paragraph (b) of section 207.21 is revised to read as follows:

§ 207.21 Prehearing and final staff reports.

* * * * *

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's final determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under section 207.7.

8. Paragraph (c)(2) of section 207.23 is revised to read as follows:

§ 207.23 Hearing.

* * * * *

(c) * * *

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to section 207.29(a), any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he shall incorporate the revision into a revised transcript.

9. A new section 207.29 is added to read as follows:

§ 207.29 Comment on information.

(a) In any final investigation under section 705 or 735 of the Act, the Commission shall specify a date on which it will disclose to all parties to the investigation all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to section 207.7. The date on which disclosure is made will occur after the filing of posthearing briefs pursuant to section 207.24.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to section 207.24. Comments shall only concern such information, and shall not exceed 10 pages of textual material, double spaced and single-sided, on stationery measuring 8 ½ x 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information or comments on information disclosed prior to the filing of the posthearing brief shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act.

(c) This section shall be applicable only to proceedings that have been self-initiated by the administering authority after, or initiated pursuant to petitions or requests filed after, the date on which the Agreement Establishing the World Trade Organization enters into force with respect to the United States.

10. Paragraphs (a) and (b) of section 207.40 are revised to read as follows:

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the **Federal Register** to all parties to the investigation, upon withdrawal of the petition by the petitioner, or upon issuance of a final negative determination or termination of its investigation by the administering authority under section 303, 705 or 735 of the Act. The Commission may not terminate an investigation upon withdrawal of the petition by the petitioner, however, before a determination is made by the administering authority under section 702(c), 703(b), 732(c) or 733(b) of the Act.

(b) Upon receipt of notice of suspension of an investigation by the administering authority under section 704 (b) or (c) or 734(b), (c), or (1), of the Act, the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the subject matter of the suspended investigation.

* * * * *

11. A new section 207.46 is added to read as follows:

§ 207.46 Investigations concerning certain countervailing duty orders.

(a) *Definitions.* For purposes of this section:

(1) *Requesting party* means an interested party described in section 771(9) (C), (D), (E), (F), or (G) of the Act.

(2) *Order* means a countervailing duty order issued under section 303 of the Act as to which the requirement of an affirmative determination of material injury under section 303(a)(2) of the Act was not applicable at the time such order was issued.

(3) *WTO Agreement* means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(b) *Request for review.* A requesting party may file with the Commission a request for an investigation under section 753 of the Act within the time period established by section 753(a)(3) of the Act. The request should contain the following information:

(1) A description and identification of the relevant domestic like product, the industry in the United States producing that product that is likely to be materially injured by reason of imports of the subject merchandise if the Order is revoked, and each individual member of that industry.

(2) Information reasonably available to the requesting party concerning the names and addresses of all known enterprises believed to be manufacturing, producing, exporting, or importing the subject merchandise;

(3) Information reasonably available to the requesting party documenting that the industry described in paragraph (b)(1) of this section is likely to be materially injured by reason of subject imports if the Order is revoked, including:

(i) Information concerning the capacity, production, sales, market share, inventories, employment, wages, productivity, profits, ability to raise capital, and development and production efforts of the industry described in paragraph (b)(1) of this section.

(ii) Information concerning current and projected production capacity in the exporting country of the subject merchandise, inventories of the subject merchandise, and the existence of barriers to the importation of such merchandise into countries other than the United States.

(4) Information concerning any scope and anticircumvention rulings issued by the administering authority with respect to the Order.

(c) *Initiation of Investigation.* (1) Upon the receipt of a timely filed request for a section 753 investigation satisfying the requirements of paragraph (b) of this section, the Secretary shall publish a notice of initiation of such investigation in the **Federal Register**.

(2) Subject to paragraph (c)(3) of this section, a section 753 investigation shall be completed within one year of the date of publication of the notice of initiation of such investigation in the **Federal Register**.

(3) The Commission may take more than one year to complete section 753 investigations for which requests for investigations are received within one year after the date on which the WTO Agreement enters into force with respect to the United States. All such investigations must be completed within four years of that date, however. In determining whether to extend the completion date for a section 753 investigation, the Commission shall consult with the administering authority. Grounds for extending completion include, but are not limited to, the desire to conduct investigations involving the same or similar domestic industries and domestic like products on a simultaneous basis, and the desire to efficiently manage the Commission's caseload.

(d) *Conduct of Investigations.* The procedures set forth in subparts A and C of this part shall apply to all investigations initiated under this section.

(e) *When No Request for Review Is Filed.* When there has been no properly filed and sufficient request for a section 753 investigation of an Order, the Commission shall notify the administering authority that a negative determination has been made under section 753(a) of the Act with respect to that Order.

(f) *Pending and Suspended Section 303 Investigations.* If, on the data on which a country becomes a signatory to the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act, there is a section 303 countervailing duty investigation in progress or suspended with respect to that country's merchandise for which the requirement of a material injury determination under section 303(a)(2) of the Act was not applicable at the time the investigation was initiated, the Commission shall commence an investigation pursuant to the provisions of section 753(c) of the Act with respect to pending investigations and suspended investigations to which section 704(i)(1)(B) of the Act applies.

(g) *Request for Simultaneous Expedited Section 751(c) Review.* (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority an expedited review under section 751(c) of the Act of a countervailing or antidumping duty order involving the same or comparable subject merchandise. The request for review under section 751(c) of the Act should set forth evidence to establish why revocation of the order to be reviewed under section 751(c) of the Act would be likely to lead to continuation or recurrence of material injury and should additionally contain any information required by the regulations of the administering authority.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. The procedures set forth in subparts A and C of this part shall apply to any such consolidated review.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

By order of the Commission:

Issued: December 24, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–32127 Filed 12–30–94; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8588]

RIN 1545–AS70

Subchapter K Anti-Abuse Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation providing an anti-abuse rule under subchapter K of the Internal Revenue Code of 1986 (Code). The rule authorizes the Commissioner of Internal Revenue, in certain circumstances, to recast a transaction involving the use of a partnership. The final regulation affects partnerships and the partners of those partnerships and is necessary to provide guidance needed to comply with the applicable tax law.

EFFECTIVE DATES: This regulation is effective May 12, 1994, except that § 1.701–2 (e) and (f) are effective December 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mary A. Berman or D. Lindsay Russell, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document adds § 1.701–2 to the Income Tax Regulations (26 CFR part 1) under section 701 of the Code.

Background

Subchapter K was enacted to permit businesses organized for joint profit to be conducted with ''simplicity, flexibility, and equity as between the partners.'' S. Rep. No. 1622, 83d Cong., 2d Sess. 89 (1954); H.R. Rep. No. 1337, 83d Cong., 2d Sess. 65 (1954). It was not intended, however, that the provisions of subchapter K be used for tax avoidance purposes. For example, in enacting subchapter K, Congress indicated that aggregate, rather than entity, concepts should be applied if such concepts are more appropriate in applying other provisions of the Code. H.R. Conf. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954). Similarly, in later amending the rules relating to special allocations, Congress sought to ''prevent the use of special allocations for tax avoidance purposes, while allowing their use for bona fide business purposes.'' S. Rep. No. 938, 94th Cong., 2d Sess. 100 (1976).

On May 12, 1994, the IRS and Treasury issued a notice of proposed rulemaking (59 FR 25581) under section 701 of the Code. That document proposed to add an anti-abuse rule under subchapter K. Comments responding to the notice were received, and a public hearing was held on July 25, 1994. After considering the comments that were received in response to the notice of proposed rulemaking and the statements made at the hearing, the IRS and Treasury adopt the proposed regulation as revised by this Treasury decision. The anti-abuse rule in this final regulation applies to the operation and interpretation of any provision of the Code and the regulations thereunder that may be relevant to a particular partnership transaction (including income, estate, gift, generation-skipping, and excise tax). The anti-abuse rule in the final regulation is expected primarily to affect a relatively small number of partnership transactions that make inappropriate use of the rules of subchapter K. The regulation is not intended to interfere with bona fide joint business arrangements conducted through partnerships.

Explanation of Provisions

A. Overview of Provisions

As noted above, subchapter K is intended to permit taxpayers to conduct joint business (including investment) activities through a flexible economic arrangement without incurring an entity-level tax. Implicit in the intent of subchapter K are three requirements. First, the partnership must be bona fide and each partnership transaction (or series of related transactions) must be entered into for a substantial business purpose. Second, the form of each partnership transaction must be respected under substance over form principles. Third, the tax consequences under subchapter K to each partner of partnership operations and of transactions between the partner and the partnership must accurately reflect the partners' economic agreement and clearly reflect the partner's income (referred to in the final regulation as proper reflection of income), except to the extent that a provision of subchapter K that is intended to promote administrative convenience or other policy objectives causes tax results that deviate from that requirement. In those cases, if the application of that provision of subchapter K and the ultimate tax results to the partners and the partnership, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision, the transaction is treated as properly reflecting the partners' income. In determining whether a transaction clearly reflects the partners' income, the principles of sections 446(b) and 482 apply.

The provisions of subchapter K must be applied to partnership transactions in a manner consistent with the intent of subchapter K. The final regulation clarifies the authority of the Commissioner to recast transactions that attempt to use partnerships in a manner inconsistent with the intent of subchapter K as appropriate to achieve tax results that are consistent with this intent, taking into account all the facts and circumstances.

In addition, the final regulation provides that the Commissioner can treat a partnership as an aggregate of its partners in whole or in part as appropriate to carry out the purpose of any provision of the Code or regulations, except to the extent that (1) a provision of the Code or regulations prescribes the treatment of the partnership as an entity, and (2) that treatment and the ultimate tax results, taking into account all of the facts and circumstances, are clearly contemplated by that provision.

B. Discussion of Comments Relating to Provisions in the Regulation

Comments that relate to the application of the proposed regulation and the responses to them, including an explanation of the revisions made to the final regulation, are summarized below.

1. Scope of the Regulation

Several comments stated that, as drafted, the language in the proposed regulation was too broad and too vague to provide adequate guidance to taxpayers as to which transactions are affected by the regulation. Similarly, some comments suggested that the intent of subchapter K as stated in the proposed regulation (upon which the regulation operates) was overbroad and potentially conflicted with explicit statutory or regulatory provisions. Several comments expressed concern that the regulation, if finalized as proposed, would adversely affect the legitimate use of partnerships. Other comments suggested that additional examples should be added to clarify the scope of the regulation, which would provide the necessary guidance. Some of the comments requested that the regulation be withdrawn, or revised and reproposed.

On the other hand, other comments supported the approach in the proposed regulation, noting that it was well established that the provisions of the Code must be interpreted consistent with their purpose. Some of these comments noted that the regulation would in large part simply be codifying aspects of existing judicial doctrines, such as substance over form and business purpose, as they relate to partnership transactions. Finally, some of these comments suggested that the regulation be modified in various respects, including by adding additional examples of its application.

In response to these comments, the IRS and Treasury have revised the final regulation in three principal respects. First, the scope of the regulation has been clarified substantially by revising the portion captioned *Intent of Subchapter K,* in paragraph (a) of the proposed regulation. Paragraph (a) of the final regulation now specifically requires that (1) the partnership must be bona fide and each partnership transaction or series of related transactions (individually or collectively, the transaction) must be entered into for a substantial business purpose, (2) the form of each partnership transaction must be

respected under substance over form principles, and (3) the tax consequences under subchapter K to each partner of partnership operations and of transactions between the partner and the partnership must, subject to certain exceptions, accurately reflect the partners' economic agreement and clearly reflect the partner's income (*proper reflection of income*). However, certain provisions of subchapter K that were adopted to promote administrative convenience or other policy objectives may, under certain circumstances, produce tax results that do not properly reflect income. To reflect the conscious choice in these instances to favor administrative convenience or such other objectives over the accurate measurement of income, the final regulation provides that proper reflection of income will be treated as satisfied with respect to the tax consequences of a partnership transaction that satisfies paragraphs (a)(1) and (2) of the final regulation to the extent the application of such a provision to the transaction and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision. Examples of such provisions include section 732, the elective feature of section 754, and the value-equals-basis rule in § 1.704–1(b)(2)(iii)(*c*), as well as regulatory de minimis rules such as those reflected in §§ 1.704–3(e)(1) and 1.752–2(e)(4). A number of examples in the final regulation demonstrate the proper application of these rules.

In addition, the revised *Intent of Subchapter K* set forth in paragraph (a) no longer provides that the provisions of subchapter K are not intended to permit taxpayers ''to use the existence of the partnerships to avoid the purposes of other provisions of the Internal Revenue Code.'' Many comments expressed confusion regarding the scope of this clause. Other comments suggested that this clause should be limited to questions of the appropriate treatment of a partnership as an entity or as an aggregate of its partners for purposes of applying another provision of the Code. Some comments further suggested that the correct application of the aggregate/entity concept does not depend on the intent of the taxpayer in structuring the transaction.

This clause was principally intended to address aggregate/entity issues that exist under current law. The final regulation clarifies this aspect of the regulation by removing the clause from paragraph (a) and adding a new paragraph (e) to address inappropriate treatment of a partnership as an entity. Paragraph (e) confirms the Commissioner's authority to treat a partnership as an aggregate of its partners in whole or in part as appropriate to carry out the purpose of any provision of the Code or the regulations thereunder. As stated in some comments, as well as under current law, the Commissioner's authority to treat a partnership as an aggregate of its partners is not dependent on the taxpayer's intent in structuring the transaction. However, the Commissioner may not treat the partnership as an aggregate of its partners under paragraph (e) to the extent that a provision of the Code or the regulations thereunder prescribes the treatment of a partnership as an entity, in whole or in part, and that treatment and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision. Underlying the promulgation of paragraph (e) is the belief that significant potential for abuse exists in the inappropriate treatment of a partnership as an entity in applying rules outside of subchapter K to transactions involving partnerships. Examples in new paragraph (f) illustrate the application of paragraph (e).

Paragraph (c) contains the second principal revision reflected in this final regulation. The corresponding paragraph in the proposed regulation provides that the purposes for structuring a transaction involving a partnership will be determined based on all of the facts and circumstances. In response to comments requesting guidance concerning the factors that will indicate that the taxpayers had a principal purpose to reduce substantially their aggregate federal tax liability in a manner inconsistent with the intent of subchapter K, paragraph (c) of the final regulation sets forth several of those factors.

Finally, in response to comments that the examples in the proposed regulation do not provide adequate guidance regarding the application of the regulation, as well as to suggestions that additional examples would help clarify the scope of the regulation, the final regulation contains numerous examples that illustrate the application of the regulation to specifically described transactions, including the weight to be given to relevant factors listed in paragraph (c) in the particular situations involved. The examples include transactions that are consistent with the intent of subchapter K as well as transactions that are inconsistent with the intent of subchapter K.

2. A Principal Purpose

The proposed regulation provides that if a partnership is formed or availed of in connection with a transaction or series of related transactions with a principal purpose of substantially reducing the present value of the partners' aggregate federal tax liability in a manner inconsistent with the intent of subchapter K, the Commissioner can disregard the form of the transaction. Some comments stated that all partnership transactions have a principal purpose of reducing federal taxes, and therefore, the standard should be changed from *a* principal purpose to *the* principal purpose. Other comments supported an ''*a* principal purpose'' standard, because the Commissioner can recast the transaction only if the tax results are also found to be inconsistent with the intent of subchapter K. Other comments stated that the taxpayer's intent should be irrelevant in all cases; rather, the inquiry should only be whether the results are inconsistent with the intent of subchapter K. Still other comments suggested that the taxpayer's intent should be irrelevant only in the case of aggregate/entity determinations.

The IRS and Treasury continue to believe that an inquiry into the taxpayer's intent generally is appropriate for an anti-abuse rule of this nature. As noted above, the regulation applies only if *both* (1) the taxpayer has a principal purpose to achieve substantial federal tax reduction, *and* (2) that tax reduction is inconsistent with the intent of subchapter K. Having a principal purpose to use a bona fide partnership to conduct business activities in a manner that is more tax efficient than any alternative means available does not establish that the resulting tax reduction is inconsistent with the intent of subchapter K. In those cases, the Commissioner cannot recast the transaction under this regulation. A number of examples in the final regulation demonstrate this point. Thus, the additional requirement in the regulation that the tax results be inconsistent with the intent of subchapter K sufficiently restricts the potential application of the regulation, so that the requirement of *a* principal purpose of federal tax reduction is appropriate.

By contrast, as noted above, the entity/aggregate determination under paragraph (e) of the final regulation does not require the taxpayer to have a principal purpose of substantially reducing taxes through misapplication of that principle. In this context, the IRS and Treasury agree with those

comments that suggested that the entity/aggregate principle is properly applied, as under current law, solely on the basis of carrying out the purpose of the particular provision to be applied.

3. Scope of Commissioner's Ability To Recast Transactions

The proposed regulation provides that if a transaction is determined to be inconsistent with the intent of subchapter K and the taxpayer acted with the requisite principal purpose of federal tax reduction, the Commissioner can disregard the form of the transaction. The proposed regulation describes several ways in which a transaction could appropriately be recast. Some comments interpreted this language as attempting to provide the Commissioner with unlimited discretionary recharacterization powers, without guidance as to which recharacterization applies to a particular transaction. To address these concerns, paragraph (b) of the final regulation has been revised to clarify that the Commissioner may recast transactions only as appropriate to ensure that the tax treatment of each transaction is consistent with the intent of subchapter K.

4. Effective Date of the Regulation

The regulation was proposed to be effective for all transactions relating to a partnership occurring on or after May 12, 1994, the date the proposed regulation was issued. Some comments requested that, in order to address the regulation's effect on bona fide partnership transactions, it apply prospectively only from the date the final regulation is issued. In light of the significant revisions made in the final regulation that clarify and narrow its potential scope and application, the final regulation generally continues to be effective as of May 12, 1994. However, to preclude the possibility that the regulation could be interpreted to apply, for example, when a partner who received an asset from a partnership before the effective date disposes of the asset after the effective date, the final regulation has been revised to clarify that it applies only to transactions *involving a partnership* after the effective date. Also, in light of the elimination of the proposed requirement that the taxpayer must have a principal purpose to achieve substantial tax reduction in the case of aggregate/entity determinations under paragraph (e), paragraphs (e) and (f) are effective for all transactions involving a partnership on or after December 29, 1994. No inference is intended as to the treatment of partnership transactions prior to the applicable effective date of the regulation.

5. Relationship of the Regulation to Established Legal Doctrines

Several comments questioned the relationship between the regulation and established legal doctrines, such as the business purpose and substance over form doctrines (including the step transaction and sham transaction doctrines), which are designed to assure that the tax consequences of transactions under the Code are governed by their substance and that statutes and regulations are interpreted consistent with their purposes.

Partnerships, like other business arrangements, are subject to those doctrines. The application of those doctrines to partnership transactions is particularly important in light of (i) the flexibility of partnership arrangements, which can take myriad forms that are often of substantial complexity, and (ii) the tax rules for partnerships, which are also often complex and, in many cases, appear purely mechanical. A literal application of these partnership tax rules in contexts not contemplated by Congress has, in certain circumstances, resulted in taxpayers claiming tax results that are contrary to those doctrines.

The final regulation confirms certain fundamental principles that must, in all cases, be satisfied in applying the provisions of subchapter K to partnership transactions, to assure that those provisions are not used to achieve inappropriate tax results. While the fundamental principles reflected in the regulation are consistent with the established legal doctrines, those doctrines will also continue to apply.

So viewed, the uncertainty regarding the application of the regulation reflects the uncertainty that already exists in properly evaluating transactions under current law, including the proper application of existing legal doctrines. As a result, the regulation should not impose any undue administrative burdens on either taxpayers or the IRS.

C. Other Comments

1. Suggested Alternatives to the Regulation

While some comments stated that it is appropriate to include a general anti-abuse rule in the regulations to limit the misuse of the provisions of subchapter K, others claimed that was not necessary. These comments stated that the IRS and Treasury already have sufficient means to challenge abusive partnership transactions and that existing authority should be used to address specific transactions as they are discovered. These comments suggested using the established legal doctrines, amending the section 704(b) regulations, and increasing partnership audits. These comments are discussed below.

In the past, the IRS and Treasury have attempted to address partnership transactions on a case-by-case basis. However, as recognized in those comments supporting a regulatory anti-abuse rule, experience has demonstrated that the case-by-case approach has been inadequate. A case-by-case approach arguably encourages non-economic, tax-motivated behavior by inappropriately putting a premium on being the first to engage in a transaction that would violate the principles of this regulation. The IRS and Treasury believe that the final regulation is a reasonable and effective way to reduce the number and magnitude of these abusive transactions. Moreover, the IRS and Treasury believe that proper application of the principles embodied in the regulation will forestall additional complexity in the Code and the regulations, by reducing the pressure for case-by-case legislative or regulatory revisions to prevent inappropriate use of the provisions of subchapter K.

Although the section 704(b) regulations are one example of the provisions of subchapter K that may be used inappropriately to reach results that are inconsistent with the intent of subchapter K, there are many other provisions of subchapter K that are being inappropriately applied to partnership transactions in a manner inconsistent with the intent of subchapter K. Therefore, an amendment to the section 704(b) regulations, by itself, is not sufficient.

Significant efforts are already underway to reduce the inappropriate use of subchapter K through increased resource allocation to partnership audits. This regulation is part of that focus on partnership transactions, and should not be viewed as an alternative to increased audits of partnerships. As part of this overall focus, a new team under the Industry Specialization Program has been established that will coordinate partnership audits and (together with the IRS National Office) the application of this regulation to partnership transactions. Thus, the IRS and Treasury believe that the regulation complements the increased enforcement of partnership transactions through enhanced audit activity.

2. Application by Revenue Agents

Many comments expressed concern that the regulation, if finalized as proposed, will not be applied

appropriately by Revenue Agents. As stated in Announcement 94–87, 1994–27 I.R.B. 124, when an issue that may be affected by the regulation is considered on examination, any application of the regulation must be coordinated with *both* the Issue Specialist on the Partnership Industry Specialization Program team *and* the IRS National Office. The IRS and Treasury believe that this coordination, together with the many clarifying changes made in the final regulation, will result in fair and consistent treatment of taxpayers in the application of the final regulation to partnership transactions.

3. Special Analyses and the Secretary's Authority

Some comments questioned the determination that the notice of proposed rulemaking was not a significant regulatory action as defined in EO 12866, as well as the determination that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Some comments also questioned the Secretary's authority to issue the regulation as proposed. The IRS and Treasury believe that the regulation complies with all statutory and regulatory requirements relating to the issuance of the notice of proposed rulemaking, and that it is clearly within the Secretary's authority to issue the final regulation. The final regulation clarifies that the authority for the regulation includes sections 701 through 761.

4. De Minimis Rule

In the preamble accompanying the proposed regulation, the IRS and Treasury solicited comments on the appropriateness of a safe harbor or de minimis rule. Some comments responded that a de minimis rule would be appropriate, and suggested delineating the rule on the basis of the number of partners, the value of the partnership assets, or the amount of the reduction in the present value of the partners' aggregate federal tax liability resulting from the transaction.

The requirement in the regulation that the present value of the partners' aggregate federal tax reduction must be substantial assures that the regulation will not be applied where the amounts involved are not significant. In addition, the IRS and Treasury believe that the clarifications made in the final regulation provide sufficient safeguards for bona fide joint business arrangements involving partnerships. For example, the exception from the proper reflection of income standard set forth in paragraph (a)(3) for transactions that are clearly contemplated by a particular provision of subchapter K provides appropriate safeguards for these business arrangements. Finally, the final regulation explicitly recognizes the application of specific statutory and regulatory de minimis rules in subchapter K. In light of these safeguards, the IRS and Treasury believe no additional specific safe harbor rules are needed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Comments were submitted and are addressed in the Supplementary Information section of this document.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.701–2 also issued under 26 U.S.C. 701 through 761 * * *

Par. 2. Section 1.701–2 is added under the heading ''Determination of Tax Liability'' to read as follows:

§ 1.701–2 Anti-abuse rule.

(a) *Intent of subchapter K.* Subchapter K is intended to permit taxpayers to conduct joint business (including investment) activities through a flexible economic arrangement without incurring an entity-level tax. Implicit in the intent of subchapter K are the following requirements—

(1) The partnership must be bona fide and each partnership transaction or series of related transactions (individually or collectively, the transaction) must be entered into for a substantial business purpose.

(2) The form of each partnership transaction must be respected under substance over form principles.

(3) Except as otherwise provided in this paragraph (a)(3), the tax consequences under subchapter K to each partner of partnership operations and of transactions between the partner and the partnership must accurately reflect the partners' economic agreement and clearly reflect the partner's income (collectively, *proper reflection of income*). However, certain provisions of subchapter K and the regulations thereunder were adopted to promote administrative convenience and other policy objectives, with the recognition that the application of those provisions to a transaction could, in some circumstances, produce tax results that do not properly reflect income. Thus, the proper reflection of income requirement of this paragraph (a)(3) is treated as satisfied with respect to a transaction that satisfies paragraphs (a)(1) and (2) of this section to the extent that the application of such a provision to the transaction and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision. See, for example, paragraph (d) *Example 8* of this section (relating to the value-equals-basis rule in § 1.704–1(b)(2)(iii)(*c*)), paragraph (d) *Example 11* of this section (relating to the election under section 754 to adjust basis in partnership property), and paragraph (d) *Examples 12 and 13* of this section (relating to the basis in property distributed by a partnership under section 732). See also, for example, §§ 1.704–3(e)(1) and 1.752–2(e)(4) (providing certain de minimis exceptions).

(b) *Application of subchapter K rules.* The provisions of subchapter K and the regulations thereunder must be applied in a manner that is consistent with the intent of subchapter K as set forth in paragraph (a) of this section (*intent of subchapter K*). Accordingly, if a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K, the Commissioner can recast the transaction for federal tax purposes, as appropriate to achieve tax results that are consistent with the intent of subchapter K, in light of the applicable statutory and regulatory provisions and the pertinent facts and circumstances. Thus, even

though the transaction may fall within the literal words of a particular statutory or regulatory provision, the Commissioner can determine, based on the particular facts and circumstances, that to achieve tax results that are consistent with the intent of subchapter K—

(1) The purported partnership should be disregarded in whole or in part, and the partnership's assets and activities should be considered, in whole or in part, to be owned and conducted, respectively, by one or more of its purported partners;

(2) One or more of the purported partners of the partnership should not be treated as a partner;

(3) The methods of accounting used by the partnership or a partner should be adjusted to reflect clearly the partnership's or the partner's income;

(4) The partnership's items of income, gain, loss, deduction, or credit should be reallocated; or

(5) The claimed tax treatment should otherwise be adjusted or modified.

(c) *Facts and circumstances analysis; factors.* Whether a partnership was formed or availed of with a principal purpose to reduce substantially the present value of the partners' aggregate federal tax liability in a manner inconsistent with the intent of subchapter K is determined based on all of the facts and circumstances, including a comparison of the purported business purpose for a transaction and the claimed tax benefits resulting from the transaction. The factors set forth below may be indicative, but do not necessarily establish, that a partnership was used in such a manner. These factors are illustrative only, and therefore may not be the only factors taken into account in making the determination under this section. Moreover, the weight given to any factor (whether specified in this paragraph or otherwise) depends on all the facts and circumstances. The presence or absence of any factor described in this paragraph does not create a presumption that a partnership was (or was not) used in such a manner. Factors include:

(1) The present value of the partners' aggregate federal tax liability is substantially less than had the partners owned the partnership's assets and conducted the partnership's activities directly;

(2) The present value of the partners' aggregate federal tax liability is substantially less than would be the case if purportedly separate transactions that are designed to achieve a particular end result are integrated and treated as steps in a single transaction. For example, this analysis may indicate that it was contemplated that a partner who was necessary to achieve the intended tax results and whose interest in the partnership was liquidated or disposed of (in whole or in part) would be a partner only temporarily in order to provide the claimed tax benefits to the remaining partners;

(3) One or more partners who are necessary to achieve the claimed tax results either have a nominal interest in the partnership, are substantially protected from any risk of loss from the partnership's activities (through distribution preferences, indemnity or loss guaranty agreements, or other arrangements), or have little or no participation in the profits from the partnership's activities other than a preferred return that is in the nature of a payment for the use of capital;

(4) Substantially all of the partners (measured by number or interests in the partnership) are related (directly or indirectly) to one another;

(5) Partnership items are allocated in compliance with the literal language of §§ 1.704–1 and 1.704–2 but with results that are inconsistent with the purpose of section 704(b) and those regulations. In this regard, particular scrutiny will be paid to partnerships in which income or gain is specially allocated to one or more partners that may be legally or effectively exempt from federal taxation (for example, a foreign person, an exempt organization, an insolvent taxpayer, or a taxpayer with unused federal tax attributes such as net operating losses, capital losses, or foreign tax credits);

(6) The benefits and burdens of ownership of property nominally contributed to the partnership are in substantial part retained (directly or indirectly) by the contributing partner (or a related party); or

(7) The benefits and burdens of ownership of partnership property are in substantial part shifted (directly or indirectly) to the distributee partner before or after the property is actually distributed to the distributee partner (or a related party).

(d) *Examples.* The following examples illustrate the principles of paragraphs (a), (b), and (c) of this section. The examples set forth below do not delineate the boundaries of either permissible or impermissible types of transactions. Further, the addition of any facts or circumstances that are not specifically set forth in an example (or the deletion of any facts or circumstances) may alter the outcome of the transaction described in the example. Unless otherwise indicated, parties to the transactions are not related to one another.

Example 1. Choice of entity; avoidance of entity-level tax; use of partnership consistent with the intent of subchapter K. (i) A and B form limited partnership PRS to conduct a bona fide business. A, the corporate general partner, has a 1% partnership interest. B, the individual limited partner, has a 99% interest. PRS is properly classified as a partnership under §§ 301.7701–2 and 301.7701–3. A and B chose limited partnership form as a means to provide B with limited liability without subjecting the income from the business operations to an entity-level tax.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. Although B has retained, indirectly, substantially all of the benefits and burdens of ownership of the money or property B contributed to PRS (see paragraph (c)(6) of this section), the decision to organize and conduct business through PRS under these circumstances is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 2. Choice of entity; avoidance of subchapter S shareholder requirements; use of partnership consistent with the intent of subchapter K. (i) A and B form partnership PRS to conduct a bona fide business. A is a corporation that has elected to be treated as an S corporation under subchapter S. B is a nonresident alien. PRS is properly classified as a partnership under §§ 301.7701–2 and 301.7701–3. Because section 1361(b) prohibits B from being a shareholder in A, A and B chose partnership form, rather than admit B as a shareholder in A, as a means to retain the benefits of subchapter S treatment for A and its shareholders.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. Although it may be argued that the form of the partnership transaction should not be respected because it does not reflect its substance (inasmuch as application of the substance over form doctrine arguably could result in B being treated as a shareholder of A, thereby invalidating A's subchapter S election), the facts indicate otherwise. The shareholders of A are subject to tax on their pro rata shares of A's income (see section 1361 et seq.), and B is subject to tax on B's distributive share of partnership income (see sections 871 and 875). Thus, the form in which this arrangement is cast accurately reflects its substance as a separate partnership and S corporation. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 3. Choice of entity; avoidance of more restrictive foreign tax credit limitation;

use of partnership consistent with the intent of subchapter K. (i) X, a domestic corporation, and Y, a foreign corporation, form partnership PRS under the laws of foreign Country A to conduct a bona fide joint business. X and Y each owns a 50% interest in PRS. PRS is properly classified as a partnership under §§ 301.7701–2 and 301.7701–3. PRS pays income taxes to Country A. X and Y chose partnership form to enable X to qualify for a direct foreign tax credit under section 901, with look-through treatment under § 1.904–5(h)(1). Conversely, if PRS were a foreign corporation for U.S. tax purposes, X would be entitled only to indirect foreign tax credits under section 902 with respect to dividend distributions from PRS. The look-through rules, however, would not apply, and pursuant to section 904(d)(1)(E) and § 1.904–4(g), the dividends and associated taxes would be subject to a separate foreign tax credit limitation for dividends from PRS, a noncontrolled section 902 corporation.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS in order to take advantage of the look-through rules for foreign tax credit purposes, thereby maximizing X's use of its proper share of foreign taxes paid by PRS, is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 4. Choice of entity; avoidance of gain recognition under sections 351(e) and 357(c); use of partnership consistent with the intent of subchapter K. (i) X, ABC, and DEF form limited partnership PRS to conduct a bona fide real estate management business. PRS is properly classified as a partnership under §§ 301.7701–2 and 301.7701–3. X, the general partner, is a newly formed corporation that elects to be treated as a real estate investment trust as defined in section 856. X offers its stock to the public and contributes substantially all of the proceeds from the public offering to PRS. ABC and DEF, the limited partners, are existing partnerships with substantial real estate holdings. ABC and DEF contribute all of their real property assets to PRS, subject to liabilities that exceed their respective aggregate bases in the real property contributed, and terminate under section 708(b)(1)(A). In addition, some of the former partners of ABC and DEF each have the right, beginning two years after the formation of PRS, to require the redemption of their limited partnership interests in PRS in exchange for cash or X stock (at X's option) equal to the fair market value of their respective interests in PRS at the time of the redemption. These partners are not compelled, as a legal or practical matter, to exercise their exchange rights at any time. X, ABC, and DEF chose to form a partnership rather than have ABC and DEF invest directly in X to allow ABC and DEF to avoid recognition of gain under sections 351(e) and 357(c). Because PRS would not be treated as an investment company within the meaning of section 351(e) if PRS were incorporated (so long as it did not elect under section 856), section 721(a) applies to the contribution of the real property to PRS. See section 721(b).

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS, thereby avoiding the tax consequences that would have resulted from contributing the existing partnerships' real estate assets to X (by applying the rules of sections 721, 731, and 752 in lieu of the rules of sections 351(e) and 357(c)), is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. Although it may be argued that the form of the transaction should not be respected because it does not reflect its substance (inasmuch as the present value of the partners' aggregate federal tax liability is substantially less than would be the case if the transaction were integrated and treated as a contribution of the encumbered assets by ABC and DEF directly to X, see paragraph (c)(2) of this section), the facts indicate otherwise. For example, the right of some of the former ABC and DEF partners after two years to exchange their PRS interests for cash or X stock (at X's option) equal to the fair market value of their PRS interest at that time would not require that right to be considered as exercised prior to its actual exercise. Moreover, X may make other real estate investments and other business decisions, including the decision to raise additional capital for those purposes. Thus, although it may be likely that some or all of the partners with the right to do so will, at some point, exercise their exchange rights, and thereby receive either cash or X stock, the form of the transaction as a separate partnership and real estate investment trust is respected under substance over form principles (see paragraph (a)(2) of this section). The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 5. Family partnership to conduct joint business activities; valuation discount; use of partnership consistent with the intent of subchapter K. (i) H and W, husband and wife, form limited partnership PRS by contributing their interests in actively managed, income-producing real property that PRS will own and operate. H holds a general partnership interest, and W holds a limited partnership interest. At a later date, W makes a gift of a portion of her limited partnership interest to each of H and W's two children, S and D. Appropriate discounts, consistent with the taxpayers' treatment of the arrangement as a partnership, were applied in determining the value of W's gifts to the children.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. Although PRS is owned entirely by related parties (see paragraph (c)(4) of this section), the decision to organize and conduct business through PRS under these circumstances is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. Therefore, absent other facts (such as the creation of the partnership immediately before the gifts by W), the Commissioner cannot invoke paragraph (b) of this section to recast the transaction. But see sections 2701 through 2704 for special valuation rules applicable to family arrangements for estate and gift tax purposes. See also sections 2036 through 2039.

(iii) The special valuation rules provided under chapter 14 of the Code, in particular section 2701, prescribe certain special rules in valuing gifts of family controlled partnership interests. These special rules clearly contemplate that a bona fide partnership like PRS be treated as an entity and not as an aggregate of its partners for that purpose. Accordingly, under paragraph (e) of this section, the Commissioner cannot treat PRS as an aggregate of its partners for purposes of valuing the gifts from W to S and D.

Example 6. Family partnership not engaged in bona fide joint business activities; valuation discount; use of partnership not consistent with the intent of subchapter K. (i) H and W, husband and wife, form limited partnership PRS and contribute to it their respective interests in their vacation home. H holds a general partnership interest, and W holds a limited partnership interest. At a later date, W makes a gift of a portion of her limited partnership interest to each of H and W's two children, S and D. Discounts, consistent with the taxpayers' treatment of the arrangement as a partnership, were applied in determining the value of W's gifts to the children.

(ii) PRS is not bona fide and there is no substantial business purpose for the purported activities of PRS. In addition, by using a partnership (if respected), H and W's aggregate federal tax liability would be substantially less than had they owned the partnership's assets directly (see paragraph (c)(1) of this section). On these facts, PRS has been formed and availed of with a principal purpose to reduce H's and W's aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K. Therefore (in addition to possibly challenging the transaction under applicable judicial principles, such as the substance over form doctrine, see paragraph (h) of this section), the Commissioner can recast the transaction as appropriate under paragraph (b) of this section.

Example 7. Special allocations; dividends received deductions; use of partnership consistent with the intent of subchapter K. (i) Corporations X and Y contribute equal amounts to PRS, a bona fide partnership formed to make joint investments. PRS pays $100 for a share of common stock of Z, an unrelated corporation, which has historically paid an annual dividend of $6. PRS specially allocates the dividend income on the Z stock to X to the extent of the London Inter-Bank Offered Rate (LIBOR) on the record date, applied to X's contribution of $50, and allocates the remainder of the dividend

income to Y. All other items of partnership income and loss are allocated equally between X and Y. The allocations under the partnership agreement have substantial economic effect within the meaning of § 1.704–1(b)(2). In addition to avoiding an entity-level tax, a principal purpose for the formation of the partnership was to invest in the Z common stock and to allocate the dividend income from the stock to provide X with a floating-rate return based on LIBOR, while permitting X and Y to claim the dividends received deduction under section 243 on the dividends allocated to each of them.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1), (2), and (3) of this section have been satisfied. Section 704(b) and § 1.704–1(b)(2) permit income realized by the partnership to be allocated validly to the partners separate from the partners' respective ownership of the capital to which the allocations relate, provided that the allocations satisfy both the literal requirements of the statute and regulations and the purpose of those provisions (see paragraph (c)(5) of this section). Section 704(e)(2) is not applicable to the facts of this example (otherwise, the allocations would be required to be proportionate to the partners' ownership of contributed capital). The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 8. Special allocations; nonrecourse financing; low-income housing credit; use of partnership consistent with the intent of subchapter K. (i) A and B, high-bracket taxpayers, and X, a corporation with net operating loss carryforwards, form general partnership PRS to own and operate a building that qualifies for the low-income housing credit provided by section 42. The project is financed with both cash contributions from the partners and nonrecourse indebtedness. The partnership agreement provides for special allocations of income and deductions, including the allocation of all depreciation deductions attributable to the building to A and B equally in a manner that is reasonably consistent with allocations that have substantial economic effect of some other significant partnership item attributable to the building. The section 42 credits are allocated to A and B in accordance with the allocation of depreciation deductions. PRS's allocations comply with all applicable regulations, including the requirements of §§ 1.704–1(b)(2)(ii) (pertaining to economic effect) and 1.704–2(e) (requirements for allocations of nonrecourse deductions). The nonrecourse indebtedness is validly allocated to the partners under the rules of § 1.752–3, thereby increasing the basis of the partners' respective partnership interests. The basis increase created by the nonrecourse indebtedness enables A and B to deduct their distributive share of losses from the partnership (subject to all other applicable limitations under the Internal Revenue Code) against their nonpartnership income and to apply the credits against their tax liability.

(ii) At a time when the depreciation deductions attributable to the building are not treated as nonrecourse deductions under § 1.704–2(c) (because there is no net increase in partnership minimum gain during the year), the special allocation of depreciation deductions to A and B has substantial economic effect because of the value-equals-basis safe harbor contained in § 1.704–1(b)(2)(iii)(*c*) and the fact that A and B would bear the economic burden of any decline in the value of the building (to the extent of the partnership's investment in the building), notwithstanding that A and B believe it is unlikely that the building will decline in value (and, accordingly, they anticipate significant timing benefits through the special allocation). Moreover, in later years, when the depreciation deductions attributable to the building are treated as nonrecourse deductions under § 1.704–2(c), the special allocation of depreciation deductions to A and B is considered to be consistent with the partners' interests in the partnership under § 1.704–2(e).

(iii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a) (1), (2), and (3) of this section have been satisfied. Section 704(b), § 1.704–1(b)(2), and § 1.704–2(e) allow partnership items of income, gain, loss, deduction, and credit to be allocated validly to the partners separate from the partners' respective ownership of the capital to which the allocations relate, provided that the allocations satisfy both the literal requirements of the statute and regulations and the purpose of those provisions (see paragraph (c)(5) of this section). Moreover, the application of the value-equals-basis safe harbor and the provisions of § 1.704–2(e) with respect to the allocations to A and B, and the tax results of the application of those provisions, taking into account all the facts and circumstances, are clearly contemplated. Accordingly, even if the allocations would not otherwise be considered to satisfy the proper reflection of income standard in paragraph (a)(3) of this section, that requirement will be treated as satisfied under these facts. Thus, even though the partners' aggregate federal tax liability may be substantially less than had the partners owned the partnership's assets directly (due to X's inability to use its allocable share of the partnership's losses and credits) (see paragraph (c)(1) of this section), the transaction is not inconsistent with the intent of subchapter K. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 9. Partner with nominal interest; temporary partner; use of partnership not consistent with the intent of subchapter K. (i) Pursuant to a plan a principal purpose of which is to generate artificial losses and thereby shelter from federal taxation a substantial amount of income, X (a foreign corporation), Y (a domestic corporation), and Z (a promoter) form partnership PRS by contributing $9,000, $990, and $10, respectively, for proportionate interests (90.0%, 9.9%, and 0.1%, respectively) in the capital and profits of PRS. PRS purchases offshore equipment for $10,000 and validly leases the equipment offshore for a term representing most of its projected useful life. Shortly thereafter, PRS sells its rights to receive income under the lease to a third party for $9,000, and allocates the resulting $9,000 of income $8,100 to X, $891 to Y, and $9 to Z. PRS thereafter makes a distribution of $9,000 to X in complete liquidation of its interest. Under § 1.704–1(b)(2)(iv)(*f*), PRS restates the partners' capital accounts immediately before making the liquidating distribution to X to reflect its assets consisting of the offshore equipment worth $1,000 and $9,000 in cash. Thus, because the capital accounts immediately before the distribution reflect assets of $19,000 (that is, the initial capital contributions of $10,000 plus the $9,000 of income realized from the sale of the lease), PRS allocates a $9,000 book loss among the partners (for capital account purposes only), resulting in restated capital accounts for X, Y, and Z of $9,000, $990, and $10, respectively. Thereafter, PRS purchases real property by borrowing the $8,000 purchase price on a recourse basis, which increases Y's and Z's bases in their respective partnership interests from $1,881 and $19, to $9,801 and $99, respectively (reflecting Y's and Z's adjusted interests in the partnership of 99% and 1%, respectively). PRS subsequently sells the offshore equipment, subject to the lease, for $1,000 and allocates the $9,000 tax loss $8,910 to Y and $90 to Z. Y's and Z's bases in their partnership interests are therefore reduced to $891 and $9, respectively.

(ii) On these facts, any purported business purpose for the transaction is insignificant in comparison to the tax benefits that would result if the transaction were respected for federal tax purposes (see paragraph (c) of this section). Accordingly, the transaction lacks a substantial business purpose (see paragraph (a)(1) of this section). In addition, factors (1), (2), (3), and (5) of paragraph (c) of this section indicate that PRS was used with a principal purpose to reduce substantially the partners' tax liability in a manner inconsistent with the intent of subchapter K. On these facts, PRS is not bona fide (see paragraph (a)(1) of this section), and the transaction is not respected under applicable substance over form principles (see paragraph (a)(2) of this section) and does not properly reflect the income of Y (see paragraph (a)(3) of this section). Thus, PRS has been formed and availed of with a principal purpose of reducing substantially the present value of the partners' aggregate federal tax liability in a manner inconsistent with the intent of subchapter K. Therefore (in addition to possibly challenging the transaction under judicial principles or the validity of the allocations under § 1.704–1(b)(2) (see paragraph (h) of this section)), the Commissioner can recast the transaction as appropriate under paragraph (b) of this section.

Example 10. Plan to duplicate losses through absence of section 754 election; use of partnership not consistent with the intent of subchapter K. (i) A owns land with a basis of $100 and a fair market value of $60. A would like to sell the land to B. A and B devise a plan a principal purpose of which is to permit the duplication, for a substantial period of time, of the tax benefit of A's built-in loss in the land. To effect this plan, A, C (A's brother), and W (C's wife) form partnership PRS, to which A contributes the land, and C and W each contribute $30. All partnership items are shared in proportion to the partners' respective contributions to PRS. PRS invests the cash in an investment asset (that is not a marketable security within the meaning of section 731(c)). PRS also leases the land to B under a three-year lease pursuant to which B has the option to purchase the land from PRS upon the expiration of the lease for an amount equal to its fair market value at that time. All lease proceeds received are immediately distributed to the partners. In year 3, at a time when the values of the partnership's assets have not materially changed, PRS agrees with A to liquidate A's interest in exchange for the investment asset held by PRS. Under section 732(b), A's basis in the asset distributed equals $100, A's basis in A's partnership interest immediately before the distribution. Shortly thereafter, A sells the investment asset to X, an unrelated party, recognizing a $40 loss.

(ii) PRS does not make an election under section 754. Accordingly, PRS's basis in the land contributed by A remains $100. At the end of year 3, pursuant to the lease option, PRS sells the land to B for $60 (its fair market value). Thus, PRS recognizes a $40 loss on the sale, which is allocated equally between C and W. C's and W's bases in their partnership interests are reduced to $10 each pursuant to section 705. Their respective interests are worth $30 each. Thus, upon liquidation of PRS (or their interests therein), each of C and W will recognize $20 of gain. However, PRS's continued existence defers recognition of that gain indefinitely. Thus, if this arrangement is respected, C and W duplicate for their benefit A's built-in loss in the land prior to its contribution to PRS.

(iii) On these facts, any purported business purpose for the transaction is insignificant in comparison to the tax benefits that would result if the transaction were respected for federal tax purposes (see paragraph (c) of this section). Accordingly, the transaction lacks a substantial business purpose (see paragraph (a)(1) of this section). In addition, factors (1), (2), and (4) of paragraph (c) of this section indicate that PRS was used with a principal purpose to reduce substantially the partners' tax liability in a manner inconsistent with the intent of subchapter K. On these facts, PRS is not bona fide (see paragraph (a)(1) of this section), and the transaction is not respected under applicable substance over form principles (see paragraph (a)(2) of this section). Further, the tax consequences to the partners do not properly reflect the partners' income; and Congress did not contemplate application of section 754 to partnerships such as PRS, which was formed for a principal purpose of producing a double tax benefit from a single economic loss (see paragraph (a)(3) of this section). Thus, PRS has been formed and availed of with a principal purpose of reducing substantially the present value of the partners' aggregate federal tax liability in a manner inconsistent with the intent of subchapter K. Therefore (in addition to possibly challenging the transaction under judicial principles or other statutory authorities, such as the substance over form doctrine or the disguised sale rules under section 707 (see paragraph (h) of this section)), the Commissioner can recast the transaction as appropriate under paragraph (b) of this section.

Example 11. Absence of section 754 election; use of partnership consistent with the intent of subchapter K. (i) PRS is a bona fide partnership formed to engage in investment activities with contributions of cash from each partner. Several years after joining PRS, A, a partner with a capital account balance and basis in its partnership interest of $100, wishes to withdraw from PRS. The partnership agreement entitles A to receive the balance of A's capital account in cash or securities owned by PRS at the time of withdrawal, as mutually agreed to by A and the managing general partner, P. P and A agree to distribute to A $100 worth of non-marketable securities (see section 731(c)) in which PRS has an aggregate basis of $20. Upon distribution, A's aggregate basis in the securities is $100 under section 732(b). PRS does not make an election to adjust the basis in its remaining assets under section 754. Thus, PRS's basis in its remaining assets is unaffected by the distribution. In contrast, if a section 754 election had been in effect for the year of the distribution, under these facts section 734(b) would have required PRS to adjust the basis in its remaining assets downward by the amount of the untaxed appreciation in the distributed property, thus reflecting that gain in PRS's retained assets. In selecting the assets to be distributed, A and P had a principal purpose to take advantage of the facts that (i) A's basis in the securities will be determined by reference to A's basis in its partnership interest under section 732(b), and (ii) because PRS will not make an election under section 754, the remaining partners of PRS will likely enjoy a federal tax timing advantage (i.e., from the $80 of additional basis in its assets that would have been eliminated if the section 754 election had been made) that is inconsistent with proper reflection of income under paragraph (a)(3) of this section.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1) and (2) of this section have been satisfied. The validity of the tax treatment of this transaction is therefore dependent upon whether the transaction satisfies (or is treated as satisfying) the proper reflection of income standard under paragraph (a)(3) of this section. A's basis in the distributed securities is properly determined under section 732(b). The benefit to the remaining partners is a result of PRS not having made an election under section 754. Subchapter K is generally intended to produce tax consequences that achieve proper reflection of income. However, paragraph (a)(3) of this section provides that if the application of a provision of subchapter K produces tax results that do not properly reflect income, but application of that provision to the transaction and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision (and the transaction satisfies the requirements of paragraphs (a)(1) and (2) of this section), then the application of that provision to the transaction will be treated as satisfying the proper reflection of income standard.

(iii) In general, the adjustments that would be made if an election under section 754 were in effect are necessary to minimize distortions between the partners' bases in their partnership interests and the partnership's basis in its assets following, for example, a distribution to a partner. The electivity of section 754 is intended to provide administrative convenience for bona fide partnerships that are engaged in transactions for a substantial business purpose, by providing those partnerships the option of not adjusting their bases in their remaining assets following a distribution to a partner. Congress clearly recognized that if the section 754 election were not made, basis distortions may result. Taking into account all the facts and circumstances of the transaction, the electivity of section 754 in the context of the distribution from PRS to A, and the ultimate tax consequences that follow from the failure to make the election with respect to the transaction, are clearly contemplated by section 754. Thus, the tax consequences of this transaction will be treated as satisfying the proper reflection of income standard under paragraph (a)(3) of this section. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 12. Basis adjustments under section 732; use of partnership consistent with the intent of subchapter K. (i) A, B, and C are partners in partnership PRS, which has for several years been engaged in substantial bona fide business activities. For valid business reasons, the partners agree that A's interest in PRS, which has a value and basis of $100, will be liquidated with the following assets of PRS: a nondepreciable asset with a value of $60 and a basis to PRS of $40, and related equipment with two years of cost recovery remaining and a value and basis to PRS of $40. Neither asset is described in section 751 and the transaction is not described in section 732(d). Under section 732 (b) and (c), A's $100 basis in A's partnership interest will be allocated between the nondepreciable asset and the equipment received in the liquidating distribution in proportion to PRS's bases in those assets, or $50 to the nondepreciable asset and $50 to the equipment. Thus, A will have a $10 built-in gain in the nondepreciable asset ($60 value less $50 basis) and a $10 built-in loss in the equipment ($50 basis less $40 value), which it expects to recover rapidly through cost recovery deductions. In selecting the assets to

be distributed to A, the partners had a principal purpose to take advantage of the fact that A's basis in the assets will be determined by reference to A's basis in A's partnership interest, thus, in effect, shifting a portion of A's basis from the nondepreciable asset to the equipment, which in turn would allow A to recover that portion of its basis more rapidly. This shift provides a federal tax timing advantage to A, with no offsetting detriment to B or C.

(ii) Subchapter K is intended to permit taxpayers to conduct joint business activity through a flexible economic arrangement without incurring an entity-level tax. See paragraph (a) of this section. The decision to organize and conduct business through PRS is consistent with this intent. In addition, on these facts, the requirements of paragraphs (a)(1) and (2) of this section have been satisfied. The validity of the tax treatment of this transaction is therefore dependent upon whether the transaction satisfies (or is treated as satisfying) the proper reflection of income standard under paragraph (a)(3) of this section. Subchapter K is generally intended to produce tax consequences that achieve proper reflection of income. However, paragraph (a)(3) of this section provides that if the application of a provision of subchapter K produces tax results that do not properly reflect income, but the application of that provision to the transaction and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision (and the transaction satisfies the requirements of paragraphs (a)(1) and (2) of this section), then the application of that provision to the transaction will be treated as satisfying the proper reflection of income standard.

(iii) A's basis in the assets distributed to it was determined under section 732 (b) and (c). The transaction does not properly reflect A's income due to the basis distortions caused by the distribution and the shifting of basis from a nondepreciable to a depreciable asset. However, the basis rules under section 732, which in some situations can produce tax results that are inconsistent with the proper reflection of income standard (see paragraph (a)(3) of this section), are intended to provide simplifying administrative rules for bona fide partnerships that are engaged in transactions with a substantial business purpose. Taking into account all the facts and circumstances of the transaction, the application of the basis rules under section 732 to the distribution from PRS to A, and the ultimate tax consequences of the application of that provision of subchapter K, are clearly contemplated. Thus, the application of section 732 to this transaction will be treated as satisfying the proper reflection of income standard under paragraph (a)(3) of this section. The Commissioner therefore cannot invoke paragraph (b) of this section to recast the transaction.

Example 13. Basis adjustments under section 732; plan or arrangement to distort basis allocations artificially; use of partnership not consistent with the intent of subchapter K. (i) Partnership PRS has for several years been engaged in the development and management of commercial real estate projects. X, an unrelated party, desires to acquire undeveloped land owned by PRS, which has a value of $95 and a basis of $5. X expects to hold the land indefinitely after its acquisition. Pursuant to a plan a principal purpose of which is to permit X to acquire and hold the land but nevertheless to recover for tax purposes a substantial portion of the purchase price for the land, X contributes $100 to PRS for an interest therein. Subsequently (at a time when the value of the partnership's assets have not materially changed), PRS distributes to X in liquidation of its interest in PRS the land and another asset with a value and basis to PRS of $5. The second asset is an insignificant part of the economic transaction but is important to achieve the desired tax results. Under section 732 (b) and (c), X's $100 basis in its partnership interest is allocated between the assets distributed to it in proportion to their bases to PRS, or $50 each. Thereafter, X plans to sell the second asset for its value of $5, recognizing a loss of $45. In this manner, X will, in effect, recover a substantial portion of the purchase price of the land almost immediately. In selecting the assets to be distributed to X, the partners had a principal purpose to take advantage of the fact that X's basis in the assets will be determined under section 732 (b) and (c), thus, in effect, shifting a portion of X's basis economically allocable to the land that X intends to retain to an inconsequential asset that X intends to dispose of quickly. This shift provides a federal tax timing advantage to X, with no offsetting detriment to any of PRS's other partners.

(ii) Although section 732 recognizes that basis distortions can occur in certain situations, which may produce tax results that do not satisfy the proper reflection of income standard of paragraph (a)(3) of this section, the provision is intended only to provide ancillary, simplifying tax results for bona fide partnership transactions that are engaged in for substantial business purposes. Section 732 is not intended to serve as the basis for plans or arrangements in which inconsequential or immaterial assets are included in the distribution with a principal purpose of obtaining substantially favorable tax results by virtue of the statute's simplifying rules. The transaction does not properly reflect X's income due to the basis distortions caused by the distribution that result in shifting a significant portion of X's basis to this inconsequential asset. Moreover, the proper reflection of income standard contained in paragraph (a)(3) of this section is not treated as satisfied, because, taking into account all the facts and circumstances, the application of section 732 to this arrangement, and the ultimate tax consequences that would thereby result, were not clearly contemplated by that provision of subchapter K. In addition, by using a partnership (if respected), the partners' aggregate federal tax liability would be substantially less than had they owned the partnership's assets directly (see paragraph (c)(1) of this section). On these facts, PRS has been formed and availed of with a principal purpose to reduce the taxpayers' aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K. Therefore (in addition to possibly challenging the transaction under applicable judicial principles and statutory authorities, such as the disguised sale rules under section 707, see paragraph (h) of this section), the Commissioner can recast the transaction as appropriate under paragraph (b) of this section.

(e) *Abuse of entity treatment*—(1) *General rule.* The Commissioner can treat a partnership as an aggregate of its partners in whole or in part as appropriate to carry out the purpose of any provision of the Internal Revenue Code or the regulations promulgated thereunder.

(2) *Clearly contemplated entity treatment.* Paragraph (e)(1) of this section does not apply to the extent that—

(i) A provision of the Internal Revenue Code or the regulations promulgated thereunder prescribes the treatment of a partnership as an entity, in whole or in part, and

(ii) That treatment and the ultimate tax results, taking into account all the relevant facts and circumstances, are clearly contemplated by that provision.

(f) *Examples.* The following examples illustrate the principles of paragraph (e) of this section. The examples set forth below do not delineate the boundaries of either permissible or impermissible types of transactions. Further, the addition of any facts or circumstances that are not specifically set forth in an example (or the deletion of any facts or circumstances) may alter the outcome of the transaction described in the example. Unless otherwise indicated, parties to the transactions are not related to one another. See also paragraph (d) *Example 5* (iii) of this section (also demonstrating the application of the principles of paragraph (e) of this section).

Example 1. Aggregate treatment of partnership appropriate to carry out purpose of section 163(e)(5). (i) Corporations X and Y are partners in partnership PRS, which for several years has engaged in substantial bona fide business activities. As part of these business activities, PRS issues certain high yield discount obligations to an unrelated third party. Section 163(e)(5) defers (and in certain circumstances disallows) the interest deductions on this type of obligation if issued by a corporation. PRS, X, and Y take the position that, because PRS is a partnership and not a corporation, section 163(e)(5) is not applicable.

(ii) Section 163(e)(5) does not prescribe the treatment of a partnership as an entity for purposes of that section. The purpose of section 163(e)(5) is to limit corporate-level interest deductions on certain obligations. The treatment of PRS as an entity could result in a partnership with corporate partners issuing those obligations and thereby circumventing the purpose of section

163(e)(5), because the corporate partner would deduct its distributive share of the interest on obligations that would have been deferred until paid or disallowed had the corporation issued its share of the obligation directly. Thus, under paragraph (e)(1) of this section, PRS is properly treated as an aggregate of its partners for purposes of applying section 163(e)(5) (regardless of whether any party had a tax avoidance purpose in having PRS issue the obligation). Each partner of PRS will therefore be treated as issuing its share of the obligations for purposes of determining the deductibility of its distributive share of any interest on the obligations. See also section 163(i)(5)(B).

Example 2. Aggregate treatment of partnership appropriate to carry out purpose of section 1059. (i) Corporations X and Y are partners in partnership PRS, which for several years has engaged in substantial bona fide business activities. As part of these business activities, PRS purchases 50 shares of Corporation Z common stock. Six months later, Corporation Z announces an extraordinary dividend (within the meaning of section 1059). Section 1059(a) generally provides that if any corporation receives an extraordinary dividend with respect to any share of stock and the corporation has not held the stock for more than two years before the dividend announcement date, the basis in the stock held by the corporation is reduced by the nontaxed portion of the dividend. PRS, X, and Y take the position that section 1059(a) is not applicable because PRS is a partnership and not a corporation.

(ii) Section 1059(a) does not prescribe the treatment of a partnership as an entity for purposes of that section. The purpose of section 1059(a) is to limit the benefits of the dividends received deduction with respect to extraordinary dividends. The treatment of PRS as an entity could result in corporate partners in the partnership receiving dividends through partnerships in circumvention of the intent of section 1059. Thus, under paragraph (e)(1) of this section, PRS is properly treated as an aggregate of its partners for purposes of applying section 1059 (regardless of whether any party had a tax avoidance purpose in acquiring the Z stock through PRS). Each partner of PRS will therefore be treated as owning its share of the stock. Accordingly, PRS must make appropriate adjustments to the basis of the corporation Z stock, and the partners must also make adjustments to the basis in their respective interests in PRS under section 705(a)(2)(B). See also section 1059(g)(1).

Example 3. Prescribed entity treatment of partnership; determination of CFC status clearly contemplated. (i) X, a domestic corporation, and Y, a foreign corporation, intend to conduct a joint venture in foreign Country A. They form PRS, a bona fide domestic general partnership in which X owns a 40% interest and Y owns a 60% interest. PRS is properly classified as a partnership under §§ 301.7701–2 and 301.7701–3. PRS holds 100% of the voting stock of Z, a Country A entity that is classified as an association taxable as a corporation for federal tax purposes under § 301.7701–2. Z conducts its business operations in Country A. By investing in Z through a domestic partnership, X seeks to obtain the benefit of the look-through rules of section 904(d)(3) and, as a result, maximize its ability to claim credits for its proper share of Country A taxes expected to be incurred by Z.

(ii) Pursuant to sections 957(c) and 7701(a)(30), PRS is a United States person. Therefore, because it owns 10% or more of the voting stock of Z, PRS satisfies the definition of a U.S. shareholder under section 951(b). Under section 957(a), Z is a controlled foreign corporation (CFC) because more than 50% of the voting power or value of its stock is owned by PRS. Consequently, under section 904(d)(3), X qualifies for look-through treatment in computing its credit for foreign taxes paid or accrued by Z. In contrast, if X and Y owned their interests in Z directly, Z would not be a CFC because only 40% of its stock would be owned by U.S. shareholders. X's credit for foreign taxes paid or accrued by Z in that case would be subject to a separate foreign tax credit limitation for dividends from Z, a noncontrolled section 902 corporation. See section 904(d)(1)(E) and § 1.904–4(g).

(iii) Sections 957(c) and 7701(a)(30) prescribe the treatment of a domestic partnership as an entity for purposes of defining a U.S. shareholder, and thus, for purposes of determining whether a foreign corporation is a CFC. The CFC rules prevent the deferral by U.S. shareholders of U.S. taxation of certain earnings of the CFC and reduce disparities that otherwise might occur between the amount of income subject to a particular foreign tax credit limitation when a taxpayer earns income abroad directly rather than indirectly through a CFC. The application of the look-through rules for foreign tax credit purposes is appropriately tied to CFC status. See sections 904(d)(2)(E) and 904(d)(3). This analysis confirms that Congress clearly contemplated that taxpayers could use a bona fide domestic partnership to subject themselves to the CFC regime, and the resulting application of the look-through rules of section 904(d)(3). Accordingly, under paragraph (e) of this section, the Commissioner cannot treat PRS as an aggregate of its partners for purposes of determining X's foreign tax credit limitation.

(g) *Effective date.* Paragraphs (a), (b), (c), and (d) of this section are effective for all transactions involving a partnership that occur on or after May 12, 1994. Paragraphs (e) and (f) of this section are effective for all transactions involving a partnership that occur on or after December 29, 1994.

(h) *Application of nonstatutory principles and other statutory authorities.* The Commissioner can continue to assert and to rely upon applicable nonstatutory principles and other statutory and regulatory authorities to challenge transactions. This section does not limit the applicability of those principles and authorities.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 20, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Part 301

[TD 8587]

RIN 1545–AN48

Authority to Release Levy and Return Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the authority to release a levy and to return property. The Technical and Miscellaneous Revenue Act of 1988 sets forth certain conditions under which the IRS must release a levy. In addition, the Internal Revenue Code was amended in 1979 to provide for the payment of interest in certain circumstances in which wrongfully levied upon property is returned. These final regulations describe the conditions under which a levy will be released and the procedures for obtaining such a release. Lastly, these final regulations also conform the existing regulations regarding the return of wrongfully levied upon property to provide for the payment of interest in certain circumstances.

EFFECTIVE DATE: These regulations are effective December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, 202–622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6343 of the Internal Revenue Code. These regulations reflect the amendment of section 6343 by section 6236(f) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), section 4(a) of Act of Dec. 29, 1979 (Pub. L. 96–167), and section 1511(c)(10) of the Tax Reform Act of 1986 (Pub. L. 99–514).

On October 16, 1991 a notice of proposed rulemaking concerning the authority to release and return property was published in the **Federal Register** (56 FR 51857). Written comments

responding to this notice were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations under section 6343 are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The notice of proposed rulemaking provided different rules with respect to levies made prior to July 1, 1989, and levies made on or after that date. It was decided that separate rules concerning levies made prior to July 1, 1989 are not necessary. Accordingly, they have been eliminated. These final regulations are prospective in nature and are effective as of December 30, 1994. In addition, for ease of administration, it was decided that the authority to release levies should be extended by regulation to service center and compliance center directors. These final regulations has been revised to confer this authority on service center and compliance center directors.

The written comments received made several suggestions for changes to the proposed regulations. The comments suggested that the regulations provide an appeal procedure for taxpayers when a request for a release of levy is denied. These final regulations do not adopt this suggestion. A taxpayer who believes an IRS employee is not properly applying these regulations has the right to appeal to that person's supervisor. Thus, a formal appeals procedure would add a layer of bureaucracy to the process while providing little or no benefit to the taxpayer.

The comments also suggested revising an example in the proposed regulations governing when a levy may be released to facilitate collection. The comment suggested that the example provide that a release of levy must be made if that release would increase the fair market value of the property (and, presumably, the amount that would be bid) if the taxpayer were to sell that property, irrespective of whether the proceeds from that sale would satisfy the taxpayer's outstanding federal tax liabilities. This suggestion has been adopted in modified form. The final regulations provide that a levy may be released even though the proceeds of the sale would not fully satisfy the taxpayer's outstanding federal tax liabilities, but only on a case by case basis at the discretion of a district director. The IRS is not required to release a levy merely because a taxpayer alleges that a sale by the taxpayer would produce a higher bid than if the sale were made by the IRS.

Another suggestion was that the regulations provide an example of situations where the fair market value of the property exceeds the liability for which the levy was made and the release of levy can be made on only a part of a taxpayer's property without hindering the collection of the liability. This suggestion has been adopted in the final regulations.

The comments suggested that an example be given of ''essential business property'' qualifying for expedited determination of whether a levy should be released. The issue of what constitutes ''essential business property'' will necessarily turn on the unique facts of an individual case. An item of property that may be essential to the carrying on of one business may not be essential in the carrying on of another business. Thus, any example given in the regulations could not provide specific guidance as to what specific items of property would be considered essential in all cases. Conversely, any example given in the regulations could be erroneously construed as requiring a certain fact pattern or degree of effect on the operation of a business that would not be necessary in all cases in order for a specific item of property to be considered ''essential business property.'' Accordingly, this suggestion has not been adopted in these final regulations.

The comments also suggested that the final regulations require a district director to return the specific property levied upon if it is still in the possession of the United States Government. This suggestion was adopted in part. It is the practice of the IRS, generally, to return specific property still in its possession to its rightful owner if the property has been wrongfully seized. However, this general rule is not appropriate in all cases. For instance, the property seized may be found to include items which may be illegal under State or Federal law. This type of property will not be returned to its owner. The final regulations indicate that the IRS will normally return specific property in its possession when that property has been wrongfully levied upon.

Another suggestion was that the proposed regulations be revised to require the IRS to return property within 10 days after it is determined that such property was wrongfully levied upon. This suggestion is not adopted in these final regulations. Although section 6343 does not mandate a time period within which the property must be returned, property is normally returned as expeditiously as possible. There do occur, however, situations where conflicting claims are made for the return of wrongfully levied upon property. Cases where conflicting claims to the property are received require greater time and, in some instances, litigation to resolve who is rightfully entitled to the return of the property. A requirement that the IRS return property in 10 days in all cases could adversely affect the rights of other claimants to the property and would not benefit either those claimants or the IRS.

The comments also suggested that final regulations require a person requesting the return of wrongfully levied upon property to include a copy of the levy itself if it is available. This suggestion was not adopted in these final regulations. Based on the experience of the IRS, the actual submission of a copy of the levy or notice of levy has not been necessary. Thus, the addition of a new requirement for the submission of a copy of either of those two forms in all cases could be potentially burdensome for some taxpayers and prove to be of no benefit to the IRS.

It has also been suggested that the proposed regulations be revised in order to prevent a taxpayer from making a request for a release of levy by telephone because such requests lack proper documentation and make it difficult for the IRS to determine if the taxpayer has complied with the statutory provisions. The regulations follow current IRS procedures and are designed to provide the taxpayer with the most expeditious method to initiate a request for release. The regulations, however, also provide that the IRS may request any documentation necessary before making a determination on whether a condition requiring release has been met. Thus, although the request for a determination may be made orally, the IRS is not required to make the determination based on insufficient information.

Another comment interpreted the proposed regulations as creating an inconsistency in that a request for release of property, in ordinary circumstances, could be made as little as six days prior to a scheduled sale of that property, while the IRS was generally allowed up to 30 days to make a determination concerning a request for release. The commentator indicated its belief that these two rules could be read to allow a sale to take place without a determination being made concerning a request for release.

The commentator's concern is unfounded. The period between the date of seizure and the date notice of sale is given is used by the IRS to determine whether the property seized

should be sold or released. This determination is made whether or not a request for release has been received. Because this initial determination concerning sale or the possible release of the levy is made prior to the issuance of the notice of sale, a subsequent determination in response to an actual request for release of levy made by a taxpayer can be accomplished, in most of these cases, prior to the scheduled sale date if at least five days remain prior to the sale date. It is only in unusual cases where a determination cannot be made prior to the date of the scheduled sale if a request for release is made more than five days prior to the scheduled sale date. In those cases, the sale is postponed, but a determination is normally made within 30 days of the date of the request for release.

To clarify this issue, however, these final regulations have been revised to state that if a request for release is made more than five days prior to a scheduled sale, the IRS is to make a determination on any request for release of property before that property can be sold. In addition, the final regulations state that the IRS is not required to consider a request for release or an expedited determination made within five or fewer days prior to a scheduled sale. The IRS has the discretion, however, to consider such requests.

In § 301.6343–1(b)(3) of these final regulations, the phrase ''there is an intervening judgment lien creditor'' has been added to the example indicating when the IRS is not required to release a levy when an installment agreement has been entered into if the release will jeopardize the secured status of the United States. The final regulations also clarify that the lack of a filed notice of federal tax lien does not by itself warrant a finding that the secured status of the United States is jeopardized in all situations where no notice of such tax lien has been filed. Finally, the final regulations provide that, for the purposes of determining a reasonable amount for basic living expenses, a taxpayer may furnish, and the IRS may consider, information concerning his or her current employment status, as well as past employment history.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by adding entries to read as follows:

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

Section 301.6343–1 also issued under 26 U.S.C. 6343.

Section 301.6343–2 also issued under 26 U.S.C. 6343 * * *

Par. 2. Section 301.6343–1 is revised to read as follows:

§ 301.6343–1 Requirement to release levy and notice of release.

(a) *In general.* A district director, service center director, or compliance center director *(director)* must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

(b) *Conditions requiring release.* The director must release the levy upon all or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—

(1) *Liability satisfied or unenforceable*—(i) *General rule.* The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless—

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and § 301.6502–1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) *Special situations.* A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

(2) *Release will facilitate collection.* The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

Example. A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who

wants to buy both machines together. The buyer will only buy the machines together. A's property has a greater value as part of the package than it does by itself. The larger value, as shown in the sale contract, is enough to pay A's tax liability in full. In this situation a release of the levy will facilitate collection because the sale of both machines can be completed and A's liability will be paid in full at the settlement.

(ii) *Compliance with other conditions.* The director may find that collection will be facilitated by the taxpayer's compliance with conditions other than immediate payment, such as:

(A) The delinquent taxpayer delivers a satisfactory arrangement, which is accepted by the director, for placing property in escrow to secure the payment of the liability (including the expenses of the levy) which is the basis of the levy.

(B) The delinquent taxpayer delivers an acceptable bond to the director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. This bond shall be in the form provided in section 7101 and § 301.7101–1.

(C) There is paid to the director an amount determined by the director to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(D) The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502(a)(2) and § 301.6502–1.

(iii) *Expenses of sale exceed the government's interest.* If the director determines that the value of the United States' interest in the seized property does not exceed the expenses of sale of the property, a release of the levy will be deemed to facilitate collection of the liability even though the fair market value of property which has been seized exceeds the expenses of seizure and sale.

(3) *Installment agreement.* The taxpayer has entered into an agreement under section 6159 to satisfy the liability by means of installment payments, unless the agreement provides otherwise. However, the director is not required to release the levy under this condition if a release of the levy will jeopardize the secured creditor status of the United States, e.g., where there is an intervening judgment lien creditor and a notice of tax lien has not been filed.

(4) *Economic hardship*—(i) *General rule.* The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

(ii) *Information from taxpayer.* In determining a reasonable amount for basic living expenses the director will consider any information provided by the taxpayer including—

(A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;

(B) The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed);

(C) The cost of living in the geographic area in which the taxpayer resides;

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and

(F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.

(iii) *Good faith requirement.* In addition, in order to obtain a release of a levy under this subparagraph, the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to, falsifying financial information, inflating actual expenses or costs, or failing to make full disclosure of assets.

(5) *Fair market value exceeds liability.* The fair market value of the property exceeds the liability for which the levy was made and release of the levy on a part of the property can be made without hindering the collection of the liability. The following example illustrates the provisions of this paragraph (b)(5):

Example. The Internal Revenue Service levies upon ten widgets which belong to the taxpayer to satisfy the taxpayer's outstanding tax liabilities. Subsequent to the levy, the taxpayer establishes that market conditions have increased the aggregate fair market value of widgets so that the value of seven widgets equals the aggregate anticipated expenses of sale and seizure and the tax liabilities for which the levy was made. The director must release three widgets from the levy and return them to the taxpayer.

(c) *Request for release of levy*—(1) *Information to be submitted by taxpayer.* A taxpayer who wishes to obtain a release of a levy must submit a request for release in writing or by telephone to the district director for the Internal Revenue district in which the levy was made. The taxpayer making the request must provide the following information—

(i) The name, address, and taxpayer identification number of the taxpayer;

(ii) A description of the property levied upon;

(iii) The type of tax and the period for which the tax is due;

(iv) The date of the levy and the originating Internal Revenue district, if known; and

(v) A statement of the grounds upon which the request for release of the levy is based.

(2) *Time for submission.* Except in extraordinary circumstances, a request for release of a levy must be made more than five days prior to a scheduled sale of the property to which the levy relates.

(3) *Determination by director*—(i) *When required.* The director must promptly make a determination concerning release prior to sale in all cases where a request for release of a levy is made except those where the request for release is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(ii) *Time for making required determination.* The determination will be made, generally, within 30 days of a request for release made 30 or more days prior to a scheduled sale of the property to which the levy relates. If a request for release is made less than 30 days prior to the scheduled sale but more than 5 days before the scheduled sale, a determination must be made prior to the scheduled sale. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) *Discretionary determination.* The director has the discretion, but is not required, to make a determination concerning release prior to sale in cases where a request for release of a levy is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(4) *Notification to taxpayer of determination.* The director must promptly notify the taxpayer if the levy is released. If the director determines

that none of the conditions requiring release of the levy exist, the director must promptly notify the taxpayer of the decision not to release the levy and the reason why the levy is not being released.

(d) *Expedited determination with respect to certain business property*—(1) *General procedure*—(i) *Submission by taxpayer.* If a levy is made on essential business property as is described in paragraph (d)(2) of this section, the taxpayer may obtain an expedited determination of whether any of the conditions requiring release of the levy exist. In order to obtain an expedited determination, the taxpayer must submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(ii) *Time for making required determination.* The director must make such a determination by the later of 10 business days from the time the director receives the request for release, or 10 business days from the time the director receives any necessary supporting documentation, if 10 or more business days remain before a scheduled sale of the property to which the levy relates. An expedited determination concerning release must be made prior to sale in all cases where a request for release of a levy is made within the time frame specified in paragraph (c)(2) of this section. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) *Discretionary determination.* The director has the discretion, but is not required, to make an expedited determination concerning release in cases where the taxpayer does not submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(2) *Essential business property defined.* For purposes of this section, *essential business property* means tangible personal property used in carrying on the trade or business of the taxpayer which when levied upon prevents the taxpayer from continuing to carry on the trade or business.

(3) *Seizure of perishable goods.* The provisions of this paragraph do not apply in the case of a seizure of perishable goods. Those seizures are governed by the provisions of section 6336 and § 301.6336–1.

(e) *Effect of a release of levy.* If property has not yet been surrendered to the director in response to a levy, a release of the levy under section 6343(a) will relieve the possessor of any obligation to surrender the property. Otherwise, a release of a levy under section 6343(a) will cause the property to be returned to the custody of the person or persons legally entitled thereto. The release of a levy on any property under this section does not prevent any subsequent levy on the property. Section 301.6343–2, dealing with return of wrongfully levied upon property, is subject to section 6402 which prohibits the Internal Revenue Service from refunding a payment of money that has been deposited in the Treasury and credited to the taxpayer's liability unless there is an overpayment.

(f) *Effective date.* This section is effective as of December 30, 1994.

Par. 3. Section 301.6343–2 is added to read as follows:

§ 301.6343–2 Return of wrongfully levied upon property.

(a) *Return of property*—(1) *General rule.* If the district director, service center director, or compliance center director (the *director*) determines that property has been wrongfully levied upon, the director may return—

(i) The specific property levied upon;

(ii) An amount of money equal to the amount of money levied upon; or

(iii) An amount of money equal to the amount of money received by the United States from a sale of the property.

(2) *Time of return.* If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request.

(3) *Specific property.* In general the specific property levied upon will be returned whenever possible. For this purpose, money that is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, is treated as specific property.

(4) *Purchase by United States.* For purposes of paragraph (a)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to section 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the director before the sale or, if larger, the amount received by the United States from the resale of the property.

(b) *Request for return of property.* A written request for the return of property wrongfully levied upon must be addressed to the district director (marked for the attention of the Chief, Special Procedures Staff) for the Internal Revenue district in which the levy was made. The written request must contain the following information—

(1) The name and address of the person submitting the request;

(2) A detailed description of the property levied upon;

(3) A description of the claimant's basis for claiming an interest in the property levied upon; and

(4) The name and address of the taxpayer, the originating Internal Revenue district, and the date of the levy as shown on the notice of levy form, or levy form, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(c) *Inadequate request.* A request for the return of property wrongfully levied upon will not be considered adequate unless it is a written request containing the information required by paragraph (b) of this section. However, unless a notification is mailed by the director to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request will be considered adequate. If the director timely notifies the claimant of the inadequacies of his request, the claimant has 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request will be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under section 6532(c).

(d) *Payment of interest.* Interest is paid at the overpayment rate established under section 6621—

(1) In the case of money returned under paragraph (a)(1)(ii) of this section, from the date the director received the money to a date (to be determined by the director) preceding the date of return by not more than 30 days; or

(2) In the case of money returned under paragraph (a)(1)(iii) of this

section, from the date of the sale of the property to a date (to be determined by the director) preceding the date of return by not more than 30 days.

(e) *Effective date.* This section is effective as of December 30, 1994.

Approved: December 13, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–31665 Filed 12–30–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[A.G. Order No. 1943–94]

Fee for Production of Identification Record

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The cost for production of a Federal Bureau of Investigation (FBI) identification record has increased from $17 to $18. This final rule will permit the FBI to increase the fee from $17 to $18 for the production of identification records for the subjects of such records.

EFFECTIVE DATE: February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Bennie F. Brewer, FBI, Criminal Justice Information Services Division, Programs Support Section, Washington, D.C. 20535, telephone number (202) 324–2607.

SUPPLEMENTARY INFORMATION: A proposed rule to increase the fee for the production of identification records to the subjects of such records was published for notice and comment in the **Federal Register** on August 29, 1994 (59 FR 44383). Interested persons were allowed 30 days to submit comments on the proposal. No comments were received.

Departmental Order 556–73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for dissemination of arrest and conviction records upon request. That order resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's directive, the FBI has been releasing copies of identification records to the subjects of such records upon submission of a written request, a set of rolled-inked fingerprint impressions, and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from $17 to $18.

This regulation has been drafted and reviewed in accordance with Executive Order No. 12866, Section 1(b), Principles of Regulation. The Attorney General has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, and 5 U.S.C. 301, Part 16 of Title 28 of the CFR is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.33 is revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $18 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

Dated: December 20, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–32197 Filed 12–30–94; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 96–1–6799a FRL–5130–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Mojave Desert Air Quality Management District (MDAQMD) for two source categories that emit volatile organic compounds (VOC): Natural Gas or Gasoline Processing Equipment and Chemical Processing and Manufacturing. The MDAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these negative declarations serves as a final determination that the finding of nonsubmittal for these source categories has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on March 6, 1995 unless adverse or critical comments are received by February 2, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW., Washington, DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095
Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The revisions being approved as additional information for the California SIP include two negative declarations from the MDAQMD regarding the following source categories: (1) Natural Gas and Gasoline Processing Equipment and (2) Chemical Processing and Manufacturing. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the portions of San Bernardino County Air Pollution Control District [1] within the Southeast Desert Air Quality Management Area (AQMA). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that nonattainment areas submit reasonably available control technology (RACT) rules for all major sources of VOC and for all VOC sources covered by a Control Techniques Guideline document by November 15, 1992.[2]

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The Southeast Desert AQMA is classified as severe;[3] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.

The negative declarations were adopted on May 25, 1994 and submitted by the State of California for the MDAQMD on July 13, 1994. The submitted negative declarations were found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being finalized for approval into the SIP. This notice addresses EPA's direct-final action for the MDAQMD negative declarations for Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing.

The submitted negative declarations certify that there are no VOC sources in these source categories located inside MDAQMD's portion of the Southeast Desert AQMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of MDAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In a letter dated May 25, 1994, the District certified to EPA that no sources of Natural Gas and Gasoline Processing Equipment exist in the District. This certification is based on the definition ''natural gas processing plant'' found in EPA's Control Technique Guideline, No. EPA–450/3–83–007, ''Leaks from Natural Gas/Gasoline Processing Equipment. In a separate letter dated May 25, 1994, the District certified to EPA that its emission inventory analysis revealed no Chemical Processing and Manufacturing facilities located within the federal nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. MDAQMD's negative declarations for Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. Therefore, if this direct final action is not withdrawn, on March 6, 1995, any FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 6, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 6, 1995.

[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Mojave Desert Air Quality Management District did not make the required SIP submittals by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The negative declarations being acted on in this direct final rulemaking were submitted in response to the EPA finding of failure to submit.

[3] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 1994.

David P. HoweKamp,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(200)(ii) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(200) * * *

(ii) Additional material.

(A) Negative Declarations for the Mojave Desert Air Quality Management District for the following Volatile Organic Compound Sources: Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing, adopted on May 25, 1994.

* * * * *

[FR Doc. 94–32232 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL12–37–6747; FRL–5131–4]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is withdrawing two stays pending reconsideration (of emission limitations) applicable to the metal furniture paint and adhesive operations at the Montgomery, Illinois facility owned by Allsteel, Inc. (Allsteel). In the proposed rules section of this **Federal Register** USEPA is withdrawing related proposed rules.

EFFECTIVE DATE: This action is effective January 3, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6052.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 29, 1990, USEPA promulgated a Federal Implementation Plan (FIP) which contained stationary source Volatile Organic Compound (VOC) control measures representing Reasonably Available Control Technology (RACT) for emission sources located in six Chicago, Illinois counties. On that date, USEPA also took final rulemaking action on certain VOC rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP) (55 FR 26814). Among the sources impacted by these actions is Allsteel's plant in Kane County.

As a result of this rulemaking, Allsteel's paint operations became subject to the FIP's VOC emission limitations for metal furniture coating at 40 CFR 52.741(e), while the adhesive operations were required to comply with the FIP's ''generic'' rule for miscellaneous fabricated product manufacturing at 40 CFR 52.741(u). However, because USEPA had insufficient time to respond to Allsteel's highly technical comments, the Agency deferred the effective date of the applicable rules with regard to Allsteel for six months. Similarly, USEPA deferred action on a site-specific limit for Allsteel's adhesive lines submitted by the State of Illinois for inclusion as a SIP revision.

On August 28, 1990, Allsteel filed a petition for review of USEPA's June 29, 1990 rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group (IERG) et al.* v. *Reilly*, No. 90–2778. In addition, Allsteel filed petitions for reconsideration of the FIP as it applied to both the adhesive and specialty paint operations. Pursuant to these petitions, USEPA convened proceedings for reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act (Act) 42. U.S.C. 7607(d)(7)(B). On May 31, 1991 (56 FR 24722), USEPA issued a stay of the FIP rules pending reconsideration for the adhesive operations; on June 4, 1993 (58 FR 31653), USEPA issued a stay of the FIP rules pending reconsideration for the specialty paint operations. Both stays, issued pursuant to section 307(d)(7)(B) of the Act, were issued only as necessary to complete reconsideration of the subject rules.

On May 13, 1993, USEPA proposed site-specific RACT requirements for the paint operations (58 FR 28376). On June 18, 1993, USEPA proposed to disapprove the State's SIP submission and to promulgate a new rule for the adhesive operations (58 FR 33578).

On July 11, 1994, Allsteel filed with USEPA a Withdrawal of Requests for Reconsideration in which it represented that the adhesive operations were permanently shut down on March 18, 1994, and that the paint operations were to be discontinued by July 15, 1994. In addition, on August 15, 1994, the State of Illinois withdrew its SIP revision request for the adhesive lines.

II. Summary and Conclusions

As a result of Allsteel's July 11, 1994, Withdrawal of Requests for Reconsideration and the State of

Illinois' August 15, 1994, withdrawal of its SIP submission, in the proposed rules section of this **Federal Register** USEPA is withdrawing its May 13, 1993, proposed site-specific RACT requirements for Allsteel's paint operations and its June 18, 1993, proposal to disapprove the State's SIP submission and to promulgate a new rule for the adhesive operations. In this final rule USEPA is withdrawing the May 31, 1991, and the June 4, 1993, stays pending reconsideration, since they are no longer necessary to complete reconsideration of the subject rules. It should be noted that USEPA's June 29, 1990, FIP regulations remain in place.

Pursuant to the good cause exception in section 553(b)(B) of the Administrative Procedure Act, USEPA is taking final action without proposal. The USEPA believes notice-and-comment rulemaking is unnecessary to rescind the stay of the FIP rules because the stay affects only one party and that party requested the stay. Furthermore, there were no comments when USEPA initially promulgated the stay. In addition, USEPA believes it is in the public interest to forego notice-and-comment rulemaking and to rescind the stay as expeditiously as possible because (1) Allsteel has withdrawn the petition for reconsideration upon which the stay was based, and (2) as a result of the rescission of the stay, the June 29, 1990 FIP regulations are fully enforceable.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Volatile organic compound.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

§ 52.74 [Amended]

2. Section 52.741 is amended by removing and reserving paragraphs (z)(1)(ii) and (z)(5), and in paragraph (z)(1)(i), by removing the semicolon and the word ''and'' at the end of the paragraph and adding a period.

[FR Doc. 94–32278 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FL54–1–6026a; FRL–5089–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 23, 1993, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a maintenance plan and a request to redesignate the Duval County area from transitional nonattainment to attainment for ozone (O_3). The O_3 nonattainment area consists only of Duval County. Under the Clean Air Act (CAA), designations can be revised if sufficient data are available to warrant such revisions. In this action, EPA is approving Florida's request because it meets the maintenance plan and redesignation requirements set forth in the CAA and EPA is approving the 1990 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for the Duval County nonattainment area.

DATES: This final rule will be effective March 6, 1995 unless adverse or critical comments are received by February 2, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4215. Reference file FL54–1–6026.

SUPPLEMENTARY INFORMATION: The CAA, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the O_3 national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Duval County was designated under section 107 of the 1977 Act as nonattainment with respect to the O_3 NAAQS on March 3, 1978. [43 FR 8964, 40 CFR Section 81.310] In accordance with section 110 of the 1977 Act, the State submitted a part D O_3 SIP on April 30, 1979, which was supplemented on August 27, 1979, and January 23, 1980, which EPA conditionally approved on March 18, 1980, and fully approved on May 14, 1981, as meeting the requirements of section 110 and part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments) [Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q]. The nonattainment designation of Duval County was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified by operation of law as transitional for O_3 according to section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.310.)

Duval County more recently has ambient monitoring data that show no violations of the O_3 NAAQS, during the period from 1987 through 1993. In addition, there have been no exceedences reported for the 1994 O_3 season, to date. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, Florida submitted an O_3 maintenance SIP for the Duval County area on June 23, 1993, and a supplemental revision on August 23, 1994. Florida also requested redesignation of the area to attainment with respect to the O_3 NAAQS.

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must meet all relevant requirements under section 110 and part D of the CAA;

3. The area must have a fully approved SIP under section 110(k) of the CAA;

4. The air quality improvement must be permanent and enforceable; and

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;

The Florida redesignation request for the Duval County area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the O_3 NAAQS

The Florida request is based on an analysis of quality assured O_3 air quality data which is relevant to the maintenance plan and to the redesignation request. The ambient air O_3 monitoring data for calendar year 1987 through calendar year 1989 show an expected exceedence rate for the O_3 standard of less than 1.0 per year of the O_3 NAAQS in the Duval County area, resulting in a classification of transitional. The most recent ambient O_3 data for the calendar year 1991 through 1993 continued to show an expected exceedence rate of less than 1.0 per year of the O_3 NAAQS in the Duval County area. (See 40 CFR 50.9 and appendix H). Because the Duval County area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Duval County area has met the first statutory criterion of attainment of the O_3 NAAQS. In addition, there have been no ambient air exceedences to date in 1994 for O_3. Florida has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

On May 14, 1981, EPA fully approved Florida's SIP for the Duval County area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act (46 FR 26640). The 1990 Amendments, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Duval County SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Duval County may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a) or table 3 of section 186(a). Subpart 2 requirements, however, are not applicable to transitional areas. The Duval County area was classified as transitional (See 56 FR 56694, codified at 40 CFR § 81.530). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is not subject to the requirements of subpart 2 of part D. EPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation request. Requirements of the Act that come due subsequent to the submission of the redesignation request continue to be applicable to the area (see section 175A(c)) and, if the redesignation is disapproved, the state remains obligated to fulfill those requirements.

With the exception of the RACT requirement, for transitional O_3 nonattainment areas that attained the standard as of December 31, 1991, EPA has not determined that the section 172(c) requirements were applicable prior to November 15, 1993. Thus, no section 172(c) requirements other than the RACT requirement are applicable requirements for purposes of this redesignation. For RACT, EPA has stated that transitional ozone nonattainment areas must correct any enforceability deficiencies in their existing RACT rules prior to being redesignated to attainment. The State corrected all identified deficiencies in the State RACT regulations. The regulations apply in Duval County.

Section 176(c) of the Act requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federal Actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date [*see* 57 FR 13498, 13557 (April 16, 1992)].

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 1775A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Florida is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Florida is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the 1990 Amendments, EPA has determined that the Duval County area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the Florida SIP control strategy for the Duval County nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are volatile organic compound (VOC) reasonably available control technology (RACT) regulations, Stage I vapor recovery provisions, Federal Motor Vehicle Control Program (FMVCP), and lower Reid Vapor Pressure (RVP). RACT regulations reduced VOC emissions from those sources subject to RACT by 28% from 1977 through 1990. Stage I controls applicable to gasoline stations previously not subject to regulations reduced VOC emissions from those sources by 82% from 1981 through 1990. The FMVCP reduced VOC emissions from motor vehicles by 31.82% from 1985 to 1992. The reduction in RVP from 11.5 psi in 1985 to 7.8 psi in 1992 has reduced summertime VOC mobile source emissions by 25.36%.

In association with its emission inventory discussed below, the State of Florida has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient O_3 levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Florida's maintenance plan for the Duval County area because EPA finds that Florida's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of Florida submitted comprehensive inventories of VOCs, nitrogen oxides (NO_X), and carbon monoxide (CO) emissions from the Duval County area. The inventories include biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. This inventory is being approved in this notice.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the NEDS format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the base year and projected maintenance year inventories. EPA's TSD contains more in-depth details regarding the base year inventory for the Duval County area.

VOC EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990	1994	1997	2000	2005
Stationary point	15.60	17.01	18.14	19.20	20.87
Stationary area	51.25	46.00	44.65	45.71	39.24
Highway mobile	82.49	54.24	51.10	49.09	48.33
Non-Highway mobile	24.63	26.36	27.22	29.10	29.41
Biogenic	45.53	45.53	45.53	45.53	45.53
Total	219.50	189.14	186.64	188.63	183.38

NO_X Emissions Inventory Summary

[Tons per day]

	1990	1994	1997	2000	2005
Stationary point	101.16	103.21	103.47	105.95	108.87
Stationary area	8.37	12.54	13.03	13.72	14.67
On-Road mobile	61.40	60.60	59.92	58.91	59.11
Non-Road mobile	21.07	21.71	22.26	22.83	23.74
Total	192.00	198.06	198.68	201.41	206.39

CO EMISSIONS INVENTORY SUMMARY

[Tons per day]

	1990
Stationary point	30.6
Stationary area	7.6
On-Road mobile	452.7
Non-Road mobile	155.3
Total	646.2

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 base year out to 2005, with interim years of 1994, 1997, and 2000. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC emissions are expected to decrease 36.12 tons or 16.5% from the level of the base year inventory during this time period. The NO_X emissions do show a slight increase of 14.39 tons or 7.5% from 1990 to 2005, but the total precursors of ozone decrease from 411.5 tons to 389.77 tons for a reduction by 21.73 tons or 5.3%. Duval County attained the NAAQS through a VOC control strategy.

The Empirical Kinetics Modeling Approach (EKMA) was used to demonstrate the impact of NO_X emission increases on maximum ozone formation. The EKMA analysis showed that the projected future mix of emissions will not cause a violation of the NAAQS. EPA EKMA guidance documents were used in developing model inputs. The model was run using 1987 meteorological conditions and monitored ozone, NO_X and nonmethane organic compound (NMOC) concentration data for July 10, 1987, and was run in the EKMA calculate mode. This day had an observed ozone maximum concentration of 0.118 parts per million (ppm). The monitored NMOC/NO_X ratio of 4.13 was used as input. The model was run five times using the following mix of emissions:

(1) 1990 VOC and NO_X emissions (base case);

(2) base case with 7.5% increased NO_X;

(3) base case with 15% increased NO_X;

(4) base case with 30% increased NO_X; and

(5) base case with 7.5% increased NO_X and 16% NMOC reductions). The EKMA predicted an ozone maximum of 0.097 ppm using the 1990 base case emissions. This model concentration under-predicted the observed ozone maximum (0.118 ppm) by 18%.

The model output indicated a continual decrease in the maximum model-predicted ozone with each increase in NO_X emissions over the 1990 base case inventory (see table). Additionally, the modeling indicated that the mix of emissions as indicated in the 2005 inventory (16% VOC reductions and 7.5% NO_X increase over the 1990 inventory) produced lower ozone levels than the base case. Thus, the analysis indicates that, not withstanding the projected increase in NO_X emissions, the Jacksonville area should continue to maintain the standard throughout the maintenance period.

July 10:

Base case: 0.09744 ppm

Base case +7.5% NO_X: 0.09624 ppm

Base case +15% NO_X: 0.09512 ppm

Base case +30% NO_X: 0.09287 ppm

Base case − 16% NMOC + 7.5% NO_X: 0.09459 ppm

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the Duval County area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submitting periodic inventories of VOC and NO_X emissions every three years. Duval County's contingency plan is triggered by two indicators, a violation of the O_3 NAAQS or a periodic inventory update that shows emissions of VOCs have increased by at least five percent above the 1990 levels.

D. Contingency Plan

The level of VOC emissions in the Duval County area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Florida has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as reinstatement of NSR, less volatile or reformulated gasoline, NO_X Reasonable Available Control Technology (RACT), Stage II vapor recovery, expansion of control strategies to adjacent counties for VOC and/or NO_X and to new control technique guidelines (CTG) categories, and an enhanced vehicle emissions inspection program. The plan also contains a secondary trigger that will apply where no actual violation of the NAAQS has occurred. This trigger occurs if a periodic inventory update shows emissions of VOCs have increased by five percent above the 1990 levels. On the occurrence of the secondary trigger, the State will complete an evaluation within six months to determine the most cost-effective means for lowering VOC emissions to the 1990 levels. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this action, EPA is approving the Duval County O_3 maintenance plan because it meets the requirements of section 175A. EPA is also approving the 1990 base year inventory summary. In addition, the EPA is approving the request and redesignating the Duval County area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective March 6, 1995 unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 6, 1995.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be

interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).]

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

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

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: September 28, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(81) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(81) The maintenance plan for Duval County submitted by the Florida Department of Environmental Protection on June 23, 1993, as part of the Florida SIP.

(i) Incorporation by reference.

(A) Duval County Ozone Ten Year Maintenance Plan including Emissions Inventory Summary and Projections effective on August 23, 1994.

(ii) Other material. None.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.310 the attainment status table for ''Florida-Ozone'' is amended by removing the entire entry for ''Jacksonville Area Duval County'' and adding a new entry in alphabetical order under the heading ''Rest of State'' to read as follows:

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	* *
Duval County	March 6, 1995			
* *	*	*	*	* *

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–32234 Filed 12–30–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[BPD–789–CN]

RIN 0938–AG52

Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5-Year Refinement of RVUs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on December 8, 1994 (59 FR 63410) entitled ''Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5-Year Refinement of RVUs.''

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966–1309.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** Document [94–29916] dated December 8, 1994 beginning on page 63410, there were a number of technical and typographical errors in the preamble, in one section of the regulations text, and in two of the addenda. The corrections appear later in this document, under the heading ''Correction of Errors.''

In Table 6, Anesthesia Codes and Imputed RVUs, beginning on page 63456, we omitted the entry for HCPCS code 00534 and should not have included HCPCS code 00806. Also in Table 6, due to a transcription error, the ''descriptions'' were incorrect for HCPCS codes 00540 through 00802.

In the regulations text, § 414.39, appearing at page 63463, the text does not agree with the preamble description of it on page 63418 relating to payment of physician oversight services.

In Addendum B, Relative Value Units (RVUs) and Related Information, on page 63497, for HCPCS code 33247, the incorrect work RVUs (9.36) and incorrect total RVUs (25.06) were printed. The correct work RVUs for HCPCS code 33247 are 9.76 and the correct total RVUs are 25.36.

In Addendum G, Reference Set with 1995 Work RVUs, we inadvertently included some codes and omitted other codes. Thus, we are reprinting a corrected Addendum G in its entirety. The codes that were incorrectly included are listed below.

CODES TO BE DELETED FROM ADDENDUM G

HCPCS [1]	Description	Work RVU
10040	Acne surgery	1.34
10080	Drainage of pilonidal cyst	1.62
11042	Cleansing of skin/tissue	1.12
11050	Trim skin lesion	0.43
11051	Trim 2 to 4 skin lesions	0.66
14041	Skin tissue rearrangement	10.74
14061	Skin tissue rearrangement	11.42
15732	Muscle-skin graft, head/neck	12.10
15822	Revision of upper eyelid	4.27
15851	Removal of sutures	0.86
16000	Initial treatment of burn(s)	0.89
16025	Treatment of burn(s)	1.85
22505	Manipulation of spine	1.77
26990	Drainage of pelvis lesion	6.76
27125	Partial hip replacement	13.21
28450	Treat midfoot fracture, each	1.77
28515	Treatment of toe fracture	1.36
31579	Diagnostic laryngoscopy	2.26
32005	Treat lung lining chemically	2.19
32095	Biopsy through chest wall	7.13
33249	Insert/replace leads/gener	12.83
33510	Cabg, vein, single	23.29
35381	Rechanneling of artery	14.50
43226	Esophagus endoscopy, dilation	2.34
43640	Vagotomy & pylorus repair	13.28
43820	Fusion of stomach and bowel	10.43
44110	Excision of bowel lesion(s)	9.01
44130	Bowel to bowel fusion	11.09
44141	Partial removal of colon	17.36
45383	Colonoscopy, lesion removal	5.87
45915	Remove rectal obstruction	2.09
46080	Incision of anal sphincter	2.35
47100	Wedge biopsy of liver	6.75
47510	Insert catheter, bile duct	7.39
48100	Biopsy of pancreas	10.19
49002	Reopening of abdomen	9.40
49421	Insert abdominal drain	4.89
50360	Transplantation of kidney	27.05
50398	Change kidney tube	1.46
52005	Cystoscopy & ureter catheter	2.37

CODES TO BE DELETED FROM ADDENDUM G—Continued

HCPCS [1]	Description	Work RVU
52320	Cystoscopy and treatment	4.70
52330	Cystoscopy and treatment	5.04
52340	Cystoscopy and treatment	7.76
52630	Remove prostate regrowth	6.55
54001	Slitting of prepuce	2.14
54161	Circumcision	3.22
55040	Removal of hydrocele	5.15
55520	Removal of sperm cord lesion	5.72
57511	Cryocautery of cervix	1.85
57800	Dilation of cervical canal	0.77
58210	Extensive hysterectomy	23.97
58720	Removal of ovary/tube(s)	6.20
60220	Partial removal of thyroid	9.86
62272	Drain spinal fluid	1.35
64640	Injection treatment of nerve	2.49
67311	Revise eye muscle	6.30
67903	Repair eyelid defect	6.22
67908	Repair eyelid defect	4.95
90911	Anorectal biofeedback	2.15
92975	Dissolve clot, heart vessel	7.25
93501	Right heart catheterization	3.02
93505	Biopsy of heart lining	4.56
93511	Left heart catheterization	5.03
93536	Insert circulation assist	4.85
93619	Electrophysiology evaluation	7.32
93624	Electrophysiologic study	4.81
99217	Observation care discharge	1.09

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

The codes that are to be added are listed below.

CODES TO BE ADDED TO ADDENDUM G

HCPCS [1]	Description	Work RVU
10060	Drainage of skin abscess	1.12
11043	Cleansing of tissue/muscle	1.83
11100	Biopsy of skin lesion	0.81
14060	Skin tissue rearrangement	8.05
15260	Skin full graft procedure	9.56
15823	Revision of upper eyelid	6.65
15946	Removal of pressure sore	19.81
17000	Destroy benign/premal lesion	0.64
19240	Removal of breast	14.71
22554	Neck spine fusion	18.14
26531	Revise knuckle with implant	7.57
27006	Incision of hip tendons	9.50
28485	Repair metatarsal fracture	5.31
31584	Repair of larynx fracture	18.50
32020	Insertion of chest tube	3.98
33405	Replacement of aortic valve	28.47
33430	Replacement of mitral valve	29.42
33500	Repair heart vessel fistula	23.91
35454	Repair arterial blockage	6.04
43235	Upper GI endoscopy, diagnosis	2.39
43750	Place gastrostomy tube	5.71
44120	Removal of small intestine	13.15
44140	Partial removal of colon	16.97
45385	Colonoscopy, lesion removal	5.31
46050	Incision of anal abscess	1.14
46600	Diagnostic anoscopy	0.50
47130	Partial removal of liver	31.56
48150	Partial removal of pancreas	40.25
49000	Exploration of abdomen	8.99
49505	Repair inguinal hernia	6.17
50392	Insert kidney drain	5.59
50393	Insert ureteral tube	6.88
50780	Reimplant ureter in bladder	17.12
51860	Repair of bladder wound	11.17
52000	Cystoscopy	2.01
52325	Cystoscopy, stone removal	6.16

CODES TO BE ADDED TO ADDENDUM G—Continued

HCPCS [1]	Description	Work RVU
52601	Prostatectomy (TURP)	11.51
54150	Circumcision	1.78
55250	Removal of sperm duct(s)	3.21
57520	Conization of cervix	3.96
58260	Vaginal hysterectomy	11.39
59400	Obstetrical care	20.99
59515	Cesarean delivery	16.55
62270	Spinal fluid tap, diagnostic	1.13
63075	Neck spine disk surgery	19.77
63690	Analysis of neuroreceiver	0.45
63691	Analysis of neuroreceiver	0.65
64595	Revise/remove neuroreceiver	1.68
67228	Treatment of retinal lesion	12.39
67904	Repair eyelid defect	5.96
92950	Heart/lung resuscitation (cpr)	3.80
92982	Coronary artery dilation	10.98
93510	Left heart catheterization	4.33
93526	Rt & Lt heart catheters	5.99
93620	Electrophysiology evaluation	11.59
99295	Neonatal critical care	16.03

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

Correction of Errors

In FR Doc. 94–29916 of December 8, 1994 (59 FR 63410) make the following corrections:

A. Page 63456, Table 6

On page 63456, the following code is added in numerical order to read:

HCPCS [1]	Description	Base unit	Time unit	Imputed work RVUs
*	* * * * *	*		*
00534	Anesth, Cardioverter/defib	7	9.65	4.49
*	* * * * *	*		*

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

B. Pages 63456 and 63457, Table 6

1. On pages 63456 and 63457, the HCPCS codes starting with 00540 through 00802 are corrected to read as follows:

HCPCS [1]	Description	Base unit	Time unit	Imputed work RVUS
00540	Anesth, chest surgery	13	12.99	7.01
00542	Anesth, release of lung	15	13.32	7.64
00544	Anesth, chest lining removal	15	14.00	7.83
00546	Anesth, lung, chest wall surg	15	15.59	8.26
00548	Anesth, trachea, bronchi surg	15	14.86	8.06
00560	Anesth, open heart surgery	15	10.89	6.99
00562	Anesth, open heart surgery	20	22.27	11.41
00580	Anesth, heart/lung transplant	20	27.01	12.69
00600	Anesth, spine, cord surgery	10	14.31	6.56
00604	Anesth, surgery of vertebra	13	13.44	7.14
00620	Anesth, spine, cord surgery	10	15.34	6.84
00622	Anesth, removal of nerves	13	10.08	6.23
00630	Anesth, spine, cord surgery	8	11.30	5.21
00632	Anesth, removal of nerves	7	7.95	4.03
00634	Anesth for chemonucleolysis	10	1.92	3.22
00670	Anesth, spine, cord surgery	13	21.82	9.40
00700	Anesth, abdominal wall surg	3	5.99	2.43
00702	Anesth, for liver biopsy	4	7.67	3.15
00730	Anesth, abdominal wall surg	5	6.94	3.22
00740	Anesth, gi visualization	5	3.29	2.24
00750	Anesth, repair of hernia	4	6.62	2.87
00752	Anesth, repair of hernia	6	7.45	3.63
00754	Anesth, repair of hernia	7	9.12	4.35
00756	Anesth, repair of hernia	7	11.55	5.01

HCPCS [1]	Description	Base unit	Time unit	Imputed work RVUS
00770	Anesth, blood vessel repair	15	18.01	8.91
00790	Anesth, surg upper abdomen	7	9.88	4.56
00792	Anesth, part liver removal	13	19.03	8.64
00794	Anesth, pancreas removal	8	23.85	8.60
00796	Anesth, for liver transplant	30	41.76	19.37
00800	Anesth, abdominal wall surg	3	5.88	2.40
00802	Anesth, fat layer removal	5	10.47	4.18
*	*	*	*	*

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

2. On page 63457, HCPCS code 00806 in Table 6 is removed.

C. Page 63463

In column 2, in § 414.39(b)(2), line 8, the words ''HHA or'' are removed.

D. Page 63497

On page 63497, Addendum B, HCPCS code 33247 is corrected to read as follows:

HCPCS [1]	MOD	Status	Description	Work RVUs [2]	Practice expense RVUs [3]	Mal-practice RVUs	Total	Global period	Update
*		*	*	*	*		*		*
33247		A	Insert/replace leads	9.76	13.24	2.36	25.36	090	N
*		*	*	*	*		*		*

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.
[2] # Indicates RVUs are not used for Medicare payment.
[3] Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

E. Pages 63633 through 63635

On pages 63633 through 63635, Addendum G is corrected to read as follows:

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS

HCPCS [1]	Description	Work RVU
10060	Drainage of skin abscess	1.12
10120	Remove foreign body	1.19
11040	Surgical cleansing, abrasion	0.50
11043	Cleansing of tissue/muscle	1.83
11100	Biopsy of skin lesion	0.81
11400	Removal of skin lesion	0.86
11406	Removal of skin lesion	2.71
11441	Removal of skin lesion	1.56
11603	Removal of skin lesion	2.30
11642	Removal of skin lesion	2.88
11762	Reconstruction of nail bed	2.84
12002	Repair superficial wound(s)	1.81
14060	Skin tissue rearrangement	8.05
15100	Skin split graft procedure	8.05
15240	Skin full graft procedure	8.30
15260	Skin full graft procedure	9.56
15734	Muscle-skin graft, trunk	16.52
15755	Microvascular flap graft	28.33
15823	Revision of upper eyelid	6.65
15937	Remove sacrum pressure sore	12.98
15946	Removal of pressure sore	19.81
17000	Destroy benign/premal lesion	0.64
17100	Destruction of skin lesion	0.53
19240	Removal of breast	14.71
19318	Reduction of large breast	11.08
19364	Breast reconstruction	27.60
19367	Breast reconstruction	24.73
20610	Drain/inject joint/bursa	0.79
21267	Revise eye sockets	17.66
21395	Repair eye socket fracture	11.85
21433	Repair craniofacial fracture	23.69

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS—Continued

HCPCS [1]	Description	Work RVU
22554	Neck spine fusion	18.14
22595	Neck spinal fusion	19.24
23412	Repair of tendon(s)	12.69
25611	Repair fracture radius/ulna	7.11
26040	Release palm contracture	3.09
26045	Release palm contracture	5.27
26055	Incise finger tendon sheath	2.56
26123	Release palm contracture	8.64
26356	Repair finger/hand tendon	7.05
26531	Revise knuckle with implant	7.57
26615	Repair metacarpal fracture	5.18
27006	Incision of hip tendons	9.50
27165	Incision/fixation of femur	16.20
27170	Repair/graft femur head/neck	14.90
27418	Repair degenerated kneecap	9.82
27635	Remove lower leg bone lesion	7.29
27792	Repair of ankle fracture	7.04
28285	Repair of hammertoe	4.41
28485	Repair metatarsal fracture	5.31
29881	Knee arthroscopy/surgery	7.46
30520	Repair of nasal septum	5.55
31575	Diagnostic laryngoscopy	1.10
31584	Repair of larynx fracture	18.50
31600	Incision of windpipe	3.62
31622	Diagnostic bronchoscopy	2.80
32000	Drainage of chest	1.54
32020	Insertion of chest tube	3.98
32100	Exploration/biopsy of chest	10.07
32440	Removal of lung	19.15
32480	Partial removal of lung	16.84
32500	Partial removal of lung	13.10
32602	Thoracoscopy, diagnostic	5.96
33208	Insertion of heart pacemaker	7.28
33405	Replacement of aortic valve	28.47
33426	Repair of mitral valve	26.07
33430	Replacement of mitral valve	29.42
33500	Repair heart vessel fistula	23.91
33512	CABG, vein, three	27.84
33513	CABG, vein, four	30.12
33533	CABG, arterial, single	24.00
33870	Transverse aortic arch graft	37.74
34201	Removal of artery clot	8.04
35081	Repair defect of artery	22.15
35082	Repair artery rupture, aorta	28.82
35091	Repair defect of artery	28.10
35207	Repair blood vessel lesion	9.06
35221	Repair blood vessel lesion	15.11
35301	Rechanneling of artery	15.95
35454	Repair arterial blockage	6.04
35473	Repair arterial blockage	6.04
35474	Repair arterial blockage	7.36
35556	Artery bypass graft	15.47
35646	Artery bypass graft	24.00
35654	Artery bypass graft	17.62
35656	Artery bypass graft	13.86
36140	Establish access to artery	2.01
36200	Place catheter in aorta	3.02
36215	Place catheter in artery	4.47
36216	Place catheter in artery	5.28
36245	Place catheter in artery	5.07
36471	Injection therapy of veins	1.49
36489	Insertion of catheter, vein	1.22
36533	Insertion of access port	3.82
36620	Insertion catheter, artery	1.15
37140	Revision of circulation	22.15
38720	Removal of lymph nodes, neck	12.29
39400	Visualization of chest	5.11
40701	Repair cleft lip/nasal	15.10
42200	Reconstruct cleft palate	9.48
42415	Excise parotid gland/lesion	16.12
42440	Excision submaxillary gland	6.61
42809	Remove pharynx foreign body	1.76

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS—Continued

HCPCS [1]	Description	Work RVU
42820	Remove tonsils and adenoids	3.59
43235	Upper GI endoscopy, diagnosis	2.39
43239	Upper GI endoscopy, biopsy	2.69
43260	Endoscopy, bile duct/pancreas	5.96
43268	Endoscopy, bile duct/pancreas	7.39
43312	Repair esophagus and fistula	27.26
43331	Repair of esophagus	14.73
43420	Repair esophagus opening	10.19
43610	Excision of stomach lesion	10.11
43750	Place gastrostomy tube	5.71
44120	Removal of small intestine	13.15
44140	Partial removal of colon	16.97
44152	Removal of colon/ileostomy	22.98
44160	Removal of colon	14.09
44950	Appendectomy	6.06
45110	Removal of rectum	21.68
45300	Proctosigmoidoscopy	0.70
45330	Sigmoidoscopy, diagnostic	0.96
45331	Sigmoidoscopy and biopsy	1.26
45378	Diagnostic colonoscopy	3.70
45380	Colonoscopy and biopsy	4.01
45385	Colonoscopy, lesion removal	5.31
46050	Incision of anal abscess	1.14
46221	Ligation of hemorrhoid(s)	1.38
46255	Hemorrhoidectomy	4.95
46260	Hemorrhoidectomy	6.70
46500	Injection into hemorrhoids	1.53
46600	Diagnostic anoscopy	0.50
47000	Needle biopsy of liver	1.90
47130	Partial removal of liver	31.56
47556	Biliary endoscopy, thru skin	8.56
47605	Removal of gallbladder	11.53
48150	Partial removal of pancreas	40.25
49000	Exploration of abdomen	8.99
49505	Repair inguinal hernia	6.17
50080	Removal of kidney stone	13.98
50230	Removal of kidney	20.56
50392	Insert kidney drain	5.59
50393	Insert ureteral tube	6.88
50780	Reimplant ureter in bladder	17.12
51050	Removal of bladder stone	6.04
51596	Remove bladder, create pouch	36.27
51845	Repair bladder neck	9.06
51860	Repair of bladder wound	11.17
52000	Cystoscopy	2.01
52325	Cystoscopy, stone removal	6.16
52601	Prostatectomy (TURP)	11.51
54150	Circumcision	1.78
54520	Removal of testis	4.93
54640	Suspension of testis	6.55
55250	Removal of sperm duct(s)	3.21
55530	Revise spermatic cord veins	5.45
55700	Biopsy of prostate	1.57
55845	Extensive prostate surgery	26.73
56340	Laparoscopic cholecystectomy	10.68
56360	Peritoneoscopy	4.04
57100	Biopsy of vagina	0.97
57300	Repair rectum-vagina fistula	6.81
57520	Conization of cervix	3.96
58100	Biopsy of uterus lining	0.71
58150	Total hysterectomy	13.00
58260	Vaginal hysterectomy	11.39
58950	Resect ovarian malignancy	14.10
59160	D&C after delivery	2.66
59400	Obstetrical care	20.99
59515	Cesarean delivery	16.55
60240	Removal of thyroid	15.66
61154	Pierce skull, remove clot	13.67
61312	Open skull for drainage	20.54
61510	Removal of brain lesion	23.39
61518	Removal of brain lesion	32.27
61520	Removal of brain lesion	38.35

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS—Continued

HCPCS [1]	Description	Work RVU
61526	Removal of brain lesion	29.71
61530	Removal of brain lesion	42.35
61700	Inner skull vessel surgery	34.83
62223	Establish brain cavity shunt	12.81
62270	Spinal fluid tap, diagnostic	1.13
62279	Inject spinal anesthetic	1.58
62284	Injection for myelogram	1.54
62289	Injection into spinal canal	1.64
63012	Removal of spinal lamina	14.21
63017	Removal of spinal lamina	15.85
63030	Low back disk surgery	12.11
63047	Removal of spinal lamina	12.76
63075	Neck spine disk surgery	19.77
63650	Implant neuroelectrodes	5.99
63660	Revise/remove neuroelectrode	5.54
63685	Implant neuroreceiver	6.29
63688	Revise/remove neuroreceiver	4.77
63690	Analysis of neuroreceiver	0.45
63691	Analysis of neuroreceiver	0.65
63750	Insert spinal canal catheter	7.23
63780	Insert spinal canal catheter	6.22
64442	Injection for nerve block	1.41
64590	Implant neuroreceiver	2.35
64595	Revise/remove neuroreceiver	1.68
64721	Carpal tunnel surgery	3.99
66984	Remove cataract, insert lens	9.89
67010	Partial removal of eye fluid	6.67
67107	Repair detached retina	13.99
67145	Treatment of retina	5.07
67228	Treatment of retinal lesion	12.39
67904	Repair eyelid defect	5.96
69631	Repair eardrum structures	9.55
70220	X-ray exam of sinuses	0.25
70450	CAT scan of head or brain	0.85
70470	Contrast CAT scans of head	1.27
70541	Magnetic image, head (MRA)	1.81
70553	Magnetic image, brain	2.36
71020	Chest x-ray	0.22
72050	X-ray exam of neck spine	0.31
72100	X-ray exam of lower spine	0.22
72131	CAT scan of lower spine	1.16
72148	Magnetic image, lumbar spine	1.48
72170	X-ray exam of pelvis	0.17
73560	X-ray exam of knee	0.17
74000	X-ray exam of abdomen	0.18
74020	X-ray exam of abdomen	0.27
74160	Contrast CAT scan of abdomen	1.27
74280	Contrast x-ray exam of colon	0.99
74400	Contrast x-ray urinary tract	0.49
74455	X-ray exam urethra/bladder	0.33
75650	Artery x-rays, head & neck	1.49
75962	Repair arterial blockage	0.54
76091	Mammogram, both breasts	0.41
76519	Echo exam of eye	0.54
76645	Echo exam of breast	0.54
76700	Echo exam of abdomen	0.81
76805	Echo exam of pregnant uterus	0.99
76872	Echo exam, transrectal	0.69
77263	Radiation therapy planning	3.14
77290	Set radiation therapy field	1.56
77430	Weekly radiation therapy	3.60
77762	Radioelement application	5.35
77777	Radioelement application	6.99
78006	Thyroid, imaging with uptake	0.49
78223	Hepatobiliary imaging	0.84
78306	Bone imaging, whole body	0.86
78461	Heart muscle blood multiple	1.23
78465	Heart image (3D) multiple	1.46
78472	Gated heart, resting	0.98
78585	Lung V/Q imaging	1.09
79000	Intial hyperthyroid therapy	1.80
80500	Lab pathology consultation	0.37

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS—Continued

HCPCS [1]	Description	Work RVU
85060	Blood smear interpretation	0.45
85095	Bone marrow aspiration	1.08
85102	Bone marrow biopsy	1.37
86078	Physician blood bank service	0.94
88104	Microscopic exam of cells	0.56
88302	Tissue exam by pathologist	0.13
88304	Tissue exam by pathologist	0.22
88305	Tissue exam by pathologist	0.75
88307	Tissue exam by pathologist	1.59
88309	Tissue exam by pathologist	2.28
88325	Comprehensive review of data	2.22
88331	Pathology consult in surgery	1.19
90801	Psychiatric interview	2.19
90843	Psychotherapy 20–30 min.	1.10
90844	Psychotherapy 45–50 min.	1.72
90853	Special group therapy	0.43
90862	Medication management	0.95
90870	Electroconvulsive therapy	1.88
90935	Hemodialysis, one evaluation	1.22
90937	Hemodialysis, repeated eval.	2.11
90945	Dialysis, one evaluation	1.28
92004	Eye exam, new patient	1.61
92012	Eye exam established pt	0.82
92014	Eye exam & treatment	1.06
92083	Visual field examination(s)	0.50
92250	Eye exam with photos	0.44
92950	Heart/lung resuscitation (cpr)	3.80
92960	Heart electroconversion	2.25
92982	Coronary artery dilation	10.98
93010	Electrocardiogram report	0.17
93015	Cardiovascular stress test	0.75
93224	ECG monitor/report, 24 hrs	0.52
93307	Echo exam of heart	0.78
93320	Doppler echo exam, heart	0.38
93510	Left heart catheterization	4.33
93526	Rt & Lt heart catheters	5.99
93620	Electrophysiology evaluation	11.59
93651	Ablate heart dysrhythm focus	16.25
93732	Analyze pacemaker system	0.92
93736	Telephone analysis, pacemaker	0.15
93880	Extracranial study	0.60
94010	Breathing capacity test	0.17
94060	Evaluation of wheezing	0.31
94160	Vital capacity screening	0.18
94656	Initial ventilator mgmt	1.22
94657	Cont. ventilator	0.83
95819	Electroencephalogram (EEG)	1.08
95860	Muscle test, one limb	0.96
95861	Muscle test, two limbs	1.54
95900	Motor nerve conduction test	0.42
95904	Sense nerve conduction test	0.34
95935	''H'' or ''F'' reflex study	0.59
97110	Therapeutic exercises	0.45
99201	Office/outpatient visit, new	0.38
99202	Office/outpatient visit, new	0.75
99203	Office/outpatient visit, new	1.14
99204	Office/outpatient visit, new	1.71
99205	Office/outpatient visit, new	2.28
99211	Office/outpatient visit, est	0.17
99212	Office/outpatient visit, est	0.38
99213	Office/outpatient visit, est	0.55
99214	Office/outpatient visit, est	0.94
99215	Office/outpatient visit, est	1.51
99222	Initial hospital care	1.84
99223	Initial hospital care	2.57
99231	Subsequent hospital care	0.51
99232	Subsequent hospital care	0.88
99233	Subsequent hospital care	1.25
99238	Hospital discharge day	1.06
99241	Office consultation	0.54
99242	Office consultation	1.11
99243	Office consultation	1.47

ADDENDUM G.—REFERENCE SET WITH 1995 WORK RVUS—Continued

HCPCS [1]	Description	Work RVU
99244	Office consultation	2.23
99245	Office consultation	2.96
99252	Initial inpatient consult	1.13
99253	Initial inpatient consult	1.56
99254	Initial inpatient consult	2.27
99255	Initial inpatient consult	3.14
99263	Follow-up inpatient consult	1.16
99282	Emergency dept visit	0.47
99283	Emergency dept visit	1.07
99284	Emergency dept visit	1.68
99285	Emergency dept visit	2.63
99291	Critical care, first hour	3.64
99292	Critical care, addl 30 min	1.84
99295	Neonatal critical care	16.03
99296	Neonatal critical care	7.40
99297	Neonatal critical care	3.84
99302	Nursing facility care	1.67
99311	Nursing facility care, subseq	0.54
99353	Home visit, estab patient	1.48
99381	Preventive visit, new, infant	1.19
99382	Preventive visit, new, age 1–4	1.36
99383	Preventive visit, new, age 5–11	1.36
99384	Preventive visit, new, 12–17	1.53
99385	Preventive visit, new, 18–39	1.53
99386	Preventive visit, new, 40–64	1.88
99387	Preventive visit, new, 65 & over	2.06
99391	Preventive visit, est, infant	1.02
99392	Preventive visit, est, age 1–4	1.19
99393	Preventive visit, est, age 5–11	1.19
99394	Preventive visit, est, 12–17	1.36
99431	Initial care, normal newborn	1.17
99433	Normal newborn care, hospital	0.62
99440	Newborn resuscitation	2.93

[1] All numeric CPT HCPCS Copyright 1994 American Medical Association.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 22, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–32286 Filed 12–29–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

RIN 2125–AC50

Controlled Substances Testing; Removal of Foreign Implementation Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; removal of compliance date.

SUMMARY: The Federal Highway Administration announces the removal of the compliance date from regulations governing drug testing of foreign-based employees of foreign-domiciled motor carriers. On February 15, 1994, the FHWA published a notice of proposed rulemaking which proposed to begin controlled substances and alcohol testing of foreign-based employees of foreign-domiciled employers under 49 CFR part 382 on January 1, 1996. But 49 CFR part 391 requires foreign-based employees of foreign-domiciled employers to implement controlled substances testing effective January 2, 1995. The removal of the compliance date in part 391 is to allow completion of the part 382 rulemaking process initiated in compliance with the Omnibus Transportation Employee Testing Act of 1991. Also the delay will allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 30, 1994.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. Ronald Finn, Office of Motor Carrier Standards, (202) 366–0647, or *for information regarding legal issues:* Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FHWA, along with certain other agencies within the Department of Transportation (the Department), adopted regulations requiring pre-employment/use, periodic, post-accident, reasonable cause and random drug testing of commercial motor vehicle drivers. The FHWA rule applies to all covered drivers while they are operating in the United States, regardless of whether they are based in a foreign country or the United States. The rule provided, however, that it would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule as originally published further provided that in any event it would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. *See* 53

FR 47134, codified at 49 CFR 391.81 *et seq*.

The FHWA has delayed the effective date of drug testing requirements for foreign-based employees of foreign-based motor carriers on four occasions. *See* 54 FR 39546, September 27, 1989; 54 FR 53294, December 27, 1989; 56 FR 18994, April 24, 1991; 57 FR 31277, July 14, 1992. The last of these established January 2, 1995, as the date for compliance with subpart H of part 391.

Meanwhile, on October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) was enacted (Pub. L. 102–143, Title V). The Omnibus Act requires the Secretary of Transportation to issue regulations requiring drug and alcohol testing of commercial motor vehicle drivers. Final rules implementing such testing were published on February 15, 1994. *See* 59 FR 7484, 49 CFR part 382. These new rules institute alcohol testing and will completely replace the current drug testing rule in subpart H of 49 CFR part 391 by January 1, 1996. After that time, subpart H of part 391 will no longer be in effect. However, because § 391.83(c) provides that foreign-based employees of foreign-domiciled carriers shall be subject to the drug testing rules in part 391 as of January 2, 1995, foreign motor carriers would be required to conduct testing for 1995 alone. The FHWA published a notice of proposed rulemaking (NPRM) on February 15, 1994, which proposed to require foreign-based motor carriers to conduct both alcohol and controlled substances testing under the rules in 49 CFR part 382 rather than requiring foreign-based motor carriers to conduct just controlled substances testing under the rules in 49 CFR part 391. *See* 59 FR 7528.

The Omnibus Act applies to foreign-based motor carriers and drivers on its face, with the proviso that the new rules be ''consistent with the international obligations of the United States, and * * * consider applicable laws and regulations of foreign countries.'' 49 U.S.C. 31306(h). Thus, foreign-based drivers are required by the statute to be covered, but the Secretary is granted the authority to deem the requirement satisfied by the testing laws of foreign nations or through international agreements.

On February 15, 1994, the FHWA published an NPRM soliciting comments on methods for conducting testing of foreign drivers. The FHWA proposed that the final controlled substances and alcohol testing rule under 49 CFR part 382 be amended to cover foreign-based drivers of foreign-based carriers. To accomplish this, § 382.103(c)(4), which excludes foreign-based carriers, would be deleted. Based on the comments about the efficacy and progress of the negotiations process aimed at achieving compatibility and reciprocity of testing standards, the implementation date was chosen to provide the greatest opportunity for the negotiation process to be completed successfully. However, if the process were not completed successfully, the requirements of 49 CFR parts 40 and 382 were proposed to go into effect on January 1, 1996. The FHWA continues to analyze comments and negotiate with foreign governments to achieve compatible laws and reciprocity of testing standards. To permit these discussions to progress in an orderly fashion, and to allow additional time to work on compatibility and reciprocity with foreign governments, the FHWA is removing the date on which foreign-based motor carriers would be subject to the drug testing rules at 49 CFR part 391.

This final rule removes the date by which testing programs must commence for persons located outside the territory of the United States, including foreign-based employees of American companies (or their foreign subsidiaries). This action does not postpone testing for any other person, including U.S.-based employees of foreign companies and their American subsidiaries.

Rulemaking Analyses and Notices

The FHWA finds that further notice and opportunity for comment are unnecessary under 5 U.S.C. § 553(b)(3)(B) inasmuch as the issue of when foreign-based employees of foreign-domiciled carriers should be subject to the FHWA's new alcohol and controlled substances testing rules at 49 CFR part 382, rather than the current part 391 rules, has already been the subject of notice-and-comment rulemaking (RIN 2125–AD11) in a December 15, 1992, advance notice of proposed rulemaking (57 FR 59356) and a February 15, 1994, notice of proposed rulemaking (59 FR 7528). In addition, the FHWA believes that further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In light of the earlier opportunities to comment on this subject, the FHWA does not anticipate that providing an additional comment period would result in the receipt of useful information.

The FHWA also believes that this final rule is exempt from the 30-day delayed effective date requirement of the Administrative Procedure Act under 5 U.S.C. § 553(d)(1) because it ''grants or recognizes an exemption or relieves a restriction.'' If 49 CFR § 391.83(c) were not amended to remove the compliance date, foreign-based drivers would be subject to the drug testing rules of 49 CFR part 391 as of January 2, 1995. This action provides that foreign-based drivers will continue to be excluded from the requirements of 49 CFR part 391, effectively granting an exemption to the controlled substances testing requirements in 49 CFR part 391 which would otherwise soon apply to these drivers. Therefore, the FHWA finds that good cause exists to proceed directly to a final rule which is effective upon its date of publication.

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

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. In this final rule, the FHWA removes the date on which the drug testing rules at 49 CFR part 391 would apply to foreign-based employees of foreign-domiciled carriers, thereby continuing to exempt these employees from these drug testing rules. It is anticipated that the economic impact of this rulemaking will not be substantial because, in removing the compliance date for foreign-based employees of foreign carriers, the FHWA is not altering existing regulations in such a way as to either impose or eliminate any economic burden. These employees are not now subject to the drug testing rules at 49 CFR part 391, and this action simply maintains their exempt status.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This final rule will remove the compliance date by which foreign-domiciled motor carriers would have been required to test drivers for the use of controlled substances under 49 CFR part 391. In removing this compliance date, the FHWA is simply continuing to exempt these employees from the agency's controlled substances testing requirements. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a separate Federalism assessment. This action removes the requirement that foreign-based motor carriers conduct controlled substances testing. It does not place any requirements on the States and thus does not limit the policy-making discretion of States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances, Driver qualifications, Drug abuse, Drug testing, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: December 29, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulation, subtitle B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATION OF DRIVERS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; and 49 CFR 1.48.

Subpart H—Controlled Substances Testing

2. In § 391.83, paragraph (c) is revised to read as follows:

§ 391.83 Applicability.

* * * * *

(c) This subpart is not applicable with respect to any foreign-based employee of a foreign-domiciled motor carrier.

[FR Doc. 94–32333 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC27

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Arabis Perstellata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for *Arabis perstellata* (rock cress) under the authority of the Endangered Species Act of 1973, as amended (Act). The species is made up of two subspecies occupying distinct geographic areas. The small rock cress (*Arabis perstellata* E. L. Braun var. *perstellata* Fernald) is currently known from 27 populations in Kentucky—24 in Franklin County, 2 in Owen County, and 1 in Henry County. The large rock cress (*Arabis perstellata* E. L. Braun var. *ampla* Rollins) is known from only two populations in Rutherford County, Tennessee. Both subspecies are endangered throughout their range due to habitat alteration; residential, commercial, or industrial development; timber harvesting; grazing and trampling; and competition with native and exotic weedy species, especially the European garlic mustard (*Alliaria petiolata*). This action extends Federal protection under the Act to the rock cress.

EFFECTIVE DATE: February 2, 1995.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address (704/655–1195, Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Both varieties of *Arabis perstellata* E.L. Braun, (*Arabis perstellata* E. L. Braun var. *ampla* Rollins, large rock cress, and *Arabis perstellata* E.L. Braun var. *perstellata* Fernald, small rock cress) are perennial members of the mustard family (Brassicaceae). The large rock cress is known from only one county in Tennessee, and the small rock cress is known from only three counties in Kentucky. Both varieties have round stems and alternate leaves. Their stems and foliage have a grayish coloration due to the large quantity of hairs. Their stems arise from horizontal bases and grow up to 80 centimeters (cm) (31.5 inches) long, often drooping from rock ledges. Each year a basal rosette of leaves is produced, and new flowering branches emerge from the old rosette of the previous season. Their lower leaves vary from 4 to 15 cm (1.6 to 6.0 inches) long and are obovate to oblanceolate with slightly toothed and pinnatifid margins. Their upper leaves are smaller—up to 3.5 cm (1.4 inches) long—and are elliptic to oblanceolate, with coarse teeth along the margin. Both surfaces of their leaves are stellate-pubescent. The inflorescence is an elongate raceme with numerous flowers. Their flowers have four petals that are 3 to 4 millimeters (mm) (0.12 to 0.16 inch) long, are white to lavender, and have four pale green sepals that are 2 to 3 mm (0.08 to 0.12 inch) long. There are six stamens, with two shorter than the other four. The ovary is elongate, two-chambered, and develops into a silique. Fruiting stalks are about 1 cm (0.4 inch) long at maturity; siliques are up to 4 cm (1.6 inches) long and are covered with both simple and stellate hairs. Flowering is from late March to early May. Fruits mature from mid-May to early June. Their oblong seeds are reddish brown; somewhat flattened; about 1 mm (0.04 inch) long; and, in places, minutely hairy (Jones 1991).

Arabis perstellata was named by E.L. Braun from plants collected between 1936 and 1993 on wooded hillsides along Elkhorn Creek in Franklin County, Kentucky. Braun (1940) distinguished the new taxon from the similar *Arabis dentata* (Torr.) T. & G. (now called *Arabis shortii* (Fern.) Gleason) by its

perennial habit; grayer, stellate pubescence of stems and leaves; and longer pedicels. Fernald (1946) treated *A. shortii* as a variety of *A. perstellata,* through it is now generally accepted that they represent two species (Kartesz and Kartesz 1980). In 1959, plants were discovered on steep limestone cliffs above the Stones River in Davidson County, Tennessee, by Dr. R.B. Channel. Rollins (1960) described these plants as *Arabis perstellata* var. *ampla* and distinguished them from the typical variety by their generally larger size, thinner and more entire leaves, and lesser pubescence. Rollins reported the chromosome number of the Tennessee plants as n=7. The chromosome number of the Kentucky plants has yet to be determined.

Arabis perstellata is typically found on wooded steep slopes with limestone outcrops. The outcrops tend to be moist but not wet; rarely, plants can be found on seepy outcrops. They also may be found in protected areas, such as around the bases of larger trees, or in areas where there is little competition, such as around areas regularly scoured by talus movement or erosion. The plants have a well-developed system of rootstocks that allow them to persist in these inhospitable sites. Sometimes plants display a weedy tendency, colonizing recent road cuts or animal paths through the woodlands. The plants survive in full shade or filtered light, but are not found in full sunlight (Jones 1991).

The distribution of *Arabis perstellata* var. *perstellata* shows a strong correlation with the Kentucky River and its tributaries (primarily Elkhorn Creek), with the majority of sites occurring in Franklin County. No sites have been found south of Frankfort along the Kentucky River, although appropriate habitat appears to be present.

Historically, *Arabis perstellata* var. *ampla* was also associated with calcareous bluff habitat of a specific river—the Stones River. The two extant populations are somewhat atypical compared to historic sites because they occur on rocky knobs about 15 miles from the Stones River (Jones 1991). The following is a description of the species' status within each State where it occurs.

Tennessee. The following information on *Arabis perstellata* var. *ampla* in Tennessee is primarily from Jones (1991). All known *Arabis perstellata* var. *ampla* populations in Tennessee are from the Cumberland River Subsection of the Central Basin Physiographic Region. Prior to the status survey conducted by Jones (1991), there were three records of large rock cress in Davidson County and two in Rutherford County. All three of the sites in Davidson County have been extirpated, and one of the sites in Rutherford County could not be relocated. One additional population was discovered in Rutherford County during the status survey. Of the two remaining populations, one is small—about 25 plants—and covers about 0.06 acre. The other population contains several hundred plants scattered over about 2.2 acres. Both sites are on private land and are threatened from competition by weedy invaders.

Kentucky. The following information on *Arabis perstellata* var. *perstellata* in Kentucky is primarily from Jones (1991). All known *Arabis perstellata* var. *perstellata* populations in Kentucky are from the Eden Shale Belt Subsection of the Blue Grass Physiographic Region. Prior to the status survey conducted by Jones (1991), there were three counties in Kentucky with occurrence records for the small rock cress—1 in Henry County, 2 in Owen County, and 26 in Franklin County. One site in Owen County and seven sites in Franklin County have been extirpated. There was insufficient information to locate four other historic records (two in Franklin County and two from unknown counties). However, 8 new populations were discovered during the status survey, and the 27 known small rock cress sites in Kentucky are distributed as follows: 1 population from Henry County, 2 populations from Owen County, and 24 populations from Franklin County. Of these 27 populations, 10 have fewer than 100 individual plants and 12 have 20 or fewer.

The immediate threats to the 27 remaining populations include the following—(1) 8 are threatened by weedy competitors, (2) 4 by weedy competitors and trampling, (3) 2 by trampling, (4) 1 by logging, and (5) 2 by road work. One of the largest populations was severely impacted by roadwork while the species was proposed for listing. The remaining 10 populations do not appear to have any immediate threats but are vulnerable to the aforementioned threats as well as other habitat alterations and potential inbreeding problems as neighboring populations decline. All of the Kentucky populations are privately owned. Three receive limited protection through their inclusion in State designated natural areas.

Previous Federal Actions

Federal government actions on this species began with section 12 of the Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* were included in the Smithsonian report and in the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* were included in that proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. The revised notice of review for native plants published on December 15, 1980 (45 FR 82480), included *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* as category 1 species. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as threatened or endangered. These subspecies were retained in their respective categories when the notice of review for native plants was revised in 1983 (48 FR 53640) and 1985 (50 FR 39526), but *Arabis perstellata* var. *ampla* was then thought to be extinct. In the 1990 notice of review (50 FR 6184), *Arabis perstellata* var. *ampla* was retained as a category 1 species but was no longer thought to be extinct (i.e., it was rediscovered), and *Arabis perstellata* var. *perstellata* was placed in category 2 because the Service believed that additional searches of potential habitat and further identification of threats were needed before a decision could be made as to whether a proposed rule should be prepared to add the species to the list. (Category 2 species are those for which the Service has information indicating that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological

vulnerability and threats are not currently known or on file to support the preparation of rules.) The Service funded surveys in 1989 in order to determine the status of *Arabis perstellata* var. *perstellata* in Kentucky. The contractors conducting the status survey for *Arabis perstellata* var. *perstellata* included a review of *Arabis perstellata* var. *ampla* in Tennessee. Final reports on these surveys were accepted by the Service in 1991.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* because of the acceptance of the 1975 Smithsonian report as a petition. From 1983 through 1990 the Service found that the petitioned listing of both varieties was warranted but precluded by higher priority species. In 1990, it was determined that listing of *Arabis perstellata* var. *ampla* was not warranted because data on distribution, vulnerability, and threats were incomplete. Status survey information received by the Service in 1991 completed these informational gaps and was sufficient and conclusive enough to support the proposed listing of *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* published in the **Federal Register** of January 3, 1994 (59 FR 53). The proposed listing represented the final petition finding for the large and small rock cresses.

Summary of Comments and Recommendations

In the January 3, 1994, proposed rule, and through associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule for the rock cress. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letters dated January 20, 1994. Legal notices were published in the ''Frankfort State Journal'' (Frankfort, Kentucky) on January 23, 1994 and in the ''Daily News Journal'' (Murfreesboro, Tennessee) on January 21, 1994.

Four written responses were received on the proposed rule to list rock cress. One Federal agency, one State agency, and two individuals provided comments.

The U.S. Soil Conservation Service, Nashville, Tennessee, responded by stating they have ''no projects which might affect the species proposed for listing.''

The Kentucky State Nature Preserves Commission and one individual from Kentucky (who owns land that supports the species), supported the listing of the typical variety. Neither commented on the large rock cress.

One individual opposed the listing because ''The Fish and Wildlife Service is intruding into an area in which it certainly has no moral or legal authority—private property.'' The Service response is that the Act does not allow the Service to use land ownership as a factor in determining whether a species should be placed on the Endangered and Threatened Species List. The Act requires that a decision to list a species be based solely on biological data. Further, listed plants receive very little formal protection on private lands. For the most part they are only protected on Federal lands or through section 7 of the Act (consultation with other Federal Agencies).

The same individual also stated that ''. . . you (the Service) present hypothetical scenarios of what timber harvest might do to the resources and the area subject to timber harvest. All of your arguments are based on conjecture and supposition with little or no scientific data. The areas in question have undergone severe natural and man-caused changes in biodiversity over the past 200 years of European occupancy. Yet, after all that has occurred, the species under consideration persist.'' The Service believes that, based on the biology of the species, timber harvesting would impact the species. Not only could the species be affected by direct impacts such as heavy equipment, but because we know the species does not survive in full sunlight, removal of trees would likely have a detrimental effect. Further, timber harvest is only one of several threats to this species (see ''Summary of Factors Affecting the Species'' section of this rule). The Service agrees that the areas in question have undergone considerable ''biodiversity'' changes over the past centuries since European settlement. However, while it is not possible to say to what degree this species has become more or less abundant since that time, populations are known to have been lost and remaining populations continue to be threatened. There are many examples of species that have been reduced in number since European settlement, many of which have become extinct. The Service believes that without the protection afforded by the Act, this species would likely follow the same course.

The individual further stated that ''The scientific community, and the Service in particular, need to recognize that extinction has always been a continuing process and will continue to be so.'' The Service agrees that extinction is a natural process. Extinction naturally occurs as species adapt (evolve) or don't adapt (become extinct) to a changing environment. However, the present rate of extinction, by some estimates, is as high as 1,000 times the ''normal'' extinction rate, with virtually all of the extinction being attributable to human induced environmental changes. A species being eliminated by processes such as road building or other man-made factors is far different from a species being unable to adapt to a naturally changing environment. Even so, the Act does not make distinctions in this regard. A species may be listed due to either natural or manmade factors that affect its continued existence.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the rock cress should be classified as an endangered species. Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Arabis perstellata* E.L. Braun (rock cress) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range

Arabis perstellata var. *perstellata*—Of the 27 known populations of small rock cress, 17 are threatened with destruction or adverse modification of their habitat. Eight are threatened by weedy competitors, four by weedy competitors and trampling, two by trampling, one by logging, and two by road work (one population was severely impacted by road work during the period the species was proposed for listing). The remaining 10 populations do not appear to have any immediate threats but are vulnerable to the aforementioned threats as well as other habitat alterations and potential inbreeding problems as neighboring populations decline. Active

management is required to ensure that the species continues to survive at all sites.

Arabis perstellata var. *ampla*—Both of the remaining large rock cress populations in Tennessee are threatened from competition by weedy invaders and potentially by livestock grazing and trampling. Also, the smaller site appears to be made up of older individuals, and there is little evidence of reproduction (Jones 1991).

B. Overutilization for commercial, recreational, scientific, or educational purposes

At this time there is little or no commercial trade in *Arabis perstellata* var. *ampla* or *Arabis perstellata* var. *perstellata.* Most populations of this species are very small and cannot support the collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty could be a threat to the species.

C. Disease or predation

Disease and predation do not appear to be factors affecting the continued existence of this species at this time (Jones 1991).

D. The inadequacy of existing regulatory mechanisms

The large rock cress is listed as endangered in Tennessee by Collins *et al.* (1978) and Somers (1989). Endangered species in Tennessee receive some protection through the ''Rare Plant Protection and Conservation Act of 1985'' (Tennessee Department of Conservation, 1987). The removal of plants from State properties for scientific educational, or propagative purposes is controlled, as is the disturbance of the species on private lands without the landowner's consent. There is no protection for the species if its presence conflicts with public works projects (i.e., road building).

In Kentucky, the small rock cress is listed as endangered by the Kentucky Academy of Science and Kentucky State Nature Preserves Commission (Branson *et al.* 1981, Warren *et al.* 1986). These lists, however, have no legal standing in the State. The state of Kentucky considers plants on the State endangered species list but provides no protection for them.

The Act will provide additional protection to populations that are on Federal land and to the other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate interstate commercial trade will also be provided.

E. Other natural or manmade factors affecting the species' continued existence

Arabis perstellata var. *ampla* and *Arabis perstellata* var. *perstellata* could be facing potential inbreeding problems as neighboring populations decline.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the rock cress as endangered. *Arabis perstellata* (rock cress) is made up of two subspecies occupying distinct geographic areas. The small rock cress is currently known from 27 populations in Kentucky—24 in Franklin County, 2 in Owen County, and 1 in Henry County. The large rock cress is known from only two populations in Rutherford County, Tennessee. Both subspecies are endangered throughout their range due to habitat alteration; residential, commercial, or industrial development; timber harvesting; grazing and trampling; and competition with native and exotic weedy species, especially the European garlic mustard (*Alliaria petiolata*). Because of their restricted distributions and both subspecies' vulnerability to extinction, endangered status appears to be the most appropriate classification for this species. (See ''Critical Habitat'' section for a discussion of why critical habitat is not being proposed for this plant.)

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) the designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to this species, and designation of critical habitat could further threaten the species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify its critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. (See ''Available Conservation Measures'' section for a further discussion of section 7.) As part of the development of this rule, Federal and State agencies were notified of the plants' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in areas inhabited by this plant, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; and if needed, more specific distributional information would be provided.

Regulations promulgated for the implementation of Section 7 of the Act provide for both a ''jeopardy'' standard and a ''destruction or adverse modification'' of critical habitat standard. Due to the highly precarious status of the rock cress, any significant adverse modification or destruction of the species' habitat would also likely jeopardize the species' continued existence thereby triggering both standards. Therefore, no additional protection for the plant would accrue from a critical habitat designation that would not also occur from listing of the species. Habitat protection for the rock cress will be accomplished through the section 7 ''jeopardy'' standard and section 9 prohibitions against take.

In addition, the rock cress is very rare, and taking for scientific purposes and private collection cold pose a threat if specific site information was released. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the often controversial critical habitat designation process. The locations of populations of this species have consequently been described only in general terms in this final rule. Any existing precise locality data would be available to appropriate Federal, State, and local government agencies from the Service office described in the **ADDRESSES** section or from the Service's Cookeville Field

Office, 446 Neal Street, Cookeville, Tennessee 38501.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify any designated critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* populations are on privately owned land or in road rights-of-way. No Federal involvement is presently known or has been identified for the immediate future.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994, (59 FR 34272), to identify to the maximum extent practicable at the time of listing those activities that would constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Prohibitions relating to Federal lands and to trade are not of concern at present, as none of the *Arabis perstellata* populations are known to occur on Federal lands, and there is no known current trade in this species. Collection, damage or destruction on non-Federal lands is prohibited if in knowing violation of State law, or in violation of State criminal trespass law. This would not affect any activities in Kentucky, as Kentucky State law provides no protection for plants. In Tennessee, *Arabis perstellata* is protected under the Rare Plant Protection and Conservation Act of 1985, which controls the removal of plants from State properties for scientific, educational, or propagative purposes, and the disturbance of the species on private lands without the landowner's consent. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7110; Facsimile 404/679–7081).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 229).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

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

2. Section 17.12(h) is amended by adding the following, in alphabetical order under flowering plants, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering plants:							
*	*	*	*	*		*	*
Arabis perstellata.	Rock cress	U.S.A. (KY, TN)	Brassicaceae	E	570	NA	NA
*	*	*	*	*		*	*

Dated: December 12, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–32267 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 20

RIN 1018–AC66

Migratory Bird Hunting; Decision on the Conditional Approval of Bismuth-Tin Shot as Nontoxic for the 1994–95 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is publishing this final rule to notify the public of the interim conditional approval of the use of bismuth-tin for the remainder of the 1994–1995 migratory bird hunting season. Toxicity studies undertaken by the Bismuth Cartridge Company and other pertinent materials indicate that bismuth-tin shot is nontoxic to waterfowl when ingested.

EFFECTIVE DATE: This rule becomes effective January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Keith Morehouse, Staff Specialist, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St. NW, Washington D.C. 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION: The Service published a proposed regulation in the **Federal Register** on August 22, 1994 (59 FR 43088) to provide for conditional approval of bismuth-tin shot (in a mixture of [nominally] 97–3 percents, respectively) as nontoxic for the taking of waterfowl and coots during the 1994–1995 hunting season. This proposed action was in response to a petition for rulemaking from the Bismuth Cartridge Company received June 24, 1994. The petition requested that the Service modify the provisions of 50 CFR 20.21(j), to legalize the use of bismuth-tin shot on an interim, conditional basis for both the 1994–95 and the 1995–96 seasons. The petition cited the following reasons in support of the proposal: (a) bismuth is nontoxic; (b) the proposed rule is conditional; and (c) the evidence presented in the record, i.e., the application from the Bismuth Cartridge Company. This petition acknowledged responsibility by the Bismuth Cartridge Company to complete all the nontoxic shot approval tests as outlined in 50 CFR 20.134.

The current petition for rulemaking follows two previous applications to the Service for final approval, one dated October 21, 1993, and the other dated December 30, 1993. The Service replied that the applications were deficient because the bismuth-based shot material had not been adequately tested. Preliminary toxicity testing by the applicants had been with essentially-pure bismuth only. Thus, there was not adequate scientific data (either available or provided with the application) covering toxicity of the material to be loaded into shotshells. The Service pledged in both replies, however, to work with the applicants to process the applications in as timely a fashion as possible.

In response to the Bismuth Cartridge Company's petition of June 14, 1994, the Service proposed (59 FR 43088) the interim conditional approval of bismuth-tin shot based on what was known about the toxicity of bismuth and on the agreement by the Bismuth Cartridge Company to conduct and complete the 30-day acute toxicity test as described in 50 CFR 20.134.

For bismuth, there are three especially recent and relevant studies that support this proposal. The three studies include Sanderson and Anderson (1994), Ringelman et al. (1992), and Sanderson et al. (1992). A complete description of these studies can be found in the proposed rule (59 FR 43088). In addition, test results with tin include those by Grandy et al. (1968) in which there were no deaths associated with mallards dosed with tin shot. Positive results from the acute toxicity test (Sanderson et al. 1994) (just concluded) and the other toxicity information (cited above) suggest that a temporary conditional approval for bismuth-tin can be provided without significant risk to migratory bird resources. The Service believes it has sufficient flexibility in the regulations to approach approval of shot in a step manner.

The toxicity analysis procedures (50 CFR 20.134) consist of three tests which represent the three major categories of toxic effects: short-term periodic exposure, chronic exposure under adverse environmental conditions, and the impact of chronic exposure on reproduction. Tests include both steel-shot and lead-shot control groups and statistical analyses of all data from each test. Test 1 is a short-term, 30-day acute

toxicity study using commercially-available duck food and including blood tests and organ analysis. Test 2 is a chronic 14-week toxicity test in cold weather using a nutritionally-deficient diet, and test 3 is a chronic-dosage study that includes reproductive assessment using a commercially-available duck food diet. For bismuth-tin shot to achieve interim conditional approval, results from test 1 (30-day acute toxicity) must show a finding of nontoxicity to waterfowl. Unconditional final approval will result when the second and third tests are concluded with a finding of nontoxicity.

The Bismuth Cartridge Company contracted with Dr. Glen Sanderson, Center for Wildlife Ecology, Illinois Natural History Survey, to conduct the 30-day (short-term) acute toxicity study. Results from the test indicate that bismuth-tin is not toxic when ingested by waterfowl. As stated in the proposed rule of August 22, 1994 (59 FR 43088), ''. . . this concluding work will be completed before any final rulemaking . . .'' Having received these test results and final report, the Service now issues this final rule providing interim conditional approval to the use of bismuth-tin shot for the remainder of the 1994–1995 migratory bird hunting season.

Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant hazard to migratory birds and other wildlife. Ingestion of spent lead shot has long been identified as a source of significant mortality in migratory birds. The Service first addressed the issue of lead poisoning in waterfowl in a 1976 environmental impact statement (EIS), and later readdressed the issue in a 1986 supplemental EIS. The latter provided the scientific justification for the ban on the use of lead shot for hunting waterfowl and coots that was begun in 1986 and completed in 1991. Currently, only steel shot has been approved by the Service Director as nontoxic. The Service believes, however, that there may be other suitable candidate shot materials that could be approved for use as nontoxic shot.

In summary, this rule provides interim conditional approval for the use of bismuth-tin shot for waterfowl and coot hunting only for the 1994–1995 hunting season. Further approval will be granted only upon satisfactory completion of the remaining tests required by the Service and the regulations at 50 CFR 20.134, and upon availability of a field detection device to address law enforcement concerns.

Public Comments

The August 22 proposed rule invited comments from interested parties. Closing date for receipt of all comments was September 21, 1994. During this 30-day comment period, the Service received 351 comments. These comments consisted of 2 from Flyway Councils, 5 from Federal agencies, 19 from State fish and wildlife agencies, 23 from other organizations, and 302 from individuals, including a letter signed by 33 Congressmen. A brief summary of those comments is as follows:

The Mississippi and Pacific Flyway Councils both opposed the proposal. The Mississippi Council cited incomplete toxicity testing, enforcement problems caused by lack of a simple field identification technique and the timing of the approval. The Pacific Council stated that ''this expedient action abandons the hard-fought standards set for waterfowling ammunition, fails to consider impacts on law enforcement and education programs, and unnecessarily sets a precedent for special exemptions.''

Four of the Federal agency comments were submitted by law enforcement personnel and opposed the action, primarily on the basis of enforcement problems caused by lack of a non-invasive field method to distinguish bismuth-tin from lead. They suggested further that approving bismuth-tin will provide an additional opportunity for those using lead to go undetected. Comments reiterated the need for the development of a cheap, easy non-invasive field test to distinguish between bismuth-tin and lead. The Canadian Wildlife Service appeared to endorse the action with a statement that the conditional approval of bismuth shot would be consistent with actions taken in Canada. Bismuth is apparently considered nontoxic in Canada since the comment indicated that toxic shot is defined as anything containing more than one percent lead.

Nineteen comments were received that represented 18 States (2 comments from Maryland). Of the 19 comments, 6 endorsed the proposal, 13 opposed it. Opposition came from Arkansas, Colorado, Delaware, Indiana, Kentucky, Minnesota, Missouri, Montana, Washington, and Wisconsin. These comments also raised the issue of enforcement difficulties, incomplete toxicity testing, and concern about timing (delay approval until 1995–96 hunting season). Support for this action came from Louisiana, Maryland, Mississippi, Nevada, and New Jersey.

Organizations were represented by 23 comments. Of the 23 comments, 21 endorsed the proposal and 2 (McGraw Wildlife Foundation and National Wildlife Federation) opposed it. Opposition was based mainly on concerns that ''shortcuts'' were being taken on testing procedures for toxicity and that the process was ''moving too fast.'' Support came from Ontario Federation of Anglers & Hunters, Safari Club International, Arkansas Wildlife Federation, International Association of Fish and Wildlife Agencies, Congressional Sportsman Foundation, National Rifle Association, South Carolina Waterfowl Association, The Wildlife Legislative Fund of America, Catahoula Lake Conservation Club, Alabama Waterfowl Association, Inc., California Waterfowl Association, Sporting Shooters' Association of Australia (Inc.), New Jersey State Federation of Sportsman's Clubs, Inc., Michigan United Conservation Clubs, Ducks Unlimited, The American Outdoorsman Hunting Club, International Joint Commission—Great Lakes, ASARCO, Inc., Smoking Barrel Duck Club, The Bismuth Cartridge Company, and the Sportsman's Council of Central California.

Individuals submitted 302 comments with 299 favoring the action and only 3 opposing it. The comments favoring the approval of bismuth-tin were, in fact, generally anti-steel, restating opposition to steel shot due to such factors as crippling loss and gun-barrel damage. The consensus expressed support of anything that could replace steel.

Response to Comments

Opposition to the regulation focused on 3 major areas: enforcement, toxicity testing, and timing.

1. Enforcement—Concern was expressed in the comments that there is no simple procedure to distinguish bismuth-tin shot from lead shot in the field, creating a burden on law enforcement personnel. The Service recognizes this difficulty and acknowledges that a prescribed field testing method (short of exposing the shot through invasive inspection) to determine shot composition should ideally be in place before approval. In fact, field methods are currently being developed to address this concern. Since resistance to steel shot is promoting a climate for noncompliance, however, it is important to provide an alternative to steel shot that could give the public greater choice during this interim period and improve hunter compliance, thereby reducing the amount of lead shot being used. In addition, increased hunter use of this alternative shot could benefit upland habitats, through the diminished use of

lead shot in those areas. The Service believes that by offering alternatives to steel shot, a climate of compliance will be promoted, not reduced, and that this is a reasonable approach to take while field testing techniques are being developed.

2. Toxicity Testing—Comments expressed concern that testing is incomplete and that testing procedures, clearly defined by regulation are not being followed. The Service stresses that there have been no actions relative to this process outside compliance with 50 CFR 20.134. The Service believes, however, that the regulatory process is sufficiently flexible to provide the opportunity for interim conditional approval of alternatives to steel shot. The applicant has demonstrated a good faith effort to comply with the regulatory procedures defined for toxicity testing and there appears to be no information suggesting a hazard to migratory birds. The Service believes this flexibility can be exercised. The procedures described in 50 CFR 20.134 are in place and interim conditional approval is being granted only after completion of the 30-day acute toxicity test and an independent review of the test results. In addition, the Service has clearly stated that only interim conditional approval has been given and the Bismuth Cartridge Company must still complete all remaining toxicity tests before unconditional final approval is granted for the use of bismuth-tin shot.

3. Timing—Concern was expressed that the hunting season will have begun if/when bismuth-tin shot is approved.The Service regrets that the conditional approval of bismuth-tin had to be delayed until after the start of the 1994-95 hunting season. Although an earlier approval date would have been preferred, the Service was obligated to wait until the acute toxicity tests, analysis of data, and review of the results were completed. The fact that the season has already begun is not considered an adequate justification to delay approval, especially considering the effort put forth to complete the testing and review process as quickly as possible. It was determined that the ''inconvenience'' of approving the use of bismuth-tin shot after the start of the hunting season was outweighed by the opportunity for the hunting public to use bismuth-tin, even if few days remained in the 1994-95 season.

References

Grandy, J.W., L.N. Locke and G.E. Bagley. 1968. Relative toxicity of lead and five proposed substitute shot types to pen-reared mallards. J. Wildl. Manage. 32(3):483–488.

Ringelman, J.K., M.W. Miller and W.F. Andelt. 1992. Effects of ingested tungsten-bismuth-tin shot on mallards. CO Div. Wildl., Fort Collins, 24 pp.

Sanderson, G.C., W.L. Anderson, G.L. Foley, L.M. Skowron, and J.W. Seets. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. Final Report, Ill. Nat. Hist. Surv., Champaign, IL. 64 pp. + tables.

Sanderson, G.C. and W.L. Anderson. 1994. Toxicity and reproductive effects of ingested bismuth alloy shot and effects of embedded bismuth alloy, lead, and iron shot on game-farm mallards. 3rd Prog. Rpt., Ill. Nat. Hist. Surv., Champaign, IL. 14 pp. + tables.

Sanderson, G.C., S.G. Wood, G.L. Foley and J.D. Brawn. 1992. Toxicity of bismuth shot compared with lead and steel shot in game-farm mallards. Trans. 57th N.A. Wildl. Nat. Res. Conf., 57:526–540.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), an Environmental Assessment has been prepared and is available to the public at the Office of Migratory Bird Management at the address listed above. Based on review and evaluation of the information contained in the Environmental Assessment, the Service determined that the proposed action to amend 50 CFR 20.21(j) to allow interim conditional use of bismuth-tin as nontoxic shot for the 1994–95 waterfowl hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat . . .''

Toxicity testing conducted by the Bismuth Cartridge Company indicates that bismuth-tin is nontoxic to the environment; therefore, no adverse impact on endangered and threatened species is anticipated. Pursuant to section 7 of the ESA, MBMO sought review and concurrence that this action ''is not likely to adversely affect'' threatened, endangered, proposed, and category 1 species. Based on review and evaluation of the toxicity testing and other available information, the Service determined that no adverse impact on endangered and threatened species would result from the proposed action. The results of this review may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions. The Service has determined, however, that this rule will have no effect on small entities since the shot to be approved will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any information collection efforts requiring approval by the OMB under 44 U.S.C. 3504.

Effective Date

This rule reflects the interim approval in the text of 50 CFR 20.21(j), by restricting permission to use bismuth-tin for the 1994–95 season. Because this rule relieves a restriction, and the current hunting season ends on February 28, 1995, the Service has determined that there is good cause to establish the effective date of this rule as the date of publication in the Federal Register, as authorized under 5 U.S.C. 553(d) (1 and 3).

Authorship

The primary author of this final rule is Peter G. Poulos, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*)

2. Section 20.21 is amended by revising paragraph (j) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin ([nominally] 97–3 percents, respectively) shot or such shot approved as nontoxic by the Director pursuant to procedures set forth in Section 20.134.

Provided that:

(1) This restriction applies only to the taking of Anatidae (ducks, geese [including brant] and swans), coots (Fulica americana) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in Section 20.108 as nontoxic shot zones, and

(2) Bismuth-tin shot is legal as nontoxic shot only during the 1994–95 season.

Dated: December 22, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife.

[FR Doc. 94–32214 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 60, No. 1
Tuesday, January 3, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, 1099, and 1108

[Docket No. AO–366–A36, etc; DA–93–21]

Milk in the Georgia and Certain Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1007	Georgia	AO–366–A36
1093	Alabama-West Florida.	AO–386–A14
1094	New Orleans-Mississippi.	AO–103–A56
1096	Greater Louisiana.	AO–257–A43
1099	Paducah, Kentucky.	AO–183–A45
1108	Central Arkansas.	AO–243–A46

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This notice extends the time for filing exceptions to the November 21, 1994, recommended decision concerning the proposed Southeast marketing area. The time has been extended to January 20, 1995, at the request of interested persons.

DATES: Exceptions now are due on or before January 20, 1995.

ADDRESSES: Exceptions (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

Supplemental Notice of Hearing: Issued October 13, 1993; published October 15, 1993 (58 FR 53436).

Extension of Time for Filing Briefs: Issued January 24, 1994; published February 3, 1994 (59 FR 5132).

Recommended Decision: Issued November 21, 1994; published November 29, 1994 (59 FR 61070).

Notice is hereby given that the time for filing exceptions to the November 21, 1994, recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Georgia, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Central Arkansas marketing areas is hereby extended from December 29, 1994, to January 20, 1995.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Dated: December 27, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 94–32289 Filed 12–30–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1032

[DA–95–08]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the pool supply plant definition of the Southern Illinois-Eastern Missouri Federal milk marketing order (Order 32) for the months of December 1994 and January 1995. The proposed suspension was requested by Mid-America Dairymen, Inc., and Prairie Farms, Inc., which contend the proposed action is necessary to ensure that producers' milk historically associated with Order 32 will continue to be priced and pooled under the order.

DATES: Comments are due no later than January 10, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed 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 provisions 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for the period of December 1, 1994, through January 31, 1995:

In § 1032.7(c), the words ''each of'', the letter ''s'' at the end of the word ''months'', and the words ''through January'' and ''for the months of February''.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the pool supply plant definition of the Southern Illinois-Eastern Missouri Federal milk order. The proposed suspension would allow a supply plant to qualify as a pool plant during the months of December 1994 and January 1995 if it qualified as a pool supply plant during the immediately preceding month of September.

Mid-America Dairymen, Inc. (Mid-America), and Prairie Farms, Inc. (Prairie Farms), jointly requested the proposed suspension. According to the request letter, Mid-America lost a major account with a pool distributing plant regulated under Order 32, effective December 16, 1994. As a result, Mid-America and Prairie Farms contend that much of the producer milk supplying the distributing plant will no longer be needed for Class I use. The proponents assert that the order should not penalize producers who have historically supplied the Class I needs of the market by requiring milk shipments that are not needed.

Accordingly, it may be appropriate to suspend the aforesaid provisions from December 1, 1994, through January 31, 1995.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

The authority citation for 7 CFR Part 1032 continues to read as follows:

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

Dated: December 27, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 94–32290 Filed 12–30–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–208–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6–45 or –50 Series Engines, or Pratt & Whitney Model JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This proposal is prompted by the development of a modification of the strut and wing structure that improves the fail-safe capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by the proposed AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Comments must be received by February 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–208–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–208–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. 94–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of fatigue cracking and/or corrosion in the strut-to-wing attachments on Boeing Model 747 series airplanes. In two cases, cracking resulted in the failure of a strut load path and the subsequent loss of the number 3 engine and strut. In both cases, catastrophic accidents occurred when the number 3 engine and strut separated from the wing of the airplane and struck the number 4 engine, causing it to separate from the airplane. Investigation into the cause of these accidents and other reported incidents has revealed that fatigue cracks and corrosion in the strut-to-wing attachments, if not detected and corrected in a timely manner, can result in failure of the strut and subsequent separation of the engine from the airplane. Investigation also has revealed that the structural fail-safe capability of the strut-to-wing attachment is inadequate on these airplanes.

The FAA has previously issued 13 AD's that address various problems associated with the strut attachment assembly on Boeing Model 747 series airplanes that are equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines. These AD's have required, among other things, inspections of the strut, strut-to-wing attachment structure, and wing backup structure.

Explanation of Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, which describes procedures for modification of the nacelle strut and wing structure. This modification entails the following:

1. Changing the strut by adding a new titanium dual side load fitting to the strut aft bulkhead, replacing the aft end of the midspar web with a new 15–5 stainless steel web, installing new 15–5 stainless steel midspar fittings on the inboard struts, and replacing the aft bulkhead assembly and overhauling the spring beams on the outboard struts;
2. Changing the wing structure by installing a new dual side load underwing fitting and new support fitting, and replacing the end fitting and installing a new stiffener at the wing midspar for the outboard strut location [for certain airplanes, installing new inboard backup fittings, installing new titanium outboard underwing fittings at all strut positions, and replacing the tee fitting common to the rib at wing station (WS) 1140; for certain other airplanes, replacing the tee fitting bolts common to the rib at WS 1140];
3. Changing the electrical wiring and hydraulics by rerouting the wire bundles around the new dual side load fitting, splicing additional wire to the wire bundles, and installing new hydraulic tubes; and
4. Installing the strut with a new upper link, a new diagonal brace, and new side links.

This alert service bulletin specifies that the modification of the nacelle strut and wing structure is to be accomplished prior to, or concurrently with, the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of this alert service bulletin. These terminating actions include the following:

1. Replacement of the diagonal brace, midspar and upper link fuse pins with new third generation 15–5 corrosion resistant steel fuse pins;
2. Replacement of the strut-to-diagonal brace aluminum attach fitting on the inboard engine with a steel fitting;
3. Installation of a large skin doubler and frame stiffener in the area of the precooler exhaust vent;
4. A zero-time overhaul of the springbeams and rework of certain fastener holes of the springbeam support fittings of the outboard strut;
5. Inspection and torque check of certain fasteners of the strut-to-wing attachment fittings; and
6. Modification of the rib at wing station 669.5.

Explanation of the Provisions of the Proposed AD

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 require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Accomplishment of the modification of the nacelle strut and wing structure would terminate the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation–	Date of Publication
94–22–08	39–9057	59 FR 58761	Nov. 15, 1994.
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989.
87–04–13 R1–	39–5836	53 FR 2005 ..	Jan. 26, 1988.
86–23–01	39–5450	51 FR 37712	Oct. 24, 1986.
86–08–03	39–5289	51 FR 12836	Apr. 16, 1986.
86–07–06	39–5270	51 FR 10821	Mar. 31, 1986.
86–05–11 R1–	39–5334	51 FR 21900	June 17, 1986.

AD No.	Amendment No.	Federal Register citation–	Date of Publication
80–08–02	39–3738	45 FR 24450	Apr. 10, 1980.
79–17–07	39–3533	44 FR 50033	Aug. 27, 1979.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

Cost Estimate

There are approximately 145 Model 747 series airplanes of the affected design, equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD.

The proposed modification may take as many as 6,600 to 7,151 work hours to accomplish, depending upon the configuration of the airplane. The manufacturer would incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The total cost impact of the proposed AD on U.S. operators is based on the median age for the fleet of Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines, which is estimated to be 15 years. The average labor rate is estimated to be $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this proposal on U.S. operators is estimated to be between $3,564,000 ($297,000 per airplane) and $3,861,540 ($321,795 per airplane).

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, that are proposed to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule. Any data received via public comments to this notice will aid the FAA in developing an accurate accounting of the cost impact of the rule.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 94–NM–208–AD.

Applicability: Model 747 series airplanes, equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–70 series engines; 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 use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, within 56 months after the effective date of this AD. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, 10, and 11 of the Accomplishment Instructions on page 129 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation–	Date of Publication
94–22–08	39–9057	59 FR 58761	Nov. 15, 1994.
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989.
87–04–13 R1	39–5836	53 FR 2005 ..	Jan. 26, 1988.
86–23–01	39–5450	51 FR 37712	Oct. 24, 1986.
86–08–03	39–5289	51 FR 12836	Apr. 16, 1986.
86–07–06	39–5270	51 FR 10821	Mar. 31, 1986.
86–05–11 R1–	39–5334	51 FR 21900–.	Jun. 17, 1986.
80–08–02	39–3738	45 FR 24450	Apr. 10, 1980.
79–17–07	39–3533	44 FR 50033	Aug. 27, 1979.

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

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

(e) Special flight permits may be issued in accordance with 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 December 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–32264 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on Proposed Endangered Status for the San Diego Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the comment period on the proposed rule to list the San Diego fairy shrimp *(Branchinecta sandiegoensis)* as endangered is reopened through March 6, 1995. The Service has reopened the comment period to allow all interested parties to submit additional written comments on the proposal.

DATES: The public comment period, which was extended to October 31, 1994, is reopened and closes on March 6, 1995. Comments from all interested parties must be received by March 6, 1995.

ADDRESSES: Written comments and materials may be submitted directly to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1994, the Service published a proposed rule in the Federal Register to list the San Diego fairy shrimp *(Branchinecta sandiegoensis)* as endangered (59 FR 39874). A public hearing was scheduled on October 19, 1994, to accept public input on the proposed endangered status. The comment period was extended to October 31, 1994, to

accommodate the public hearing. In response to the new information received on the distribution of the taxon and public requests, the Service reopens the public comment period.

The San Diego fairy shrimp a member of the Branchinectidae, a freshwater crustacean family in the Order Anostraca (fairy shrimp). It is a small and delicate animal with large stalked compound eyes, no carapace, and 11 pairs of swimming legs. The San Diego fairy shrimp is restricted to vernal pools in San Diego County from San Marcos and Ramona south to Otay Mesa and at Valle de Palmas in northwestern Baja California, Mexico. This species is threatened by one or more of the following factors: grazing, habitat destruction and fragmentation from agricultural and urban development, alteration of wetlands, recreational activities, human disturbances, and the inadequacy of existing regulatory mechanisms.

The Service reopens the comment period to allow all interested parties to submit additional written comments on the proposal. All comments received on the San Diego fairy shrimp will be summarized in the final decision document and will be included in the administrative record of the final decision.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 17

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

Dated: December 20, 1994.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–32260 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 18

RIN 1018–AD04

Importation of Polar Bear Trophies From Canada; Proposed Rule to Implement Section 104(c)(5)(A) of the 1994 Amendments to the Marine Mammal Protection Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On April 30, 1994, the Marine Mammal Protection Act (Act) was amended to allow for the issuance of permits to import sport-hunted trophies of polar bears (*Ursus maritimus*) (excluding internal organs) legally taken by the applicant while hunting in Canada. These permits may also authorize the importation of trophies of polar bears taken, but not imported, prior to the enactment of the Amendments. Prior to issuing a permit, the Fish and Wildlife Service (Service) must make legal and scientific findings required under section 104(c)(5)(A) of the Act in consultation with the Marine Mammal Commission and after notice and opportunity for public comment. This proposed rule would establish application requirements, permit procedures, issuance criteria and permit conditions. This notice also proposes a special issuance fee for each permit as required by law. Such fees will be used in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia.

This proposed rule does not discuss the legal and scientific findings required by the 1994 Amendments that need to be made prior to issuing an import permit. The Service is currently working with the Canadian wildlife authorities to obtain the needed information to make these findings. A separate **Federal Register** notice will be published in early 1995 to review the findings.

DATES: The Service will consider comments and information received by March 6, 1995 in formulating its decision on this proposed rule.

ADDRESSES: Comments and information should be sent to: Director, Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margaret Tieger, Office of Management Authority, at the above address, telephone (703) 358–2104, extension 5507.

SUPPLEMENTARY INFORMATION: This rule proposes regulations implementing provisions of the 1994 Amendments to the Act that allow for the issuance of permits to import sport-hunted trophies of polar bears legally taken by the applicant while hunting in Canada. At this time, Canada is the only country that allows polar bears to be harvested by non-residents through a regulated sport-hunting program. These amendments were signed into law on April 30, 1994. Prior to that time, those seeking authority to import polar bear trophies from Canada were required to first obtain a waiver of the Act's moratorium on importing marine mammals.

The 1994 Amendments include a streamlined procedure for authorizing the importation of these sport-hunted trophies by permit. This proposed rule would establish the application requirements, permit procedures, issuance criteria, permit conditions and issuance fee for this type of permit. The notice discusses each paragraph of the proposed rule in the section below titled, ''Section Analysis by Paragraph''.

Prior to issuing a permit for the importation of a polar bear trophy, the Service must make findings consistent with section 104(c)(5)(A) of the Act, in consultation with the Marine Mammal Commission, after publishing notice in the **Federal Register** for public comment. These findings are to ensure that the trophy was legally taken; that Canada has a monitored and enforced hunting program that is consistent with the 1973 International Agreement on the Conservation of Polar Bears and is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and that the export and subsequent import meet the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international agreements and conventions and are not likely to contribute to illegal trade in bear parts.

This proposed rule does not discuss the legal and scientific findings required by the 1994 Amendments that need to be made prior to issuing an import permit as the Service does not presently have all the information it needs to make such findings. A group of biologists from the Service and the National Biological Survey are consulting with the Canadian wildlife authorities in December 1994 to gather information and discuss Canada's program. The Service will also be addressing several questions that have been raised. A contract report prepared for the Marine Mammal Commission in 1993 has raised questions about Canada's sport-hunting program and its consistency with the 1973 International Agreement on the Conservation of Polar Bears. In addition, the 1994 Amendments require the Service to determine whether for a particular population stock, Canada manages its hunting program through scientifically-based quotas that ensure the maintenance of a sustainable population. Canada manages polar bears at the subpopulation level, that appears to be consistent with this amendment and the discussion in the legislative history on Canada's management program in the Northwest Territories (140 Cong. Rec. H2725, April 26, 1994).

The Service is gathering the specific information needed to resolve these and other related questions concerning the required findings. In early 1995, the Service anticipates publishing a summary of information on polar bear subpopulations in Canada, Canada's management program, and the legal and scientific findings in the **Federal Register** for public comment. At the same time, the Service will need to evaluate its actions under the National Environmental Policy Act, as appropriate. Once the questions have been resolved and the Service has made the findings outlined above, it will be able to act on specific permit applications.

Section Analysis by Paragraph

Section 18.30 Polar bear sport-hunted trophy import permits

This section would establish application requirements, permit procedures, issuance criteria, permit conditions and fees to allow for the importation of trophies of polar bears legally taken by the applicant while sport hunting in Canada. The requirements in 50 CFR parts 13 (General permit procedures), 14 (Importation, exportation, and transportation of wildlife) and 23 (species listed in the Appendices to CITES) must also be met. Thus, for example, the polar bear is listed in Appendix II of CITES, and the export requires a permit issued by the Canadian Wildlife Service under CITES in addition to the import permit under the Act.

Paragraph (a) Application Procedure

Persons desiring to import trophies of polar bear taken during a sport hunt in Canada must submit an application to the Service's Office of Management Authority. In addition to completing the basic information on the official application form, the applicant must provide information as prescribed in this section, including: the purpose of the taking and proposed use upon import; names and addresses of the persons exporting and importing the polar bear trophy; if the applicant is not the person who took the specimen proposed for import, documentation that the importer is the heir to the estate of a hunter who died prior to importation of the trophy; proof that the polar bear was legally harvested in Canada by the applicant or by a decedent from whom the applicant inherited the trophy, including the tag number and date, location and manner of taking; and a description of the polar bear parts to be imported, including the number of specimens or parts and the age, size and sex of the polar bear. This information is necessary to allow the Service to determine that the polar bear trophy in question meets the new provisions of the law and provides the specific details the Service needs to evaluate the application.

Paragraph (b) Definitions

The term ''sport-hunted trophy'' has been defined to clarify what parts of the polar bear are included in the term and that the item has to be for personal, noncommercial use. There was concern that internal organs, such as the gall bladder, might enter into trade and possibly contribute to illegal trade in bear parts. The Committee Report (H.R. Rep. No. 439, 103d Cong., 2d Sess. (1994)) states that ''Trophies normally constitute the hide, hair, skull, teeth, and claws of the animal, which can be used by a taxidermist to create a mount of the animal for display or tanned for use as a rug. This provision does not allow the importation of any internal organ of the animal, including the gall bladder.'' The definitions in Parts 10, 18 and 23 of 50 CFR also apply.

Paragraph (c) Review by the Marine Mammal Commission

The law requires that the Service consult with the Marine Mammal Commission in making the specific findings required in section 104(c)(5)(A). The Marine Mammal Commission is an independent Federal agency with statutory authority to make recommendations pursuant to Title II of the Act. Since this procedure for polar bear trophy import applications is substantially similar to that required for other applications considered under the Act, the proposed regulations refer the reader to the current provisions in section 18.31(c).

Paragraph (d) Procedures for issuance of permits and modification, suspension or revocation thereof

Again, since general procedures to be followed for issuance of permits and modification, suspension or revocation of permits are currently in the regulations, the reader is referred to the current provisions in section 18.33. These regulations are based on the application procedures outlined in section 104(d) of the Act, which was not changed during the recent amendments. When Congress added section 104(c)(5) to the Act to allow for issuance of permits to import polar bear trophies, polar bear import applications were not exempted from these procedures that include the requirement that the Service will publish a notice of each permit application in the **Federal Register** for a 30-day public comment period.

Paragraph (e) Issuance Criteria

Before a permit can be issued, the Service proposes to consider the issuance criteria in this section in addition to the general criteria in 50 CFR 13.21. The floor debate in the House of Representatives (140 Cong. Rec. H2725, April 26, 1994) emphasized that the intent of Congress was to limit importation of polar bear trophies to the hunter who actually took the polar bear and who desires to import the trophy. If an individual who has legally taken a polar bear dies prior to the importation, however, the heirs of that person's estate could apply for an import permit. The import permit requests for polar bear trophies can also be made for animals taken prior to enactment of the 1994 Amendments (April 30, 1994) if the issuance criteria are met. However, this does not apply to polar bear parts that have been seized by the Federal government or have already been imported into the United States. The first three issuance criteria address these concerns, as follows: the trophy has not already been imported, it meets the definition of a sport-hunted trophy and it was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy). The next issuance criteria are directly taken from the language of the law at section 104(c)(5)(A)(i)-(iv). Findings to be made include determinations that (1) Canada has a monitored and enforced hunting program consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears; (2) Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and (3) and (4) the export and subsequent import are consistent with the provisions of CITES and other international agreements and conventions and are not likely to contribute to illegal trade in bear parts. These factors will be addressed in greater detail when the Service publishes its proposed findings in early 1995.

Paragraph (f) Additional Permit Conditions

Every permit issued under this section would be subject to the conditions currently in the regulations for marine mammal permits at section 18.31(d). This paragraph would require all permits to be subject to the general permit conditions set forth in Part 13 of this subchapter and to certain specific conditions. These specific conditions

would require that the original permit be in the possession of the person to whom it is issued, or his agent, at the time of importation and that a duplicate copy of the issued permit be physically attached to the container in which the polar bear specimen is placed while in storage or transit.

Paragraph (g) Duration of Permits

The duration of a permit is designated on the face of the permit. The permit will be valid for no longer than one year, a timeframe that should allow for the importation to occur.

Paragraph (h) Fees

The Act requires the Director to establish and charge a reasonable fee for polar bear trophy import permits that are issued. This issuance fee is over and above the standard permit processing fee of $25.00 that is required at the time of application in accordance with 50 CFR 13.11(d). The permit issuance fee is to be paid after notice that the application has been approved but before the permit is issued. The Committee Report outlined that the Committee considered a reasonable fee to range from $250 to $1,000 for each permit depending on the administrative work involved. The 1994 Amendments require all of the issuance fee be made available for polar bear conservation programs being conducted in Alaska and Russia pursuant to section 113(d) of the Act. Based on the amount of information that needs to be collected and evaluated and the need for periodic review of information, the Service is proposing to charge a fee of $1,000 for each import permit issued. The Service believes setting the fee at this level is appropriate given the level of administrative work involved and as the monies generated will be used for polar bear conservation.

Paragraph (i) Scientific Review

The language of the law requires that a scientific review of the impact of permits issued on the polar bear population stocks be undertaken within 2 years after enactment, that is by April 30, 1996. This review is to provide an opportunity for public comment and the final report shall include a response to such public comment. The Director shall not issue permits to allow for the import of polar bears taken in Canada after September 30, 1996, if the Service determines that the issuance of permits is having a significant adverse impact on the polar bear population stocks in Canada. The Director is further authorized to conduct an annual review of this determination. The review provides for the monitoring of the effects of permit issuance on Canada's polar bear population stocks and a means to guarantee the cessation of imports should there be an indication of an adverse impact on the sustainability of the Canadian population stocks. These reviews are to be based on the best scientific information available. If the Director does undertake a review, the Act requires that the review be completed by January 31 of the year in which the review was undertaken. The Director may not, however, refuse to issue permits solely on the basis that the review has not been completed by January 31.

Congressman Jack Fields, during the House of Representatives floor debate on the 1994 Amendments stated, ''A significant adverse impact means more than a simple decrease, ordinary fluctuation, or normal change in the population cycle. A decline should not be considered significant if the decline is of short duration, affects a minuscule percentage of the population, or does not jeopardize the sustainability of the species in the long term. The decrease must be proven to be directly related to the trophy imports by sport hunters and of such a magnitude as to warrant suspension of those imports. Even so, the issuance of permits should not be suspended unless Canada does not reduce the harvest quota in response to this decline.'' (140 Cong. Rec. H2725, April 26, 1994)

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations or any other interested party concerning any aspect of this proposal are hereby solicited.

Required Determinations

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule 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.*). The proposal will affect only those in the United States who have hunted polar bear in Canada. This action is not expected to have significant taking implications, as per Executive Order 12630.

The information collection requirement contained in this section has been approved by OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1018–0022. Since the proposed rule would apply to importation of polar bear trophies into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

The Service has determined that this proposed rule is categorically excluded under Departmental procedures from complying with the National Environmental Policy Act (NEPA) (516 Departmental Manual, Ch. 2, Appx. 1, Para. 1.10) An Environmental Action Memorandum is on file at the Service's Office of Management Authority in Arlington, Virginia. The permits authorized under the Act and regulations, as well as the scientific findings required by the Act, may be subject to NEPA documentation requirements, on a case-by-case basis.

The Department has certified to OMB that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 50 CFR Part 18

Administrative practice and procedures, Imports, Indians, Marine mammals, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 18 of chapter I of title 50 of the Code of Federal Regulations by adding sections 18.4 and 18.30 to read as follows:

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. A new § 18.4 is added to subpart A of part 18 to read as follows:

§ 18.4 Information collection requirements.

(a) The information collection requirements contained in subpart D has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The information is being collected because it is necessary for the evaluation of permit applications. The information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(b) Public reporting burden for this collection of information is estimated to vary from 15 minutes to 4 hours per

response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, Fish and Wildlife Service Office of Management and Budget, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

3. A new § 18.30 is added to subpart D of part 18 to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

(a) *Application procedure.* Applications for permits to import polar bear trophies shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, Virginia 22203. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following additional information:

(1) A statement of the purpose of the taking and proposed use upon import;

(2) Name and address of the person from whom the polar bear trophy is to be exported;

(3) Name and address of the person in the United States to whom the polar bear trophy is to be imported;

(4) If the person who took the polar bear in Canada died prior to submittal of the import permit application, documentation that the importer is the heir of that person's estate;

(5) Proof that the polar bear was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy), including the tag number and date, location, and manner of taking; and

(6) A description of the polar bear parts to be imported, including the number of specimens or parts and the age, size, and sex of the polar bear.

(b) *Definitions.* (1) The definitions in 50 CFR 10.12, 18.3, and 23.3 apply to this paragraph.

(2) *Sport-hunted trophy* means the hide, hair, skull, teeth, and claws of the specimen, which can be used by a taxidermist to create a mount of the animal for display or tanned for use as a rug, taken by the applicant during a sport hunt for personal, noncommercial use. It does not include any internal organ of the animal, including the gall bladder.

(c) *Review by Marine Mammal Commission.* Upon receipt of an application the Director shall forward it to the Marine Mammal Commission as described in § 18.31(b).

(d) *Procedures for issuance of permits and modification, suspension or revocation thereof.* Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to regulations contained in § 18.33.

(e) *Issuance criteria.* In determining whether to issue an import permit for a sport-hunted trophy, the Director shall consider, in addition to the general criteria in Part 13 of this subchapter, the following factors:

(1) The specimen has not been imported into the United States;

(2) The specimen to be imported meets the definition of a sport-hunted trophy in paragraph (b) of this section;

(3) The polar bear was legally harvested in Canada by the applicant (or by a decedent from whom the applicant inherited the trophy);

(4) Canada has a monitored and enforced sport-hunting program consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears;

(5) Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; and

(6) The export and subsequent import:

(i) Are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(ii) Are not likely to contribute to illegal trade in bear parts.

(f) *Additional permit conditions.* Permits to import a sport-hunted trophy are subject to the conditions outlined in § 18.31(d).

(g) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit, but in no case will the permit be valid for more than one year from the date of issuance.

(h) *Fees.* (1) The applicant must pay the required standard permit processing fee at the time of application as given in 50 CFR 13.11(4).

(2) The Service will promptly notify an applicant of its decision on the import permit application. If the decision is to approve the application, the applicant must remit the issuance fee of $1,000 before receiving an import permit. The issuance fee will be used in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d) of the Marine Mammal Protection Act.

(i) *Scientific review.* (1) The Director shall undertake a scientific review of the impact of permits issued under this section on the polar bear population stocks in Canada by April 30, 1996.

(i) The review shall provide an opportunity for public comment, and shall include a response to such public comment in the final report.

(ii) The Director shall not issue permits under this section after September 30, 1996, if it is determined that the issuance of permits under this section is having a significant adverse impact on the polar bear population stocks in Canada.

(2) After the initial review, the Director may review whether the issuance of permits under this section is having a significant adverse impact on the polar bear population stocks in Canada annually in light of the best scientific information available. The review must be completed no later than January 31 in any year a review is undertaken.

* * * * *

Dated: December 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish, and Wildlife and Parks.

[FR Doc. 94–32281 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 23

RIN 1018–AD07

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to CITES.

This document announces decisions by the Conference of the Parties to CITES on amendments to Appendices I and II, and repeats a previous opportunity (59 FR 55617) to comment on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from

implementing CITES for a particular species. However, even if a reservation were taken, many importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to Appendices I and II described in this document will enter into effect on February 16, 1995.

DATES: The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties become effective 90 days after their adoption under terms of CITES and therefore are enforceable as of February 16, 1995. The Service will consider all comments received by January 17, 1995 in determining whether the United States should enter any reservations.

ADDRESSES: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop; Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (FAX number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia, 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of prevention or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

Any Party may propose amendments to Appendices I and II for consideration at meetings of the Conference of Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The ninth meeting of the Conference of Parties to CITES (COP9) was held on November 7–18, 1994, in Fort Lauderdale, Florida. At the meeting, the Parties considered 79 different animal proposals and 42 different plant proposals to amend the Appendices. These were described in the **Federal Register** on November 4, 1994, for proposals submitted by the United States (59 FR 55235), and on November 8, 1994, for proposals by other Parties (59 FR 55617). All proposed amendments were discussed and decided on by Committee I during the Conference, with each accredited attending Party having one vote. Amendments were adopted by a two-thirds majority of the Parties present and voting or by consensus. Action by Committee I was accepted by the Plenary Session unless one-third of the Parties voting expressed the desire to reopen discussion on any species proposal. Debate was reopened only on the proposal by India to list *Pterocarpus santalinus*, a tree known commonly as redsanders, on Appendix II. The proposal had been one vote short of the required two-thirds majority for acceptance by Committee I. The Parties reversed that decision in Plenary Session.

The Parties also accepted a report by the Nomenclature Committee, a draft of which was described briefly in 59 FR 55617. The adoption of the recommendations of this report will result in some changes in the scientific names and/or listing sequences of animals and possibly plants listed in Appendices I, II, and III. These changes result primarily from a completed review of taxa listed in Appendix I prior to adoption of the Berne Criteria in 1977, or from the adoption of new taxonomic references for certain animal or plant taxa. Although many of these changes are taxonomically significant, their impact on implementation and enforcement of CITES will be minimal. A copy of the report of the Nomenclature Committee is available from the Office of Scientific Authority (see Addresses). The Fish and Wildlife Service (Service) will effect these taxonomic changes in the Final Rule incorporating the amendments to Appendices I and II as decided at COP 9, and modified as necessary as a result of public comment on the present notice, into § 23.23 of title 50 of the Code of Federal Regulations.

Results of actions by the Conference of Parties on the proposed amendments are given in the table below:

Species	Proposed amendment	Proponent	Final decision of the parties
MAMMALS			
Order Chiroptera:			
Acerodon jubatus (Golden-capped fruit bat).	Transfer from II to I	Philippines	Approved.
Acerodon lucifer (Panay giant fruit bat).	Transfer from II to I	Philippines	Approved with the annotation ''possibly extinct.''
Order Edentata:			
Euphractus spp. (Armadillos)	Add to II	Chile	Rejected.
Order Pholidota:			
Manis spp. (Pangolins)	Add to II	Switzerland	Approved.
Manis temminckii (Cape pangolin)	Transfer from I to II	Switzerland	Approved.
Order Rodentia:			
Chinchilla spp. (Chinchillas)	Remove from I (domesticated specimens in South America).	Chile	Approved.

Species	Proposed amendment	Proponent	Final decision of the parties
Order Cetacea:			
Balaenoptera acutorostrata (Minke whale).	Transfer from I to II (Northeast Atlantic and the North Atlantic central stocks).	Norway	Rejected.
Order Carnivora:			
Felis bengalensis bengalensis (Leopard cat).	Transfer from I to II (except Chinese population, which is already on II).	Switzerland	Approved except for populations of India, Bangladesh, and Thailand, which remain on Appendix I.
Hyaena brunnea (Brown hyena)	Transfer from I to II	Switzerland	Approved.
Conepatus spp. (Hog-nosed skunks).	Add to II	Chile	Withdrawn.
Ailurus fulgens (Red panda)	Transfer from II to I	Netherlands	Approved.
Order Proboscidea:			
Loxodonta africana (African elephant).	Transfer from I to II (South Africa's population).	South Africa	Withdrawn.
Loxodonta africana (African elephant).	Transfer from I to II (Sudan's population).	Sudan	Withdrawn.
Order Perissodactyla:			
Ceratotherium simun simun (White rhinoceros).	Transfer from I to II (South Africa's population).	South Africa	Approved as amended to incorporate new wording ''for the sale of live animals to appropriate and acceptable destinations, and hunting trophies only.'' The down-listing will be reviewed at COP10.
Order Artiodactyla:			
Megamuntiacus vuquanghensis (Giant muntjac).	Add to I	Vietnam	Approved.
Pseudoryx nghetinhensis (Vu Quang Ox).	Add to I	Denmark	Approved.
Saiga tatarica (Saiga antelope)	Add to II	United States	Approved as amended to include the entire species, *Saiga tatarica* in Appendix II
Saiga tatarica mongolica (Saiga Antelope).	Add to I	United States	Rejected.
Ovis vignei (Urial sheep)	Interpret listing on Appendix I of *Ovis vignei* to include only *O. v. vignei*, and add other subspecies of *Ovis vignei* to Appendix II.	United States	Withdrawn (referred to the Animals and Nomenclature Committees for further study).
Vicugna vicugna (Vicuña)	Transfer from I to II (remaining Peruvian Appendix I populations).	Peru	Approved. Approval includes authority to trade in wool from sheared, live vicuñas *and* authority to sell 3249 kilograms of stockpiled wool.
Vicugna vicugna (Vicuña)	Amend annotation for Appendix II populations to allow the trade in wool sheared from live vicuñas.	Chile	Approved.
Hippopotamus amphibius (Hippopotamus).	Add to II	Belgium, Benin, and France.	Approved.
BIRDS			
Order Apterygiformes:			
Apteryx spp. (Kiwis)	Add to I	New Zealand	Rejected.
Order Tinamiformes:			
Rhynchotus rufescens maculicollis (Red-winged tinamou).	Remove from II	Uruguay	Approved.
Rhynchotus rufescens pallescens (Southern red-winged tinamou).	Remove from II	Uruguay	Approved.
Rhynchotus rufescens rufescens (Western red-winged tinamou).	Remove from II	Uruguay	Approved.
Order Anseriformes:			
Anas aucklandica (currently listed as *Anas aucklandica aucklandica*.	Transfer from II to I	New Zealand	Approved within the Appendix I listing of the species. *Anas aucklandica.*
Anas chlorotis (currently listed as *Anas aucklandica chlorotis*).	Transfer from II to I	New Zealand	Approved within the Appendix I listing of the species. *Anas aucklandica.*
Anas nesiotis (currently listed as *Anas aucklandica nesiotis*.	Retain in I	New Zealand	Approved within the Appendix I listing of the species. *Anas aucklandica.*
Order Galliformes:			
Xenoperdix (Udzungwa forest partridge).	Add to I	Denmark	Withdrawn.
Order Gruiformes:			
Balearica pavonina (Black-crowned crane).	Transfer from II to I	Netherlands	Withdrawn.
Order Psittaciformes:			
Cacatua goffini (Goffin's cockatoo)	Transfer from I to II	Indonesia	Withdrawn.
Eos histrio (Red and blue lory)	Transfer from II to I	Indonesia	Approved.

Species	Proposed amendment	Proponent	Final decision of the parties
Cyanoramphus malherbi (Orange-fronted parakeet).	Transfer from II to I	New Zealand	Withdrawn. Review of status referred to the Animals Committee.
Cyanoramphus novaezelandiae (New Zealand or Red-crowned parakeet.	Transfer from I to II	New Zealand	Withdrawn.
Psittacus erithacus princeps (African gray parrot).	Transfer from I to II	United Kingdom	Approved.
Psittacus erithacus (Sao Tome/ Principe populations of African gray parrot).	Retain in I in lieu of *Psittacus erithacus princeps.*	United Kingdom	Withdrawn.
Order Cuculiformes:			
Musophagidae spp. (Turacos)	Add to II	Netherlands	Approved as amended from Musophagidae spp. to all *Tauraco* spp.
Order Apodiformes:			
Collocalia spp. (Edible-nest swiftlets.	Add to II	Italy	Withdrawn. (A resolution to sponsor a workshop on sustainable use of edible-nest swiftlets was approved).
Order Passeriformes:			
Agelaius flavus (Saffron-cowled blackbird).	Add to I	Uruguay	Approved.
REPTILES			
Order Crocodylia:			
Melanosuchus niger (Black caiman).	Transfer from I to II (Ecuador's population pursuant to Conf. 3.15 on ranching.	Ecuador	Approved with zero export quota for 2 years and review by the IUCN Crocodile Specialist Group after 2 years.
Crocodylus niloticus (Nile crocodile).	Change basis of maintenance of Malagasy population on II from Conf. 7.14 to Conf. 3.15.	Madagascar	Approved. Under Conf. 7.14, with export quotas of ranched animals set at 4,500 in 1995, and 5,000 in 1996 and 1997. An additional export quota of 200 nuisance animals per year was also approved.
Crocodylus niloticus (Nile crocodile).	Change basis of maintenance of South Africa's population on II from Conf. 7.14 to Conf. 315.	South Africa	Approved.
Crocodylus niloticus (Nile crocodile).	Transfer from II to I (Madagascar and Somalia populations).	Switzerland	Approved for Somalia population. Proposal for Madagascar population withdrawn.
Crocodylus niloticus (Nile crocodile).	Maintain in II with significant increase in export quota pursuant to Conf. 7.14.	Tanzania	Approved as amended to allow harvest quotas of 1,000 per year for 1995 and 1996, plus an additional 100 per year for sport trophies from 1995–1997. Quota for 1997 to be determined by the Secretariat in consultation with the IUCN Crocodile Specialist Group.
Crocodylus porosus (Saltwater crocodile).	Change basis of maintenance of Indonesian population on II from Conf. 7.14 to Conf. 315.	Indonesia	Approved. Approval based on Indonesia's self-imposed zero export quota until their ranching programs are inspected and approved by the IUCN Crocodile Specialist Group and the Secretariat.
Crocodylus porosus (Saltwater crocodile).	Transfer from II to I (Indonesian population).	Switzerland	Withdrawn.
Crocodylus porosus (Saltwater crocodile).	Change basis of maintenance of Australian population on II from Conf. 3.15 to Conf. 1.2.	Australia	Approved.
Order Testudinata:			
Lissemys punctata Indian flap-shell turtle).	Add to II	Switzerland	Approved.
Lissemys punctata Indian flap-shell turtle).	Remove from I	Switzerland	Approved.
Terrapene spp. (Box turtles)	Add to II (retain *T. coahuila* in I)	Netherlands, United States.	Approved.
Testudo kleinmanni (Egyptian tortoise).	Transfer from II to I	Egypt	Approved.
Order Rhynchocephalia:			
Sphenodon spp. (Tuataras) or *Sphenodon quntheri* (Brother's Island tuatara).	Add to I	New Zealand	Approved, as *Sphenodon* spp.
Order Sauria:			
Phymaturus flagellifer (Racerunner lizard).	Add to II	Chile	Rejected.

Species	Proposed amendment	Proponent	Final decision of the parties
Pristidactylus alvaro	Add to II	Chile	Withdrawn.
Pristidactylus torquatus	Add to II	Chile	Withdrawn.
Pristidactylus valeriae	Add to II	Chile	Withdrwan.
Pristidactylus volcanensis	Add to II	Chile	Withdrawn.
Callopistes pallum	Add to II	Chile	Withdrawn.
Varnus bengalensis (Indian monitor).	Transfer from I to II (Bangladesh population).	Bangladesh	Withdrawn
Varanus flavescens (Yellow monitor).	Transfer from I to II (Bangladesh population.	Bangladesh	Withdrawn.
AMPHIBIANS			
Order Anura:			
Bufo periglenes (Monte Verde or Golden toad).	Add to I	Netherlands	Approved.
Mantella aurantiaca (Malagasy golden frog).	Add to I (Netherlands, Add to II (Germany).	Netherlands and Germany.	Approved (inclusion in Appendix II).
FISH			
Order Osteoglossiformes:			
Scleropages formosus (Asian bonytongue).	Transfer from II to I (Indonesian population).	Indonesia	Approved.
Scleropages formosus (Asian bonytongue).	Transfer from II to I (Indonesian population).	Switzerland	Withdrawn.
MOLLUSCS			
Charonia tritonis (Giant triton)	Add to II	Austalia	Withdrawn.
Placostylus spp. (New Zealand flax snails).	Add to II (New Zealand population)	New Zealand	Withdrawn.
Powelliphanta spp. (New Zealand land snails).	Add to II (New Zealand population)	New Zealand	Withdrawn.
INSECTS			
Colophon spp. (Cape stag beetles)	Add to I	Netherlands	Withdrawn.
ARACHNIDS			
Brachypelma spp. (Red-knee tarantulas).	Add to II	United States	Approved.
Pandinus imperator (Emperor scorpion).	Add to II	Ghana	Approved.
Pandinus gambiensis (scorpion)	Add to II	Ghana	Approved.
Pandinus dictator (scorpion)	Add to II	Ghana	Approved.
PLANTS			
Family Apocynaceae:			
Pachypodium ambongense	Transfer from II to I	Madagascar & Switzerland.	Approved.
P. brevicaule	Transfer from I to II	Madagascar & Switzerland.	Approved. No adult wild plants to be exported before COP10 (in 1997).
P. namaquanum	Transfer from I to II	Switzerland	Approved.
Family Araceae:			
Alocasia sanderiana	Remove from II	Switzerland	Approved.
Family Balanophoraceae:			
Dactylanthus taylorii	Add to I	New Zealand	Rejected.
Family Berberidaceae:			
Berberis aristata de Candolle	Add to II	India	Rejected.
Family Cactaceae:			
Astrophytum asterias	Transfer from I to II	Mexico & Switzerland.	Withdrawn.
Leuchtenbergia principis	Transfer from I to II	Mexico & Switzerland.	Approved.
Mammillaria plumosa	Transfer from I to II	Mexico & Switzerland.	Approved.
Family Ebenaceae:			
Diospyros mun	Add to II	Germany	Withdrawn.
Family Euphorbiaceae:			
Euphorbia cremersii	Transfer from II to I	Madagascar & Switzerland.	Approved.
Euphorbia primulifolia	Transfer from I to II	Madagascar & Switzerland.	Approved.
Family Gentianaceae:			
Gentiana kurroo	Add to II	India	Withdrawn.
Family Leguminosae (Fabaceae):			
Dalbergia melanoxylon	Add to II	Germany: Kenya	Both proposals withdrawn.
Pterocarpus santalinus	Add to II	India	Approved, with amendment to exclude finished musical instruments, formulations and chemical derivatives.

Species	Proposed amendment	Proponent	Final decision of the parties
Family Liliaceae:			
Aloe albiflora	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe alfredii	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe bakeri	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe bellatula	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe calcairophila	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe compressa (inc. var. *rugosquamosa* and var. *schistophila).*	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe delphinensis	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe descoingsii	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe fragilis	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe haworthioides (inc. var. *aurantiaca*).	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe helenae	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe laeta (inc. var. *maniensis*)	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe paralleliofolia	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe parvula	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe rauhii	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe suzannae	Transfer from II to I	Madagascar & Switzerland.	Approved.
Aloe vera (syn. *A. barbadensis*)	Remove from II	Switzerland	Approved, with problems referred to Plants Committee.
Aloe versicolor	Transfer from II to I	Madagascar & Switzerland.	Approved.
Colchicum luteum	Add to II	India	Withdrawn.
Family Meliaceae:			
Entandrophgragma spp	Add to II	Germany	Withdrawn.
Khaya spp.	Add to II	Germany	Withdrawn.
Swietenia macrophylla in the neotropics, incl. natural hybrids with *S. humilis,* and *sic* with *S. mahagoni.*	Add to II	Netherlands	Rejected, as amended at COP9 to read ''including natural hybrids with *S. humilis,* and excluding all parts and derivatives except logs, sawn wood, veneer sheets and plywood sheets.''
Family Orchidaceae:			
Cattleya skinneri	Transfer from I to II	Switzerland & Mexico.	Approved.
Cypripedium cordigerum	Transfer from II to I	India	Rejected.
Cypripedium elegans	Transfer from II to I	India	Rejected.
Cypripedium himalaicum	Transfer from II to I	India	Rejected.
Cypripedium tibeticum	Transfer from II to I	India	Rejected.
Dendrobium cruentum	Transfer from II to I	Thailand	Approved.
Didiciea cunninghamii	Transfer from I to II	Switzerland	Approved.
Lycaste skinneri var. *alba*	Transfer from I to II	Switzerland & Mexico.	Approved.
Family Polygonaceae:			
Rheum australe	Add to II	India	Withdrawn.
Family Ranunculaceae:			
Aconitum deinorrhizum	Add to II	India	Withdrawn.
Aconitum ferox	Add to II	India	Withdrawn.
Aconitum heterophyllum	Add to II	India	Withdrawn.
Coptis teeta	Add to II	India	Withdrawn.
Family Rosaceae:			
Prunus africana	Add to II	Kenya	Approved.
Family Scrophulariaceae:			
Picrorhiza kurrooa	Add to II	India	Withdrawn.

Species	Proposed amendment	Proponent	Final decision of the parties
Family Taxaceae:			
Taxus wallichiana (= *T. baccata* ssp. *wallichiana).*	Add to II	India	Approved with amendment to exclude finished pharmaceutical products (i.e., end-point medicines such as taxol).
Family Theaceae:			
Camellia chrysantha	Remove from II	Switzerland	Withdrawn.
Family Thymelaeaceae:			
Aquilaria malaccensis (syn. *A. agallocha).*	Add to II	India	Approved.
Family Valerianaceae:			
Nardostachys grandiflora	Add to II	India	Withdrawn.
Parts and Derivatives Proposal	With respect to Appendix II plant replace the standard exclusions. "tissue cultures and flasked seedlings cultures" with "seedling or tissue cultures, obtained *in vitro,* in solid or liquid media, transported in containers".	Germany	Approved.

Consequences of Amendments to Appendices I and II

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (February 16, 1995) under terms of CITES. Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species, if it enters a reservation with respect to that species. A Party desiring to enter a reservation must do so during the 90-day period immediately following the close of the meeting at which the Parties voted to include the species in Appendix I or II. If the United States should decide to enter any reservation, this action must be transmitted to the Depositary Government (Switzerland) by February 16, 1995.

The Service now repeats its opportunity (see November 8, 1994, **Federal Register** Notice) for public comment/recommendations concerning reservations to be taken by the United States on any amendments to the Appendices adopted by the Parties at COP9. Recommendations or comments regarding reservations must be received by January 17, 1995, so that the Secretariat can be informed by February 16, 1995. The Service proposes not to recommend any reservations. It will consider doing so only if evidence is presented to show that implementation of an amendment would be contrary to the interests or law of the United States. If the United States should enter any reservations, they will be announced, along with a request for public comment, in a **Federal Register** notice as soon as possible after the decisions are made. Any reservations announced would be tentative, pending full consideration of public comments.

Reservations, if entered, may do little to relieve importers in the United States from the need for foreign export permits, because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If a foreign country has enacted CITES as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States (even if it had taken a reservation on a species) would continue to require CITES documents as a condition of import. Any reservation by the United States would provide exporters in this country with little relief from the need for U.S. export documents. Importing countries that are party to CITES would generally require CITES-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all the information required in CITES permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II according to Resolution Conf. 4.25, thereby still requiring CITES documents for export. The United States has never entered a reservation to a CITES listing. It is the policy of the United States that commercial trade in Appendix I species for which a country has entered a reservation undermines the effectiveness of CITES.

Note: The Department has determined that amendments to CITES Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601) does not apply to this listing process. The proposed adjustments to the list in 50 CFR § 23.23 are solely informational to provide the public with accurate data on the species covered by CITES. The listing changes adopted by the Parties will take effect on February 16, 1995, under the terms of CITES. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service finds that good cause exists to terminate the public comment period on January 17, 1995, in order to provide the necessary time to review and, if appropriate, act on any comments requesting the entering of reservations. Any such reservations must be submitted to the CITES Secretariat by February 16, 1995.

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane, Marshall A. Howe, and Bruce MacBryde, Office of Scientific Authority.

Proposed Regulation Promulgation

The Service proposes to amend the list of species contained in § 23.23 of title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice and

modified as necessary to conform to recommendations contained in the approved Report of the Nomenclature Committee.

Dated: December 16, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–32271 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353, 355, and 356

[Docket No. 941264–4364]

RIN: 0625–AA45

Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Advance notice of proposed rulemaking and request for public comments.

SUMMARY: The Department of Commerce (''the Department'') intends to initiate a rulemaking proceeding to conform the Department's existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department will be considering other changes to the procedural and substantive provisions of the antidumping and countervailing duty regulations. The overall objectives of this rulemaking proceeding will be to: (1) translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline the Department's administration of antidumping and countervailing duty proceedings; (3) codify existing administrative practice, to the extent such codification is appropriate and is consistent with the first and second objectives; and (4) resolve any inconsistencies in the Department's administrative practice.

DATES: The Department will consider written comments if received not later than February 3, 1995. The Department will also consider written responses to written comments if received not later than February 24, 1995.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Uruguay Round Agreements Act. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 482–4412, or David Mason Jr., (202) 482–4969.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1994, President Clinton signed the Uruguay Round Agreements Act, Pub.L. 103–465 (''the URAA''), into law. The URAA implements the results of the Uruguay Round multilateral trade negotiations. Among the agreements negotiated as part of the Uruguay Round are the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''the Antidumping Agreement'') and the Agreement on Subsidies and Countervailing Measures (''the Subsidies Agreement''). The URAA, among other things, conforms the U.S. antidumping and countervailing duty laws to the requirements of the Antidumping Agreement and the Subsidies Agreement.

The Department is initiating a rulemaking proceeding to conform the Department's existing regulations on antidumping duties, countervailing duties, and Article 1904 of the North American Free Trade Agreement to the provisions of the URAA. Although the Department expects that in many instances amendments to existing regulations will be of a conforming nature only, in the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)), the Administration committed the Department to flesh out through regulation certain provisions of the bill.

In addition to regulations implementing the URAA, the Department intends to use this opportunity to proceed further with certain rulemaking proceedings on which work was suspended pending the completion of the Uruguay Round. These proceedings are listed below. In the Semiannual Unified Agenda of Federal Regulations, published on April 25, 1994 (59 FR 20136), the Department indicated that these rulemaking proceedings had been withdrawn, but that it intended to address the subject matter covered by these rulemaking proceedings as part of a new, consolidated rulemaking proceeding which, among other things, would conform the antidumping and countervailing duty regulations to anticipated legislation implementing the Uruguay Round. The withdrawn rulemaking proceedings were:

- *Antidumping Duties [RIN: 0625–AA29]:* On February 1, 1989 (54 FR 5092), the Department published an Advance Notice of Proposed Rulemaking concerning regulations that would have codified existing administrative practice with respect to the identification and measurement of dumping.
- *Countervailing Duties [RIN: 0625–AA31]:* On May 31, 1989 (54 FR 23366), the Department published a Notice of Proposed Rulemaking that would have codified existing administrative practice with respect to the identification and measurement of subsidies.
- *Antidumping and Countervailing Duties; Significant Ministerial Errors [RIN: 0625–AA35]:* On January 10, 1992 (57 FR 1131), the Department published a Notice of Proposed Rulemaking setting forth the circumstances in which the Department would correct significant ministerial errors made in preliminary antidumping and countervailing duty determinations.
- *Antidumping Duties; Methodologies for Assessment Instructions [RIN: 0625–AA36]:* On December 5, 1991 (56 FR 6396), the Department published an Advance Notice of Proposed Rulemaking regarding regulations which would have changed and/or codified existing administrative practice to simplify and streamline the collection of estimated antidumping duties and the assessment of antidumping duties.
- *Antidumping Duties; Calculation of Weighted Average Dumping Margin [RIN: 0625–AA39]:* The Department had considered initiating a rulemaking proceeding which would have addressed a problem in the Department's calculation of weighted-average dumping margins caused by the Department's treatment of adjustments for indirect taxes. *See* 59 FR 20156–57.
- *Antidumping Duties; Period of Investigation [RIN: 0625–AA41]:* The Department had considered initiating a rulemaking proceeding to amend the Department's antidumping regulations with respect to the period covered by an antidumping investigation. *See* 59 FR 20157.

• *Procedures for Imposing Sanctions for Providing False Certifications in an Antidumping or Countervailing Duty Proceedings [RIN: 0625–AA42]:* The Department had considered initiating a rulemaking proceeding that would have established standards for finding certifications to be false, the sanctions that could be imposed, and the procedures for imposing sanctions. *See* 59 FR 20157–58.

As part of its consolidated rulemaking proceeding, the Department intends to review the subject matter of the withdrawn rulemaking proceedings in light of the URAA and other developments in the antidumping and countervailing duty laws. One of the purposes of this review will be to determine whether the problems identified in the above rulemaking proceedings remain, and, if so, whether they should be addressed by regulations.

The overall objectives of this consolidated rulemaking proceeding will be to: (1) translate the principles of the URAA into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline, to the extent permitted by law, the Department's administration of antidumping and countervailing duty proceedings; (3) codify existing administrative practice, to the extent such codification is appropriate and is consistent with the first and second objectives; and (4) resolve any inconsistencies in the Department's administrative practice.

Timetable

The Department intends to issue a comprehensive set of proposed regulations by June 30, 1995. These comprehensive regulations will address the objectives described above, and an opportunity for public comment will be provided. The Department intends to issue a comprehensive set of final regulations by January 1, 1996. These final regulations will replace the interim-final regulations described in the following paragraph.

The URAA became effective January 1, 1995, and applies to investigations initiated as a result of petitions filed on or after that date, and administrative reviews requested on or after that date. To facilitate the administration of the new law, the Department intends to issue interim-final regulations that will amend the existing regulations where they are clearly at odds with the URAA, and where regulations are essential to administration of the new law. These interim-final regulations will be effective upon publication and will govern the Department's handling of antidumping and countervailing duty proceedings pending the promulgation of final rules described above. The interim-final regulations will make plain that where the URAA, as amplified by the Statement of Administrative Action, is in conflict with the existing regulations, the new statute will prevail.

Request for Comments

The conclusion of the Uruguay Round and the enactment of implementing legislation offer an appropriate time for the Department and the public to reexamine the Department's existing antidumping and countervailing duty regulations. The objectives described above encompass all aspects of the Department's administration of the antidumping and countervailing duty laws.

However, it should be emphasized that the Department has not reached any conclusions concerning any of these subjects. Instead, before issuing proposed regulations, the Department wishes to receive public comments on all aspects of the Department's administration of the antidumping and countervailing duty laws. The Department believes that such public comment will improve its understanding of the issues and problems that need to be addressed. Therefore, interested persons are invited to address any issue of law, policy, or procedure, and to suggest appropriate amendments to the antidumping duty, countervailing duty, and NAFTA regulations for consideration by the Department.

Format and Number of Copies

Parties should submit comments in the following format: (1) number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth below; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and one paper copy. All documents filed in electronic form must be on DOS formatted 3.5″ diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues outlined below.

Comments received on diskette by the due date will be made available to the public on Internet. In addition, the Department will make comments available to the public on 3.5″ diskettes at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Questions concerning file formatting, document conversion, Internet address, or other filing requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Classification of Issues for Comment

Countervailing Duty Issues

1. Grants, loans, equity, loan guarantees, and debt forgiveness (including benchmarks and discount rates);
2. Tax programs (not including rebates of indirect taxes on export, which is included in category number five below);
3. Government provision/procurement (including adequate remuneration);
4. Indirect subsidies, privatization, and upstream subsidies;
5. Export subsidies (*e.g.*, subsidies included in the Illustrative List);
6. Import substitution subsidies, worker benefits, and subsidies on agricultural products;
7. Specificity and infrastructure;
8. Green light subsidies and subsidies enforcement;
9. Allocation;
10. CVD methodology issues other than those outlined above.

Antidumping Issues

11. Comparison Methodology:
a. Viablility, third-country sales, intermediate country sales, and tolling;
b. Constructed export price deductions and value-added deductions;
c. Normal value adjustments;
d. Level of trade matching, level of trade adjustments, and constructed export price offset;
12. Start-up;
13. Profit and selling, general and administrative expenses in constructed value;
14. Sales below cost of production and constructed value generally;
15. Currency conversion;
16. Price averaging;
17. Anticircumvention;
18. Affiliated parties (address separately for AD and CVD);

19. AD methodology issues other than those outlined above;

Procedural Issues

20. Initiation of petitions;
21. Evidence;
22. Facts available;
23. *De Minimis* (address separately for AD and CVD);
24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);
25. Five-year reviews and revocation;
26. Repeal of Section 303;
27. Regional industries;
28. Critical circumstances;
29. Simplification;
30. Business proprietary information and administrative protective orders;
31. Ministerial errors;
32. Procedural issues other than those outlined above;
33. Other issues.

List of Subjects in 19 CFR Parts 353, 355, and 356

Business and industry, Foreign trade, Imports, Trade practices.

Dated: December 27, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–32332 Filed 12–30–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[EE–56–94]

RIN 1545–AT03

Excise Tax On Self-Dealing By Private Foundations.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations that define self-dealing by private foundations. The proposed amendments modify the application of the self-dealing rules to the provision by a private foundation of director's and officer's liability insurance to disqualified persons. These amendments provide that indemnification by a private foundation or provision of insurance for purposes of covering the liabilities of the person in their capacity as a manager of the private foundation is not self-dealing. Additionally, the amounts expended by the private foundation are not included in the compensation of the disqualified person for purposes of determining reasonable compensation of the disqualified person.

DATES: Written comments and requests for a public hearing must be received by April 3, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–56–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–56–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura at 202–622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4941(a) imposes a tax on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) defines self-dealing as any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 53.4941(d)–2(f)(1) currently provides that provision of insurance for the payment of chapter 42 taxes by a private foundation for a foundation manager is self-dealing unless the premium amounts are included in the compensation of the foundation manager. Direct indemnification for the payment of chapter 42 taxes to the foundation manager from the private foundation is self-dealing whether or not the amounts are included in the manager's compensation.

Section 53.4941(d)–2(f)(3) currently provides that the indemnification of certain expenses by a private foundation for a foundation manager's defense in a judicial or administrative proceeding involving chapter 42 taxes is not self-dealing. Such expenses must have been reasonably incurred by the manager in connection with such proceeding. Also, the manager must be successful in such defense, or such proceeding must be terminated by settlement, and the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to the liability for tax under chapter 42.

Revenue Ruling 82–223, 1982–2 C.B. 301, discussed the application of the self-dealing rules to the provision of insurance by a private foundation for the indemnification of a foundation manager's defense in actions involving state laws relating to the mismanagement of funds of charitable organizations. Rev. Rul. 82–223 implied that the private foundation's provision of insurance is includible in the foundation manager's taxable income. This position created a situation in which private foundation managers who were ''employees'' of the private foundation could exclude the insurance premiums from their income under the section 132(d) fringe benefit exclusion; however, this raised the possibility that unpaid ''volunteer'' managers would have to include the premiums in their income and, since they had no profit motive with which to support a working condition fringe benefit exclusion, could not exclude the income.

This situation has recently been corrected by the publication of amendments to regulations under section 132. Section 1.132–5(r) currently provides that bona fide volunteers for exempt organizations are deemed to have a profit motive for purposes of excluding a working condition fringe benefit.

Although these benefits are excluded from compensation under section 132(d), the problem of including the income excluded under section 132 in the compensation paid to the foundation manager still remains for purposes of determining whether a foundation managers's compensation is reasonable. These amendments to § 53.4941(d)–2(f) are intended to clarify the IRS's position that, generally, the payment of indemnification and insurance by a private foundation for a foundation manager in situations arising from the performance of services on behalf of the private foundation are not self-dealing and are not considered when determining reasonable compensation of the foundation manager.

Explanation of Provisions

The proposed regulations provide that it generally will not be self-dealing, or treated as the payment of compensation, if a private foundation indemnifies or provides insurance to a foundation manager in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation.

An indemnification or purchase of insurance would be an act of self-dealing if the expenses relating to such defense are not reasonably incurred by the manager in connection with such proceeding. Additionally, the manager must not have acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to such liability.

Also, if the indemnification or insurance is to pay chapter 42 tax, it will be an act of self-dealing unless the amounts are treated as compensation.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Terri Harris, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 53.4941(d)-2 is amended as follows:

1. Paragraphs (f)(1) and (3) are revised.
2. Paragraph (f)(4) is redesignated as paragraph (f)(5).
3. New paragraph (f)(4) is added.

The additions and revisions read as follows:

§ 53.4941(d)–2 Specific acts of self-dealing.

* * * * *

(f) *Transfer or use of the income or assets of a private foundation*—(1) *In general.* The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing. For purposes of the preceding sentence, the payment by a private foundation of any tax imposed on a foundation manager by chapter 42 shall be treated as a transfer of the income or assets of a private foundation for the benefit of a disqualified person unless such payment is treated as part of the compensation to such manager. Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for chapter 42 taxes shall be an act of self-dealing under this paragraph unless such premiums are treated as part of the compensation paid to such manager.

* * * * *

(3) *Indemnification of foundation managers against liability for defense in civil proceedings.* Except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager's defense in any civil judicial or civil administrative proceeding arising out of the manager's performance of services on behalf of the foundation, against all expenses (other than taxes, penalties, or expenses of correction) including attorneys' fees, if—

(i) Such expenses are reasonably incurred by the manager in connection with such proceeding; and

(ii) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42. Similarly, except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to premiums for insurance to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3)(ii). Neither shall such indemnification or payment of insurance be treated as part of the compensation paid to such manager. Thus, a private foundation shall not be engaged in an act of self-dealing if the foundation purchases a single insurance policy to provide its managers both the noncompensatory and the compensatory coverage discussed in this paragraph (f), provided that the total insurance premium is allocated to include, in each manager's compensation, that manager's portion of the premium attributable to the compensatory coverage, which is the coverage for the amount of penalty, tax, expense of correction, judgment or expense, that is owed by the manager.

(4) *Indemnification.* For purposes of this paragraph (f), the term *indemnification* shall include not only reimbursement by the foundation for losses and expenses that the foundation manager has already incurred but also direct payment by the foundation of such expenses as the expenses arise.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–31666 Filed 12–30–94; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[GL–0038–93]

RIN 1545–AS61

Seals of Office

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains a proposed regulatory amendment relating to the authority contained within section 7514 of the Internal Revenue Code to prescribe or modify seals of office for the district directors, service center directors, and compliance center directors (directors) and other officers or employees of the Treasury Department to whom any of the functions of the Secretary of the Treasury are or may be delegated. The proposed regulations provide an additional or alternative uniform seal to various Internal Revenue offices throughout the country. This amendment is intended to eliminate the need to publish facsimiles of seals in the **Federal Register** as new internal revenue offices are established or relocated or as replacement of existing seals becomes necessary.

DATES: Written comments and requests for a public hearing must be received by March 6, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (GL–0038- 93), room 5228, Internal Revenue Service, P.O.B.

7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (GL–0038–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622–4208 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that amend the Procedure and Administration Regulations (26 CFR 301) under section 7514 of the Internal Revenue Code (Code) and is issued under the authority contained in section 7805 (68A Stat. 917; 26 U.S.C. 7805). Section 7514 was enacted by section 91 of the Technical Amendments Act of 1958 (Pub. L. 85–866, 72 Stat. 1667) and amended by section 1906(b)(13)(A), (M) of the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1834, 1835). The IRS desired to streamline the process by which documents to be presented as evidence in court could be authenticated. Authentication is a process by which documents under seal can be admitted in court as evidence of the act, transaction, or occurrence it represents without laying an evidentiary foundation that often may have involved costly expert witnesses and courtroom time. Prior to passage of section 7514, documents needing a seal for authentication were mailed to the Internal Revenue headquarters in Washington, DC, in a cumbersome process that was not only time consuming, but also subjected important original documents to the possibility of being lost or misplaced. The statute provided that courts could take judicial notice of official seals, facsimiles of which had been duly published in the **Federal Register**. This last requirement itself has become a cumbersome process.

Explanation of Provisions

Section 301.7514–1 currently provides for several different seals of office for various offices of internal revenue throughout the country. The proposed amendment to the regulations would permit these Internal Revenue offices to keep the official seal currently in use, but would provide for a uniform Internal Revenue Service seal for use when replacement of the current seal becomes necessary, or for other reasons such as the establishment of a new office or the relocation of an office to a new geographic area. By providing a uniform seal, it would no longer be necessary to amend the Treasury regulations to name the specific office each time an office is established or relocated or an existing office needs a new seal. The uniform seal could be used by all internal revenue offices throughout the country.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robert A. Walker of the General Litigation Division, Office of Chief Counsel, Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7514–1 is amended as follows:

a. Paragraphs (a)(2) through (7) are redesignated (a)(3) through (8).

b. New paragraph (a)(2) is added.

The addition reads as follows:

§ 301.7514–1 Seals of office.

(a) * * *

(2) *Establishment of uniform seal.* In addition to the seals of office prescribed for those offices set forth in paragraphs (a)(3) through (a)(8) of this section, a uniform seal for use by any office of internal revenue is established. This uniform seal may be used by any office of internal revenue set forth in paragraphs (a)(3 through (8) of this section, as well as by any other office of the internal revenue designated to use a seal by the Commissioner. The uniform seal is described and illustrated below as follows: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield with a dark background. Exterior to this circle and within a circumscribed circle forming the exterior of the seal shall appear words describing the specific office of internal revenue authorized to use the seal under this § 301.7514–1. This paragraph (a)(2) is effective on date of publication of Final Regulations in the **Federal Register**.

* * * * *

BILLING CODE 4830–01–C

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–31984 Filed 12–30–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200, 201, 203, and 212

Title I—Helping Disadvantaged Children Meet High Standards

AGENCY: Department of Education.

ACTION: Notice of meetings to conduct a negotiated rulemaking process.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) will convene a negotiating group—including Federal, State, and local education administrators, parents, teachers, and members of local boards of education—to participate in a negotiated rulemaking process prior to publishing proposed regulations to implement the programs under Title I (formerly Chapter 1 of Title I), of the Elementary and Secondary Education Act of 1965, as recently amended. Programs under Title I are designed to help disadvantaged children meet high academic standards and include programs operated by local educational agencies in high-poverty schools (Part A), Even Start family literacy programs (Part B), programs for migratory children (Part C), and prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D). The group will review draft proposed regulations developed on selected issues involving a minimum of two key provisions of the statute—''schoolwide programs'' and ''standards and assessment.''

DATES: The meetings of the negotiating group are scheduled for January 11–13 and January 18–19, 1995.

ADDRESSES: The meetings will be held at the Sheraton City Centre, 1143 New Hampshire Avenue, N.W., Washington, D.C. 20047. Other meetings may be recommended and called by the Department, if necessary. The meetings are open to the public for individuals who wish to observe the process.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue S.W., Portals Building, room 4400, Washington, D.C. 20202–6132. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1994, the President signed into law Pub. L. 103–382, the Improving America's Schools Act of 1994 (IASA), amending the Elementary and Secondary Education Act of 1965 (ESEA). The IASA reauthorizes—for a five-year period—programs currently under Chapter 1 of Title I of the ESEA.

Section 1601 of Title I of the ESEA requires that, before publishing any proposed regulations to implement programs under Title I, the Assistant Secretary establish a negotiated rulemaking process on issues involving a minimum of two key provisions in the statute—''schoolwide programs'' and ''standards and assessment.'' The regulatory negotiation process is to be conducted in a timely manner to ensure that final regulations are issued by the Secretary of Education not later than July 1, 1995. In accordance with section 1601(b)(4)(B) of the ESEA, the process is not subject to the Federal Advisory Committee Act, but will otherwise follow the provisions of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*).

On October 28, 1994, the Assistant Secretary published a notice in the **Federal Register** (59 FR 54372) requesting advice and recommendations on regulatory issues under Title I of the ESEA. The Assistant Secretary has selected individuals to participate in the negotiated rulemaking sessions from among the individuals and groups

providing advice and recommendations in response to the notice, including representation from all geographic regions of the United States. The Assistant Secretary has also considered suggestions for more and different negotiators who would contribute to the diversity and expertise of the group. The following organizations were requested to submit nominations of participants:

National Education Association
American Federation of Teachers
National Association of Elementary School Principals
National Association of Secondary School Principals
National School Boards Association
National Parent Teachers Association
National Coalition of Chapter 1/Title I Parents
Council of Chief State School Officers
National Association of State Coordinators of Compensatory Education
American Association of School Administrators
National Association of Federal Education Program Administrators
Council of the Great City Schools
Council of American Private Education

Representing the Federal Government will be:

Thomas W. Payzant, Assistant Secretary of Elementary and Secondary Education, U.S. Department of Education
Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education

If, in response to this notice, an additional individual or representative of an interest group requests representation in the negotiated rulemaking process, the negotiating group will determine whether that individual should be added to the group. The negotiating group will make that decision based on factors such as whether the individual or representative—(1) Would be substantially affected by the rule; (2) Is not already adequately represented by the group; and (3) Meets the requirements of section 1601 of the ESEA.

The Department intends to encourage broad State and local flexibility in implementing programs under Title I. In particular, the Department intends to issue regulations only where absolutely necessary—for example, where the statute requires a regulation or where a regulation would provide flexibility for States, school districts, and schools. The Department will also provide nonbinding guidance respecting legal and policy issues under the Title I programs. This nonregulatory guidance can serve to inform parents, schools, school districts, States, and other affected parties of the flexibility that exists under the statute, including multiple approaches that may be available in carrying out the statute's requirements.

Topics Selected for Negotiation

The following topics related to the Title I program in local educational agencies have been selected for the negotiated rulemaking process.

(1) Schoolwide programs.

(2) Standards and assessment.

Discussions at the negotiated rulemaking meetings may cover other subjects as necessary or as raised by participants.

Facilitator

The Department has retained the services of a professional mediator who will serve as a neutral convenor and facilitator for the negotiations. The facilitator will not be involved with the substantive development of the regulations. The facilitator's role is to—(1) Chair negotiating sessions; (2) Help the negotiating process run smoothly; and (3) Help participants define issues and reach consensus.

The facilitator will keep a record of the negotiated rulemaking meetings. The record will be placed in the Department's rulemaking docket for this regulatory action.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Educationally Deprived Children in Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Chapter 1 Program for Neglected or Delinquent Children; 84.213, Even Start Program)

Dated: December 22, 1994.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 94–32048 Filed 12–30–94; 8:45 am]

BILLING CODE 4000–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Acceptance of supplemental comments on proposed revision of current regulations.

SUMMARY: The Advisory Council on Historic Preservation (Council) issued a notice of proposed rulemaking, 59 FR 50396, October 3, 1994, on changes to its regulations on protection of historic properties, with 60 days provided for public comment. In response to numerous requests for extension of time to comment beyond the December 2, 1994 deadline, the Council extended the comment period for an additional 30 days. The current January 3, 1995 deadline remains in effect and will not be extended further. However, in recognition of the concerns expressed by some commenters for additional time to do detailed analyses, the Council will accept supplemental submissions from any commenters who wish to amplify or amend their initial comments. Accordingly, the Council will keep the record open through February 2, 1995 for the purpose of receiving these submissions. Any materials received on or before that date will be fully considered as part of the public comment record as the Council moves forward with its consideration of regulatory revisions.

DATES: The date on or before which comments must be received remains January 3, 1995. The Council will keep the record open through February 2, 1995 for consideration of materials supplementing comments received on or before January 3, 1995.

ADDRESSES: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004. Fax 202–606–8647 or 8672.

FOR FURTHER INFORMATION CONTACT: Stephanie Woronowicz, Information Assistant, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004, (202) 606–8503.

Robert D. Bush,

Executive Director.

[FR Doc. 94–32313 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 96–1–6799b; FRL–5131–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which

concern two negative declarations from the Mojave Desert Air Quality Management District for two volatile organic compound (VOC) source categories: Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is acting on the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by February 2, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section, A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for two VOC source categories from the Mojave Desert Air Quality Management District submitted to EPA on July 13, 1994 by the California Air Resources Board. The negative declarations concern Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 15, 1994.

David P. HoweKamp,

Acting Regional Administrator.

[FR Doc. 95–32233 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL12–38–6748; IL53–3–6693; FRL–5131–3]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed rule; withdrawal.

SUMMARY: The United States Environmental Protection Agency (USEPA) is withdrawing certain proposed rulemaking actions resulting from the reconsideration of emission limitations for the metal furniture paint and adhesive operations at the Montgomery, Illinois facility owned by Allsteel, Inc. (Allsteel). In the final rules section of this **Federal Register**, USEPA is withdrawing the stays pending reconsideration (of emission limitations) applicable to this facility.

DATES: The proposed rule is withdrawn as of January 3, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6052.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 29, 1990, USEPA promulgated a Federal Implementation Plan (FIP) which contained stationary source Volatile Organic Compound (VOC) control measures representing Reasonably Available Control Technology (RACT) for emission sources located in six Chicago, Illinois counties. On that date, USEPA also took final rulemaking action on certain VOC rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP) (55 FR 26814). Among the sources impacted by these actions is Allsteel's plant in Kane County.

As a result of this rulemaking, Allsteel's paint operations became subject to the FIP's VOC emission limitations for metal furniture coating at 40 CFR 52.741(e), while the adhesive operations were required to comply with the FIP's ''generic'' rule for miscellaneous fabricated product manufacturing at 40 CFR 52.741(u). However, because USEPA had insufficient time to respond to Allsteel's highly technical comments, the Agency deferred the effective date of the applicable rules with regard to Allsteel for six months. Similarly, USEPA deferred action on a site-specific limit for Allsteel's adhesive lines submitted by the State of Illinois for inclusion as a SIP revision.

On August 28, 1990, Allsteel filed a petition for review of USEPA's June 29, 1990 rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group (IERG) et al.* v. *Reilly*, No. 90–2778. In addition, Allsteel filed petitions for reconsideration of the FIP as it applied to both the adhesive and specialty paint operations. Pursuant to these petitions, USEPA convened proceedings for reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act (Act) 42 U.S.C. 7607(d)(7)(B). On May 31, 1991 (56 FR 24722), USEPA issued a stay of the FIP rules pending reconsideration for the adhesive operations; on June 4, 1993 (58 FR 31653), USEPA issued a stay of the FIP rules pending reconsideration for the specialty paint operations. Both stays, issued pursuant to section 307(d)(7)(B) of the Act, were issued only as necessary to complete reconsideration of the subject rules.

On May 13, 1993, USEPA proposed site-specific RACT requirements for the paint operations (58 FR 28376). On June

18, 1993, USEPA proposed to disapprove the State's SIP submission and to promulgate a new rule for the adhesive operations (58 FR 33578).

On July 11, 1994, Allsteel filed with USEPA a Withdrawal of Requests for Reconsideration in which it represented that the adhesive operations were permanently shut down on March 18, 1994, and that the paint operations were to be discontinued by July 15, 1994. In addition, on August 15, 1994, the State of Illinois withdrew its SIP revision request for the adhesive lines.

II. Summary and Conclusions

As a result of Allsteel's July 11, 1994 Withdrawal of Requests for Reconsideration and the State of Illinois' August 15, 1994 withdrawal of its SIP submission, USEPA is withdrawing its May 13, 1993 proposed site-specific RACT requirements for Allsteel's paint operations and its June 18, 1993 proposal to disapprove the State's SIP submission and to promulgate a new rule for the adhesive operations. In the Final rules section of this **Federal Register** USEPA is withdrawing the May 31, 1991 and the June 4, 1993 stays pending reconsideration, since it is no longer necessary to complete reconsideration of the subject rules. It should be noted that USEPA's June 29, 1990 FIP regulations remain in place.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Volatile organic compound.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–32279 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[FL54–1–6026b; FRL–5089–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Florida for the maintenance plan and the redesignation of the Duval County ozone area to attainment. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 2, 1995.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 28, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–32235 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL 45–1–5482; FRL–5131–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to disapprove a request by Fort Dearborn Lithograph Company (FDLC) to incorporate certain operating restrictions for its Chicago, Illinois, facility into the Chicago Federal Implementation Plan for ozone (Chicago FIP). If approved by USEPA, this restriction (which attempts to limit emissions of volatile organic compounds (VOC) to less than 100 tons per year) would exempt FDLC from the otherwise applicable emission limits in the Chicago FIP, as promulgated by USEPA on June 29, 1990.

DATES: Comments on this requested revision to the Chicago FIP and on USEPA's proposed rulemaking action must be received by February 2, 1995. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by February 2, 1995 at the address below.

ADDRESSES: Written comments on this proposed action should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), USEPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604.

Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below. For information on the hearing, interested persons may call Ms. Hattie Geisler at (312) 886–3199. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Docket

Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607 (d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A–94–40, which is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano at (312) 886–6036 before visiting the Chicago location and the Air Docket at (202) 245–3639 before visiting the Washington D.C. location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor Southwest, 77 West Jackson Blvd., Chicago, Illinois, 60604, and

U.S. Environmental Protection Agency, Docket No. A–94–40, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Under 40 CFR 52.741(x) in the Chicago FIP, sources located in Cook, DuPage, Kane, Lake, McHenry and Will Counties with total Maximum Theoretical Emissions [1] (MTE) of more than 100 tons per calendar year of VOC [2] and which are not covered by a Control Techniques Guideline document, must comply with certain requirements. The rule provides an exemption, however, for sources which are limited to 100 tons or less of VOC emissions per calendar year, before the application of capture systems and control devices, through production or capacity limitations contained in a federally enforceable construction permit or a State Implementation Plan (SIP) or FIP.

On February 24, 1992, FDLC requested a FIP revision that would impose the identical limitations on its plant operations as those specified in a December 16, 1991, Illinois Environmental Protection Agency (IEPA) operating permit. A copy of the IEPA operating permit was submitted to USEPA on April 13, 1992. If granted, this FIP revision would restrict its use of inks, overvarnish, fountain solution, acrylic coating, washes, conditioners, and other solvents with the intent of keeping its VOC emissions below 100 tons per year.

FDLC's requested FIP revision is not approvable for the following reasons.

1. FDLC's permit assumes that only 5 percent of the VOC in its overvarnish is capable of being emitted. Credit was taken for 95 percent retention in the substrate for overvarnish without any documentation in support of this assumption. Without such documentation, it must be assumed that 100 percent of the VOC is emitted. Without credit for overvarnish retention, FDLC's operating restrictions limit FDLC to 126.6 tons VOC per year, well over the 100 tons per year applicability cutoff.

2. FDLC's permit does not require that records of VOC-containing material usage be kept. Without such records it is not possible to determine FDLC's yearly (for each consecutive 12 month interval) VOC emissions.

These deficiencies were discussed with a representative of FDLC on May 20, 1992.

Proposed Rulemaking Action and Solicitation of Public Comment

For the reasons stated above, USEPA is proposing to disapprove FDLC's request for a FIP revision in the form of operating restrictions on the amount of VOC containing materials used. Public comment is solicited on FDLC's requested revision and on USEPA's proposed rulemaking action. Additionally, if requested, USEPA will provide an opportunity for a public hearing on this proposal. All comments received by the close of the public comment period will be considered in the development of USEPA's final rule.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with populations of less than 50,000.

This action involves only one source, FDLC. Therefore, USEPA certifies that this promulgation does not have a significant impact on a substantial number of small entities. Furthermore, as explained in this notice, the request does not meet the requirements of the Act and USEPA cannot approve the request.

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 23, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–32296 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

[1] Maximum theoretical emissions (MTE) is defined in 40 CFR 52.741(a)(3) as the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or ink(s) with the highest volatile material content actually used in practice by the source.

[2] The term ''volatile organic material'' (VOM) is used in the Chicago FIP, in which it has the identical definition as VOC.

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40 CFR Part 180

[OPP–300363A; FRL–4928–3]

RIN No. 2070–AC18

Proposed Tolerance Revocation for Folpet; Extension of Comment Period and Request for Additional Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Comment Period and Request for Additional Information.

SUMMARY: EPA is extending the comment period for ''Revocation of Folpet Tolerances; Proposed Rule'' from January 3, 1995 until March 3, 1995, and is requesting additional information from interested parties.

DATES: Written comments, identified by the OPP document control number OPP–300363, must be received on or before March 3, 1995.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Room 201, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029.

SUPPLEMENTARY INFORMATION:

A. Comment Period Extension

On December 2, 1994, EPA published in the **Federal Register** a notice proposing to revoke all folpet tolerances except for the tolerance on avocados (59 FR 61859). The original due date for comments to the Proposed Rule was January 3, 1995. EPA is extending the comment period until March 3, 1995 for the following reasons: (1) due to a move, the OPP docket was unavailable for a short period of time during the initial 30–day comment period provided by the proposed rule; (2) EPA received a request for an extension due to the docket problem and due to the need to collect specific information that may be responsive to the proposal (see letters

from Weinberg dated 12/20/94 and 12/9/94: OPP Docket); and (3) a commenter identified additional issues on which EPA is requesting comments (see letter from Weinberg dated 12/19/94: OPP Docket).

B. Request for Additional Information

EPA is requesting the following: (1) that any interested parties identify which tolerances the interested parties are willing to support by providing the data necessary to maintain the tolerances; and (2) that any interested parties identify specific existing data that the interested parties are prepared to submit to support these tolerances. Good Laboratory Practice (GLP) requirements for studies submitted in support of import tolerances are the same as for domestic uses; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP requirements do not significantly affect the results of the study. Interested parties should submit this information to the address listed under ADDRESSES by March 3, 1995. For those tolerances for which interested parties do not indicate support during the comment period, EPA proposes to take final revocation action.

Dated: December 23, 1994.

Louis P. True,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 94–32285 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-155, RM–8468]

Radio Broadcasting Services; Big Pine Key, Key Colony Beach, Naples & Tice, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gulf Communications Partnership, permittee of Station WAAD(FM), Channel 229A, Tice, Florida, seeking the substitution of Channel 229C2 for Channel 229A at Tice, Florida, and the modification of Station WAAD(FM)'s construction permit to specify Channel 229C2. This proposal also requires the substitution of Channel 283C for Channel 284C at Big Pine Key, Florida; the substitution of Channel 267C2 for Channel 280C2 at Key Colony Beach, Florida, and the substitution of Channel 284A for Channel 228A at Naples Florida. The coordinates for Channel 229C2 at Tice are North Latitude 26–36–21 and West Longitude 81–57–10. The coordinates for Channel 284A at Naples presently licensed site are North Latitude 26–07–21 and West Longitude 81–43–22. The coordinates for Channel 283C at Big Pine Key's presently licensed site are North Latitude 24–39–38 and West Longitude 81–25–10. The coordinates for Channel 267C2 at the construction permit site for Key Colony Beach are North Latitude 24–42–25 and West Longitude 81–06–17.

DATES: Comments must be filed on or before February 17, 1995, and reply comments on or before March 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kathleen Victory, Howard M. Weiss, Fletcher, Heald & Hildreth, 1300 N. 17th Street, 11th Floor, Rosslyn, VA 22209 (Counsel for Gulf Communications Partnership).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 94-155, adopted December 15, 1994, and released December 27, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–32273 Filed 12–30–94; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94-156; RM–8564]

Radio Broadcasting Services; Hawesvillle, Kentucky and Tell City, Indiana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WLME, Inc., proposing the substitution of Channel 246A for Channel 289A at Hawesville, Kentucky, and the modification of Station WKCM-FM's license accordingly. To accommodate the substitution, petitioner also proposes the substitution of Channel 289A for Channel 245A at Tell City, Indiana, and the modification of Station WXSC(FM)'s construction permit accordingly. An engineering analysis has determined that Channel 246A can be allotted to Hawesville, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.7 kilometers (2.3 miles) northeast at petitioner's licensed site. The coordinates for Channel 246A at Hawesville are North Latitude 37–55–33 and West Longitude 86–43–19.

DATES: Comments must be filed on or before February 17, 1995 and reply comments on or before March 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John J. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, D.C. 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 94-156, adopted December 15, 1994, and released December 27, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the

FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Additionally, Channel 289A can be allotted to Tell City, Indiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) south in order to avoid short-spacings Station WASE(FM), Channel 288A, Fort Knox, Kentucky, and to the licensed and application sites of Station WQNF(FM), Channel 290A, Valley Station, Kentucky. The coordinates for Channel 289A at Tell City are North Latitude 37–51–12 and West Longitude 86–43–14.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–32274 Filed 12–30–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–143]

Television Broadcasting Services: Albion, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to allot television Channel 24 to Albion, Nebraska, in order to permit Citadel Communications Co., Inc. to amend its pending application (File No. BPCT-930726KH) for Channel 18 in Albion to specify Channel 24 without loss of cut-off protection. This would enable the FCC to grant both this application and the mutually exclusive application for Channel 18 filed by Fant Broadcasting of Nebraska, Inc. (File No.BPCT–931115KF). In the event any party expresses an interest in applying for a UHF channel in Albion, the FCC is prepared to allot Channel 40 to accommodate this interest. The reference coordinates for Channel 24 at Albion, Nebraska, are 41–55–48 and 98–17–23.

DATES: Comments must be filed on or before February 13, 1995, and reply comments filed on or before February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 94–143, adopted December 1, 1994, and released December 5, 1994. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 m Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C., 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–32275 Filed 12–30–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, and 396

[FHWA Docket No. MC–89–5]

RIN 2125–AC27

Weight Threshold Adjustment for Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking; closing of public docket.

SUMMARY: The FHWA is withdrawing its advance notice of proposed rulemaking (ANPRM) addressing the commercial motor vehicle weight threshold for the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs). The comments received in response to the ANPRM provided no significant evidence to support amending the current regulations. The definition of ''commercial motor vehicle'' will remain unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, Office of Motor Carrier Standards, (202) 366–2981, or Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On February 17, 1989, the FHWA published an ANPRM in which comments were requested on whether the FHWA should continue to use its current gross vehicle weight rating (GVWR) criterion in the definition of ''commercial motor vehicle'' found in 49 CFR 390.5 of the FMCSRs. 54 FR 7224. The FMCSRs apply to vehicles in interstate commerce having a GVWR or a gross combination weight rating (GCWR) of greater than 10,000 pounds (as well as certain vehicles transporting passengers and hazardous materials not addressed in the ANPRM). Comment was also sought on weight thresholds under State law. The ANPRM was issued expressly in response to a petition from the Delaware Department of Public Safety asking that State laws and regulations which apply only to commercial motor vehicles (CMVs) having a GVWR or a GCWR in excess of 26,000 pounds be considered compatible with the FMCSRs for purposes of the Motor Carrier Safety Assistance Program (MCSAP). Federal grant funds under MCSAP may be withheld from States with incompatible laws affecting either interstate or intrastate commerce.

The FHWA posed various questions in the ANPRM in regard to changing the weight criterion, including whether the threshold should be raised and whether factors other than the GVWR should be included in the definition of commercial motor vehicles as found in 49 CFR 390.5. Noting the higher accident rate for vehicles with a GVWR above 26,000 pounds than for those below, the FHWA further stated it was particularly interested in receiving accident and enforcement data from the various States and local governments, some of which apply the higher threshold. The FHWA also requested that commenters submit any other information available concerning the

safety ramifications of a change in the weight threshold.

In the time since the ANPRM was published, the FHWA published a separate rulemaking which settled the weight threshold issue for purposes of intrastate commerce. 57 FR 40946 (codified at 49 CFR Part 350 appendix C). State motor carrier safety laws which apply in intrastate commerce only to vehicles with a GVWR or GCWR greater than 26,000 pounds are deemed compatible with the FMCSRs. States with such laws may remain eligible participants in the MCSAP.

The weight threshold issue as it applies to interstate commerce, and the rulemaking docket on this issue, however, have remained open. The FHWA received 164 comments to the ANPRM. Eight additional comments on the issue were received in response to a notice published on February 7, 1992, requesting comments on Department regulations which impede economic growth, or are obsolete, redundant, or burdensome. 57 FR 4744, FHWA Docket No. 93–32. Of the 172 comments received, 158 supported raising the weight threshold to 26,001 pounds. Fourteen commenters opposed changing the definition of CMV as contained in the FMCSRs. Virtually none of the commenters provided substantive responses to the questions posed in the ANPRM. Except in the most general terms, there were no discussions of potential impacts on highway safety which could result from increasing the weight threshold.

For example, many commenters stated, without empirical evidence, that the threshold should be higher because the lower threshold imposes an undue economic burden with a minimal safety benefit. Two commenters did state that vehicles with a GVWR of 26,000 pounds or less are involved in less than one-sixth of the highway fatalities involving CMVs. Beyond this, the comments contained very little of the type of accident and enforcement data sought in the ANPRM. Some commenters noted anecdotally that smaller vehicle operations are usually relatively limited and secondary to another commercial purpose.

The FHWA believes that the data submitted to FHWA Docket No. MC–89–5 are insufficient at this time to support a change in the weight threshold criterion in the definition of CMV. Therefore, a CMV will continue to be defined in the FMCSRs as a vehicle with a GVWR or a GCWR of greater than 10,000 pounds. Though no rulemaking action is contemplated at this time in regard to the weight threshold, the FHWA will nevertheless incorporate the comments to the February 17, 1989, ANPRM in the agency's comprehensive zero-base research effort, intended to develop a performance-based regulatory system that will best enhance commercial motor vehicle safety.

In a related notice published elsewhere in today's **Federal Register**, the FHWA grants the States three years to adopt and enforce motor carrier safety laws and regulations having the same effect as the FMCSRs, at the 10,001 pound threshold for vehicles in interstate commerce, or be subject to the loss of MCSAP funding.

Rulemaking Analyses and Notices

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

The issues raised in the 1989 ANPRM were identified as significant under the DOT regulatory policies and procedures in the Department's semiannual regulatory agenda because of their potential impact on the motor carrier industry. This notice withdrawing the ANPRM has been reviewed by the Office of Management and Budget under Executive Order 12866.

In withdrawing the ANPRM, the FHWA has concluded that the benefits of complying with the current definition of ''commercial motor vehicle'' found in 49 CFR 390.5 continue to outweigh the costs of compliance, so the weight threshold in this definition remains unchanged. Therefore, this action will have little, if any, economic impact on the motor carrier industry because it does not alter any existing regulations. As a result, a full regulatory evaluation has not been prepared.

The FHWA recognizes, however, that one consequence of retaining the current weight threshold is that the FMCSRs are applicable to more motor carriers than if the FHWA had gone forward with a rulemaking to raise the weight threshold in the definition of CMV found in 49 CFR 390.5. Currently, a number of States do not regulate commercial motor vehicles having a gross vehicle weight rating of less than 26,001 pounds. These States must therefore enact legislation or adopt regulations necessary to ensure that their rules are compatible with the FMCSRs in order to remain in compliance with the requirements of MCSAP. Therefore, in a notice published elsewhere in today's **Federal Register**, the FHWA provides States three years in which to adopt and enforce motor carrier safety regulations that have the same effect as the FMCSRs and that apply to all CMVs used in interstate commerce with a gross vehicle weight rating of 10,001 or more pounds.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency evaluated the effects of this action on small entities. The result of withdrawing the 1989 ANPRM is that the CMV weight threshold provision, included in the FMCSRs since 1988, remains unchanged; thus the scope of the FMCSRs is unchanged by this action. The FHWA estimates that interstate motor carrier laws in eight States remain incompatible with this Federal weight threshold definition. Therefore, these eight States risk the loss of funding under the Motor Carrier Safety Assistance Program. States, however, are not included within the definition of ''small entity'' set forth in 5 U.S.C. 601. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Nothing in this document preempts any State law or regulation, and no new regulatory requirements are imposed by this action. Thus, this withdrawal raises no additional federalism issues.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this document for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not

have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390, 391, 392, and 396

Highway Safety, Highways and Roads, Motor carriers, Reporting and recordkeeping requirements.

(49 U.S.C. app. 2505; 49 U.S.C. 3102; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 22, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–32311 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–22–P

Publication date	Vol. 50 FR page numbers	CFR part	File code*	Regulation title	End of comment period	Effective date
08/26/94	44097–44109	412, 413, 414	BPD–763–P	Medicare Program; End Stage Renal Disease (ESRD) Payment Exception Requests and Organ Procurement Costs.	10/25/94	
08/26/94	44151–44152		OPL–001–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.		
09/01/94	45330–45524	412, 413, 466, 482, 485, 489.	BPD–802–FC	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1995 Rates.	10/31/94	10/01/94
09/06/94	46056–46057		BPO–117–GN	Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During FY 1994.		09/06/94
09/07/94	46258–46263		BPO–123–GNC	Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During FY 1995.	10/07/94	10/01/94
09/08/94	46500–46517	405, 482, 485	BPD–646–IFC	Medicare and Medicaid Programs; Conditions of Coverage for Organ Procurement Organizations.	11/07/94	10/11/94
09/23/94	48805–48811	435, 436	MB–052–IFC	Medicaid Program; Outstation Intake Locations for Certain Low-Income Pregnant Women, Infants, and Children Under Age 19.	11/22/94	10/24/94
09/23/94	48811–48825	456	MB–050–F	Medicaid Program; Drug Use Review Program and Electronic Claims Management System for Outpatient Drug Claims.		10/24/94
09/27/94	49249–49251		ORD–069–N	Medicaid Program; Demonstration Proposals Pursuant to Section 1115(a) of the Social Security Act; Policies and Procedures.		
09/30/94	49826–49834	405, 410, 411, 413, 494.	BPD–724–F	Medicare Program; Medicare Coverage of Screening Mammography.		10/01/94
09/30/94	49834–49843	417	OMC–009–FC	Medicare Program; Qualified Health Maintenance Organizations: Technical Amendments.	11/29/94	10/31/94

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Proposed Rule; F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; N—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling; IFC—Interim Final Rule with Comment Period.

Addendum V—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 71; section 80–2 Outpatient Diabetic Education Programs. NEW IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: Services Furnished on or After 09/22/94.

Section 80–2, Outpatient Diabetic Education Programs.— This section has been added to reflect coverage of outpatient diabetic education programs.

80–2 OUTPATIENT DIABETIC EDUCATION PROGRAMS

An outpatient hospital diabetic education program is a program which educates patients in the successful self-management of diabetes. An outpatient diabetic program includes education about performance of frequent self-monitoring of blood glucose, education about diet and exercise, an insulin treatment plan developed specifically for the patient who is insulin-dependent, and motivation to use the skills learned to enable self-management. Education programs should identify themselves as programs for non-insulin patients, insulin-dependent patients, or both.

Outpatient hospital diabetic education programs may be covered under Medicare provided the services are furnished under a physician's order by the provider's personnel and under medical staff supervision to individuals who are registered patients of that provider. The services must be closely related to the care and treatment of the individual patient and must provide the patient with essential knowledge that aids in the patient's active participation in his/her own treatment and the skills that enable self-management.

Do not substitute formally structured education programs for the more traditional and generally effective instruction included as a part of the basic care and treatment furnished to the patient by the health care professional.

The overall goal of outpatient hospital diabetic education programs is self-management of the disease, and each program must be sufficiently flexible to meet the individual needs of the patient. (This does not preclude some sessions of the programs to be given on an outpatient group basis.) The individual plan of care must indicate at a minimum the goals for the individual patient and how these goals will be realized.

Not all diabetic patients are eligible to participate in these programs. In general, the kinds of patients that are likely to be suitable candidates for outpatient education programs are newly diagnosed diabetics and/or unstable diabetics (e.g., a long-term diabetic with current management problems).

Entrance into these programs is by physician referral only. Self-referral is not covered. The duration of these programs should be sufficient to meet the goals of self-management within the timeframe indicated in the plan of treatment. It is not expected that any given patient could be eligible to reenter an education program unless new conditions warrant it.

After the intermediary determines that a program may be covered, the intermediary may request additional documentation to make a claims determination.

[FR Doc. 94–32295 Filed 12–30–94; 8:45 am]

BILLING CODE 4120–03–P

Public Health Service

Office of the Assistant Secretary for Health; Availability of Grants for Minority Community Health Coalition Demonstration Projects.

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, USPHS, DHHS.

ACTION: Notice of Availability of Funds and Request for Applications for Minority Community Health Coalition Demonstration Project Grants (Coalition Outreach Grants).

AUTHORITY: This program is authorized under section 1707(d)(1) of the Public Health Service Act, as amended in Public Law 101–527.

PURPOSE: The OMH announces the availability of grants to provide support to minority community health coalitions to develop, implement, and conduct demonstration projects which coordinate integrated community-based screening and outreach services and include linkages for access and treatment, to minorities in high risk, low income communities. These projects are to address socio-cultural and linguistic barriers to care and should have the potential for replication in similar communities.

APPLICANT ELIGIBILITY: Eligible applicants are public and private nonprofit organizations which will serve as the grantee organization for a coalition which has a history of OMH coalition grant support. This means prior support under: the Minority Community Health Coalition Demonstration Grant Program; the Minority Male Demonstration Grant Program (Intervention or Coalition Development); the Hispanic/Latino Community Health Coalition Development Project Grants; and the OMH/HRSA AIDS Coalition grants funded under the Rural Health Outreach for AIDS Education grants and Health Care Services for Residents of Public Housing. In most cases the applicant organization will be the same organization that served as the grantee on the original OMH grant. However, in a few instances: (1) The coalition has become a free standing entity, or (2) another member of the coalition has been designated to serve as the lead, grantee agency. In this case, the application must include a letter from the original grantee organization verifying that the new applicant organization is a member of the coalition and is now designated to serve as lead for the same coalition which received prior OMH support. Only one application shall be submitted on behalf of any eligible coalition.

Applicant coalitions must include a health care facility such as a community health center, migrant health center, health department or medical center. The coalition should have the capacity to plan and coordinate services which reduce existing socio-cultural barriers. Specifically, the coalition will be called upon to carry out screening, outreach and enabling services to ensure that clients follow up with treatment and treatment referrals.

In order to verify that a viable coalition exists, the following must be provided: (1) The grant number of the prior OMH grant, (2) a concise narrative history of the existing minority community health coalition; (3) a copy of the coalition's mission statement and organizational chart; current membership roster indicating the race/ethnicity and roles of each coalition member organization; and (4) a dated copy of the founding bylaws or memorandum of agreement, and recent minutes or equivalent documents as proof that the coalition has been viable and operational over a sustained period.

Background

In prior fiscal years, the Office of Minority Health has focused on the establishment and enhancement of minority coalitions. Many coalition-conducted interventions included provision of health assessments and screening as an approach to improving the health of the targeted communities. Consistent with the broader public health experience, OMH found that many programs needed to go beyond provision of screening to provision of more systematic follow-up for access and treatment. Therefore, in FY 1995, OMH's coalition grants will focus on projects that address socio-cultural barriers and that will demonstrate effective coordination of integrated community-based screening, outreach and other enabling services thus insuring linkage to treatment or other indicated follow-up.

ADDRESSES/CONTACTS: Applications must be prepared on Form PHS 5161–1 (Revised July 1992). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD, 20852, (telephone 301/594–0758). Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content for the Coalition Grants may be obtained from Ms. Joan S. Jacobs. She can be reached at the Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, (telephone 301/594–0769) or by Interest E-mail [Jacobs OASH.SSW.DHHS.GOV].

In addition, OMH Regional Minority Health Consultants (RMHCs) are available to provide technical assistance. A listing of the RMHCs and how they may be contacted in provided in the grant application kit. Applicants also can contact the OMH Resource Center (OMH/RC) at 1–800/444/6472 for health information and generic information on preparing grant applications.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Officer by March 6, 1995. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private meeting postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

AVAILABILITY OF FUNDS: It is anticipated that in Fiscal Year 1995, the Office of Minority Health will have approximately $2.0 million available to support approximately 14 awards of up to $150,000 each under the Minority Community Health Coalition Grant Program.

PERIOD OF SUPPORT: Support may be requested for a total project period not to exceed 3 years. Non competing continuation awards will be made subject to satisfactory performance and availability of funds.

PROJECT BUDGETS: Budgets of up to $150,000 total direct and indirect costs per year may be requested to cover: The cost of personnel; consultants; support services; materials; and travel. Project budget must include travel for one project staff member to meet with the OMH Coalition Grant Program Director in Washington, DC. Funds may not be used for building alternations, renovations, or to purchase equipment except as may be acceptability justified in relation to conducting the project activities. Funds are to be used to

support outreach, screening, case management and other enabling services such as transportation, and child care. Grant funds are not intended to be used for medical treatment.

AWARD CRITERIA: Funding decisions will be determined by the Office of Minority Health and will take under consideration: the recommendations/ratings of review panels as well as program balance which includes geographic and race/ethnicity distribution, and health problem areas having the greatest impact on minority health in terms of causes of death.

REVIEW OF APPLICATIONS: Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement, or nonconforming will be returned without comment. Each coalition may submit no more than one proposal under this announcement. If a coalition submits more than one proposal, all will be deemed ineligible and returned without comment. Applications judged to be complete, conforming, and responsive will be reviewed for technical merit in accordance with PHS policies.

Applications will be evaluated by federal and non-federal reviewers chosen for their expertise in minority health, experience with similar projects, and their understanding and special knowledge of outreach and screening programs.

Applicants are advised to pay close attention to program guidelines, and the general and supplemental instructions provided in the application kit. Applications will be reviewed and evaluated for technical merit and consistency with the requirements of this announcement. Of specific importance will be the criteria found in the supplemental instructions and program guidelines under these listed headings. The percentage weight for each section appears in the parentheses after each heading: Background (20%); Goals and Objectives (15%); Methodology (45%); and Evaluation (20%).

DEFINITIONS: For the purpose of this grant program, the following definitions are provided:

(1) Community—A defined geographical area in which persons live, work, and play and characterized by: (a) Formal and informal leadership structures for the purpose of maintaining order and improving conditions; and (b) its capacity to serve as a focal point for addressing societal needs including health needs.

(2) Minority Community Coalition—An entity comprised of organizations/institutions which have come together in a minority community for the purpose of collaborating on specific concerns, seeking coordination of related services, and resolution of those concerns. The coalition must include a health care facility such as a community or migrant health center, health department, or medical center, capable of providing treatment services. The coalition must have a formalized structure and process for member organizations to work together.

(3) Enabling services—Services, such as outreach, case management, child care, and transportation, which enable clients to effectively follow-up on screening findings and to access health care services.

(4) Socio-cultural barriers—Examples of socio-cultural barriers are: cultural differences between individuals and institutions; cultural differences of beliefs about health and illness, customs and lifestyles; cultural differences in languages or nonverbal communication styles; cultural differences in organizational policies and practices that create obstacles to service delivery.

(5) Minority populations—As defined by the Office of Management and Budget (OMB) Circular #15, include: Asian/Pacific Islanders; Blacks; Hispanics; and Native American/Alaska Native.

SUPPLEMENTARY INFORMATION: This announcement for Fiscal Year 1995 Coalition Outreach Grants focuses on the six health problems identified by the Secretary's Task Force on Black and Minority Health as having the greatest impact on minority health in terms of causes of death: (1) Cancer; (2) cardiovascular disease and stroke; (3) chemical dependency; (4) diabetes; (5) homicides; and (6) infant mortality. Additional areas of concern under this announcement include HIV infection, access to and financing of health care, health professions personnel development, data collection and analysis, and surveillance. Proposals should address these problems in a culturally competent and linguistically appropriate manner.

These health priorities also are addressed in the Health Objectives for the National, Healthy People 2000, which the Public Health Service (PHS) is committed to achieving. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–00100474–0) 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).

STATE REVIEWS: EO 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) 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. All comments from a State office must be received by 60 days after the application deadline by the Office of Minority Health's Grants Management Officer. A list of addresses of the SPOCs is enclosed with the application kit material.

PROVISION OF SMOKE-FREE WORKPLACE AND NON-USE OF TOBACCO PRODUCTS BY RECIPIENTS OF PHS GRANTS: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS: This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a 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: (a) A copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate State or local health agencies.

The Catalog of Federal Domestic Assistance number is 93–137.

Dated: December 21, 1994.

Audrey F. Manley,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 94–31975 Filed 12–29–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; Computer Matching Programs (SSA/States Wage, Unemployment Compensation (UC) Files, Match Numbers 1140 and 1142)

AGENCY: SSA, HHS.

ACTION: Notice of computer matching programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act of 1979 (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. The Computer Matching and Privacy Protection Amendments of 1990, set out in section 7201 of Pub. L. 101–508, further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Make written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain their Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that these computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: December 15, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Programs, States' Income Eligibility Verification System Records With the Social Security Administration (SSA)

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Programs

Section 1137 of the Social Security Act (the Act) requires individual States to have in effect an income and eligibility verification system which meet certain requirements. Among other requirements, such a State verification system must provide for certain exchanges of information when relevant information may be of use in establishing or verifying eligibility or benefit amounts under benefit programs affected by the statute.

The purpose of these matching programs is to enable SSA to implement procedures consistent with requirements of section 1137 of the Act. The agreements with the States will describe the conditions under which SSA and the States agree to disclose information to each other relating to the eligibility for, and payment of, Social Security and Supplemental Security Income (SSI) benefits.

C. Authority for Conducting the Matching Programs

Section 1137 of the Act (a)(4)(B) (42 U.S.C. 1320b-7).

D. Categories of Records and Individuals Covered by the Matching Programs

SSA will provide the States with a finder file containing names and other identifying information of beneficiaries/recipients from SSA's benefit rolls. This information will be matched by each State with its wage and unemployment compensation files and a reply file of matched records will be furnished to SSA. Upon receipt of a State's reply file, SSA will match the names from the State file with the names on SSA's records to ensure that the State data pertain to the relevant Social Security or SSI recipients.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching programs will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–32258 Filed 12–30–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Receipt of Applications for Permit.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–797735

Applicant: ENSR Consulting and Engineering, Florence, Alabama.

The applicant requests a permit to take (trap, survey, and monitor) the Alabama beach mouse (*Peromyscus polionotus ammobates*), Choctawahatchee beach mouse (*Peromyscus polionotus allophrys*),

Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) and southeastern beach mouse (*Peromyscus polionotus niveiventris*) throughout their respective ranges in the southeastern United States. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–797732

Applicant: Soil and Environmental Consultants, Inc., Raleigh, North Carolina.

The applicant requests a permit to take (collect dead shells for identification purposes) the dwarf wedge mussel, (Alasmidonta heterodon) in North Carolina. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–797738

Applicant: Fairchild Tropical Garden, Miami, Florida.

The applicant requests a permit to remove or reduce to possession on federal lands in Puerto Rico, Carribean National Forest the following endangered plants:

Callicarpa ampla
Lepanthes eltorensis
Solanum drymophilum
Ternstroemia luquilllensis
Ilex sintenisii
Pleodendron macranthum
Styrax portoricensis
Ternstroemia subsessilis

These activities are proposed for the purpose of enhancement of survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345. All data and comments must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7081.

Dated: December 27, 1994.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 94–32261 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[ES–030–5–1430–01]

Realty Action: Sale of Public Land in Perry County, Missouri

ACTION: Realty Action: Recreation and Public Purposes Classification-MOES–032220.

SUMMARY: The following land has been classified as suitable for disposal to the Missouri Department of Conservation under authority of the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended, 43 U.S.C. 869:

Fifth Principal Meridian, T.34N., R.14E.

Sec. 20, Lot #5 Containing 0.70 acres.

The purpose of this conveyance is to provide additional protection of Tower Rock for its scenic and natural history values by including it in the Tower Rock Natural Area.

The patent, when issued, will be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States. Classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

COMMENTS: On or before February 17, 1995, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION: Detailed information concerning this application is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Dated: December 21, 1994.

Gary D. Bauer,

District Manager.

[FR Doc. 94–32193 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

Draft Comprehensive Management and Use Plan/EIS, Jaun Bautista de Anza National Historic Trail; Notice of Management Proposals and Notice of Availability of Draft Environmental Impact Statement

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 has prepared an environmental impact statement (EIS) and Comprehensive Management and Use Plan for the Juan Bautista de Anza National Historic Trail.

The *Draft Comprehensive Management and Use Plan/Environmental Impact Statement* presents a proposal and three alternatives for the management, use, and development of the Juan Bautista de Anza National Historic Trail. The proposal (alternative D) calls for marking the historic route, identifies an auto route, and envisions a continuous multi-use recreational retracement trail. The National Park Service (NPS) will take an active role in administrative oversight of the trail by helping protect a continuous trail right-of-way and historic, cultural, and natural resources associated with the trail. The NPS will certify eligible sites and segments and provide leadership for state, regional, and local governments, private landowners, organizations, corporations, and individuals to create a continuous and unified trail. The NPS will form a partnership with a non-profit trail association for the Anza Trail under the auspices of Heritage Trails Fund. Interpretive programs and a system of wayside exhibits will enhance visitor opportunities along the route. A planned promotional and tourism program will increase visitor awareness of American Indian and Spanish Colonial culture and history related to the 1775–76 Anza colonizing expedition to San Francisco Bay.

The other alternatives included in this document include a Single Theme (alternative A), Multi-theme (alternative B), and Broad Outreach (alternative C). Because action was legislated, a pure no action alternative is not considered. Alternative A most closely resembles the no action alternative required in an Environmental Impact Statement (EIS). Alternative A would limit trail recognition and resource protection to federal lands and state parks and focus interpretation on only the 1775–76 Anza trek. Trail uses would be limited to those of the original expedition. Management would emphasize volunteers, and the National Park Service would play a minor role. Alternative B is similar to the proposal but would not have the promotional aspects. Alternative C is similar to the proposal, but would broaden the interpretive themes to the overlay of history along the trail route from prehistory to the present and would include a list of points of interest associated with the trail.

The environmental consequences of the proposed action and alternatives are addressed at a level suitable to a management policy plan. This programmatic EIS considers impacts to cultural resources, natural resources, and the socio-economic environment. More detailed environmental analysis for specific trail projects is expected to follow in tiered environmental documents.

SUPPLEMENTARY INFORMATION: The public review period for this document will end 60 days after the publication of the Notice of Availability in the **Federal Register**. Comments will be accepted until March 1, 1995. All review comments must be received by that time and should be addressed to Regional Director, Western Region, Attention Meredith Kaplan, National Park Service, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372.

For copies of the Comprehensive Management and Use Plan/EIS or further information on the documents, please contact the above address or telephone 415/744–3968. Copies of the documents are also available at national parks along the route and county park and planning agencies and libraries along the route.

Dated: December 16, 1994.

Ray Murray,

Regional Director, Western Region.

[FR Doc. 94–32229 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–70–P

General Management Plan; Kaloko-Honokohau National Historical Park; Record of Decision

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the National Park Service, Department of the Interior, has approved a Record of Decision (ROD) for the General Management Plan/Environmental Impact Statement for the Kaloko-Honokohau National Historical Park, Hawaii County, Hawaii.

The National Park Service will implement the proposed plan as identified in the Final General Management Plan/Environmental Impact Statement, issued in October, 1994.

Copies of the Record of Decision may be obtained either from the Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani St. # 14, Kailua, Kona, HI 96740, or the Pacific Area Office, 300 Ala Moana Blvd., Suite 6305, P.O. Box 50165, Honolulu, HI, 96850.

Dated: December 13, 1994.

Stephen S. Crabtree,

Regional Director, Western Region.

[FR Doc. 94–32236 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–70–P

Notice of Availability of Final Comprehensive Management Plan/Development Concept Plan and Final Environmental Impact Statement for City of Rocks National Reserve, Idaho

AGENCY: National Park Service, Interior.

ACTION: Notice.

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, Department of the Interior, has prepared a Final Comprehensive Management Plan/Development Concept Plan/Environmental Impact Statement (FCMP/DCP/EIS) that describes and analyzes a proposal and two alternatives for the management, use, and development of City of Rocks National Reserve, Cassia County, Idaho. The FCMP/DCP/EIS is two documents bound together in one volume—the FCMP/DCP which describes the proposal in detail; and the FInal EIS, which presents the proposal and two alternatives, along with the analysis of the environmental consequences of the respective implementations.

The Draft Comprehensive Management Plan/Development Concept Plan/Environmental Impact Statement was released for public review on November 30, 1993 (58 FR 228), and the public comment period closed February 1, 1994. During this period, three public meetings were held; written comments were also received. The FCMP/DCP/EIS contains responses to the comments received and modifications to the text as needed in response to the comments.

The proposal, which constitutes the comprehensive management plan for the reserve, calls for the preservation and interpretation of exceptional and important natural and cultural resources and the management of recreational use to protect and maintain the reserve's scenic quality. The plan's focus is on remnants of the California Trail, distinctive rock outcrops and associated habitats, and a historic rural setting reminiscent of the American West, while accommodating the traditional use of livestock grazing, trailing, sport hunting, and recreation. Uses would be directed to different zones to minimize conflicts among potentially incompatible activities. Grazing and recreational use would be managed to avoid unacceptable degradation of resource values, placing greatest emphasis on protection of historic fabric, natural rock surfaces, habitats for species of special concern, and riparian areas and wetlands. Portions of the reserve would remain in private ownership, and some public land would remain under grazing allotments, where traditional ranching activities would perpetuate the historic rural setting existing at the time of the reserve's establishment. Private commercial and residential development would be regulated by county zoning ordinances and may be limited by the acquisition of interests in lands on an opportunity basis necessary to protect reserve resources. Implementation of the proposal would be a partnership among the National Park Service, the Idaho Department of Parks and Recreation, the Cassia County commissioners, and private landowners.

An overview of changes that have been made in the proposal since the draft plan includes:

(1) The decision on how climbing would occur outside the foreground of the California Trail would be deferred to the climbing management plan;

(2) Some additional areas would be closed to grazing to protect wetland and riparian areas. Some decisions on where grazing would occur would be deferred to the grazing management plan;

(3) Prescriptions for uses of zones, subzones, and areas within the subzones would be eliminated in favor of more general guidance;

(4) The proposed road around the south end of the reserve would be eliminiated;

(5) The Twin Sisters formation would be managed to emphasize resource protection and to exclude active recreational uses, including climbing, picnicking, and camping; and

(6) A Statement of Findings on Wetlands has been added. A more detailed list of changes are in the plan summary and in appendix I.

The alternatives under consideration, in addition to the proposal, include the no-action alternative, which would continue to emphasize unrestricted private use and public recreational use, sometimes to the detriment of exceptional cultural and natural values, and an alternative that would emphasize the preservation and interpretation of the California Trail and the rock outcrops to the exclusion of traditional land use and the historic rural setting.

Major impact topics assessed for the proposed action and alternatives

include the Cultural/Visual Environment, Natural/Visual Environment, and Socioeconomic Environment.

SUPPLEMENTARY INFORMATION: The no-action period on this final plan and environmental impact statement will end 30 days after the Environmental Protection Agency has published a notice of availability of the FCMP/DCP/EIS in the **Federal Register**. For further information, contact: Regional Director, National Park Service, Pacific Northwest Region, 909 First Ave., Seattle, WA 98104–1060, (206) 220–4010.

Copies of the FCMP/DCP/EIS will be available at City of Rocks National Reserve, P.O. Box 169, Almo, ID 83312. Additional copies will be available for inspection at the following locations: Twin Falls Public Library, 434 2nd Street East, Twin Falls, ID; Burley Public Library, 1300 Miller Ave., Burley, ID; Boise Public Library, 715 S. Capital Blvd., Boise, ID; Community Library, Ketchum, ID; Pocatello Public Library, 812 E. Clark, Pocatello, ID; Idaho State University Library, Pocatello, ID; Weber County Library, 2464 Jefferson Ave., Ogden, UT; Whitmore Library, 2197 E. 7000 S., Salt Lake City, UT; Utah State Library, 2150 S. 300 W., Suite 16, Salt Lake City, UT; the Department of the Interior Library and at the National Park Service Public Affairs Office, 1849 C Street NW., Washington, DC; and the National Park Service, Pacific Northwest Regional Office, 909 First Ave., Seattle, WA.

Dated: December 21, 1994.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 94–32231 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–70–M

Public Scoping Session; Golden Gate National Recreation Area; Crissy Field Site Design

SUMMARY: Notice is hereby given in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) that a public scoping workshop will be held at Building A, Fort Mason Center on Thursday, January 12, 1995 from 7:00–9:00 pm. (p.d.t.) in San Francisco. This meeting will constitute a public scoping session for the preparation of a Site Design Plan and environmental document. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the National Park Service is preparing an environmental document to address the Crissy Field Site Design. At this time, the National Park Service has not determined whether an Environmental Assessment or Environmental Impact Statement will be prepared, however this meeting will serve as the scoping session for either document.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft Site Design Plan and environmental document are expected to be available for public review in May 1995. The final plan and environmental document are expected to be completed in August 1995.

For additional information on these items, contact the General Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

The main agenda items at the public workshop will be a presentation of the approved concepts and actions for the Crissy Field planning area from the Presidio General Management Plan Amendment and Environmental Impact Statement (GMPA/EIS); identification and discussion of issues related to this planning process, public comment to date, information about the environmental setting of the site, and preliminary concepts for alternatives.

The approved GMPA concept for Crissy Field includes restoration of wetlands and the historic airfield; expansion of natural dunes and improved access to the shoreline; provision of parking and access to support boardsailing and other recreational activities, and an improved entrance to this park site. This phase of planning will take this programmatic concept to a further level of detail for implementation.

The public workshop announced above will be the first of several workshops and meetings conducted over the next six months by the National Park Service as part of the planning process for the Crissy Field area of the Presidio.

Statements of issues and concerns for the purposes of scoping will be accepted through February 28, 1995.

The meeting is open to the public. Persons who cannot attend the workshop, but wish to receive handouts that will be available at the meeting, or other additional information should contact the Park Planner, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4137.

Minutes of the meeting will be available to the public. For copies of the minutes, contact the Office of the Park Planner, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 16, 1994.

Ray Murray,

Regional Director, Western Region.

[FR Doc. 94–32230 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463). Meeting Date and Time: January 26, 1995; 2 p.m. until 6 p.m. Address: Hampton Inn, 4646 Constitution, Baton Rouge, Louisiana.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Alan M. Hutchings, Acting Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: December 21, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–32266 Filed 12–30–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–724; Preliminary]

Manganese Metal From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of manganese metal,[3 4] provided for in subheadings 8111.00.45 and 8111.00.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 8, 1994, a petition was filed with the Commission and the Department of Commerce by Elkem Metals Company, Marietta, OH, and Kerr-McGee Chemical Corporation, Hamilton, MS, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of manganese metal from China. Accordingly, effective November 8, 1994, the Commission instituted antidumping investigation No. 731–TA–724 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 17, 1994 (59 F.R. 59419). The conference was held in Washington, DC, on November 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 23, 1994. The views of the Commission are contained in USITC Publication 2844 (December 1994), entitled ''Manganese Metal from the People's Republic of China: Investigation No. 731–TA–724 (Preliminary).''

By order of the Commission.

[2] Commissioner Crawford dissenting.

[3] As defined by Commerce, manganese metal is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron, and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms, and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines.

[4] Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the alleged LTFV imports from China.

Issued: December 27, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–32237 Filed 12–30–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–675; Final]

Saccharin From China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 23, 1994, following a preliminary determination by the Department of Commerce that imports of saccharin from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 20, 1994 (59 F.R. 37056). The hearing was held in Washington, DC, on November 10, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 22, 1994. The views of the Commission are contained in USITC Publication 2842 (December 1994), entitled ''Saccharin from China: Investigation No. 731–TA–675 (Final).''

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Rohr and Commissioner Newquist dissenting.

Issued: December 22, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–32238 Filed 12–30–94; 8:45 am]

BILLING CODE 7020–20–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have became totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,382; Steuben Foods, Inc., Elma, NY

TA–W–30,459; Borg Textile Cop., Rossville, GA

TA–W–30,314; Copes-Vulcan, Inc., Lake City, PA

TA–W–30,431; Boben Manufacturing Co., Boonville, MO

TA–W–30,407; John H. Harland Co., El Paso, TX

TA–W–30,363; Teledyne Pines Div., Teledyne Industries, Aurora, IL

TA–W–30,347; Signature Cloth Co., Inc., Clifton, NJ

TA–W–30,129; Dietrich Industries, Inc., Blairsville, PA

TA–W–30,337; Aeronca, Inc., Middletown, OH

TA–W–30,284; Lasky Co., Millburn, NJ

TA–W–30,292; Fuel Systems Textron, Zeeland, MI

TA–W–30,235; Hazleton Pumps, Inc., Hazleton, PA

TA–W–30,399; Continental EMSCO Co., Houston, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,316; Electric Apparatus Service Co., Inc., Lester, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,488; Polystyrene, Inc., Florence, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,480; Venezuelan Line (C.A. Venezuolana De Navegacion), Miami, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,413; A.P. Green Industries, Inc., Hitchins, KY

Corporate decision was made to consolidate production and thus transfer work from the Hitchins, KY plant to other domestic locations.

TA–W–30,401; Miller Group, Inc., Pottsville Bleach & Dye, Independence Plant, Schuylkill, PA

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,231; Technetwork, Inc., Ranier, OR

Almost all of the sales of diskett production machinery by the subject firm are for the export market and thus are not impacted by the imports of the product.

TA–W–30,308; Wilrig (USA), Inc., Lafayette, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,311; Coltec Industries, Menasco Aerosystems Div—Calif. Operations, Burbank, CA

The predominate reason the separations of workers and ceasing of production was due to a decrease in demand from the subject firm's products from domestic manufacturers of military aircraft.

TA–W–30,352; Goetze Gasket Co., LaGrange, GA

Parent Co close the LaGrange plant and transferred the overwhelming majority of LaGrange production to an affiliated domestic plant.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,289 and TA–W–30,289A; Baytech, Inc., Midland, TX Big Lake, TX

A certification was issued covering all workers separated on or after August 22, 1993.

TA–W–30,190; Houbigant, Inc., Ridgefield, NJ

A certification was issued covering all workers separated on or after September 26, 1993.

TA–W–30,385; R.C.K. Welding, Inc., Gilbert, PA

A certification was issued covering all workers separated on or after September 27, 1993.

TA–W–30,346; Stapleton Garment Co., Thomson Sample Room, Thomson, GA

A certification was issued covering all workers separated on or after September 12, 1993.

TA–W–30,360; BASF Corp., Nylon Hosiery Dept., Lowland, TN

A certification was issued covering all workers separated on or after September 19, 1993.

TA–W–30,387; Merit Energy Co., Dallas, TX

A certification was issued covering all workers separated on or after September 15, 1993.

TA–W–30,178; Tube-Line Co., Union, NJ

A certification was issued covering all workers separated on or after July 27, 1993.

TA–W–30,373; Sung Sportswear, Inc., Stroudsburg, PA

A certification was issued covering all workers separated on or after September 1, 1993.

TA–W–30,394; Champion International Corp., Klickitat, WA

A certification was issued covering all workers separated on or after September 27, 1993.

TA–W–30,351; Main Street Fashions, Roseta, PA

A certification was issued covering all workers separated on or after September 13, 1993.

TA–W–30,283; Mary Fashions, Inc., Bath, PA

A certification was issued covering all workers separated on or after August 23, 1993.

TA–W–30,353; E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging, Rochester, NY

A certification was issued covering all workers separated on or after July 11, 1993.

TA–W–30,367; National Medical Care, Medical Products Div., McAllen, TX

A certification was issued covering all workers separated on or after September 19, 1993.

TA–W–30,327; Samedan Oil Corp., Midland, TX

A certification was issued covering all workers separated on or after September 9, 1993.

TA–W–30,410; Hoechst Celanese Corp., Coventry, RI

A certification was issued covering all workers separated on or after October 4, 1993.

TA–W–30,339; DG&E/Slocum Limited Partnership, Slocum, TX

A certification was issued covering all workers separated on or after August 23, 1993.

TA–W–30,377; Europa Fashions, Garfield, NJ

A certification was issued covering all workers separated on or after September 15, 1993.

TA–W–30,386; Patti-Jo Fashions, Inc., Mayfield, PA

A certification was issued covering all workers separated on or after September 27, 1993.

TA–W–30,250; Washington Scientific Industries, Inc., Owatonna, MN

A certification was issued covering all workers separated on or after August 17, 1993.

TA–W–30,189; Baxter, Baxter Anesthesia Div., North Reading, MA

A certification was issued covering all workers separated on or after July 27, 1993.

TA–W–30,381; ACE Radio Control, Inc., Higginsville, MO

A certification was issued covering all workers separated on or after August 25, 1993.

TA–W–30,255; Packaging Corp of America, PCA East, Piscataway, NJ

A certification was issued covering all workers separated on or after September 10, 1993.

TA–W–30,391; Exxon Co USA, Exxon Shute Creek Facility, Green River, WY

A certification was issued covering all workers separated on or after August 31, 1993.

TA–W–30,433; IMC Magnetics Corp., Eastern Div., Hauppauge, NY

A certification was issued covering all workers separated on or after October 12, 1993.

Also, pursuant to title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November and December, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00286; Lone Star Industries, Inc., Nazareth Cement Corp., Nazareth, PA

The investigation revealed that criteria (3) and criteria (4) were not met. The investigation findings show that sales or production at the Nazareth plant have not declined. Also, findings show that the employees at the subject plant will be separated because the plant is being sold as a result of reorganization under bankruptcy procedures.

NAFTA–TAA–00274; EFR Corp., Everett, WA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of customers of EFR Corporation revealed that customers did not import logs from Canada or Mexico.

NAFTA–TAA–00276; Lockheed Fort Worth Co., Fort Worth, TX

The investigation revealed that criteria (3) and criteria (4) were not met. The investigative findings show that production declines at the subject plant are related to cutbacks in defense spending. A survey revealed that customers of Lockheed Fort Worth Company did not import aircrafts from Mexico or Canada.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00284; Quadrum Telecommunications, Inc., Arab, AL

A certification was issued covering all workers of Quadrum Telecommunication, Inc., Arab, AL separated on or after December 8, 1993.

NAFTA–TAA–00280; Kerr Corp., Sybron Dental Specialties, Romulus, MI

A certification was issued covering all workers of Kerr Corp., Sybron Dental Specialties Div., Romulus, MI separated on or after December 8, 1993.

NAFTA–TAA–00283; W.R. Grace & Co—Conn Construction Products Div., Wilder, KY

A certification was issued covering all workers of W.R. Grace & Co.—Conn., Construction Productions Div., Wilder, KY separated on or after December 8, 1993.

NAFTA–TAA–00269; Baxter Healthcare Corp., Kingstree, SC

A certification was issued covering all workers engaged in employment related to the production of medical procedure trays at Baxter Healthcare Corp., Kingstree, SC separated on or after December 8, 1993.

NAFTA–TAA–00277; RB & W Corp., Kent Plant, Cleveland, OH

A certification was issued covering all workers of RB & W Corp., Kent Plant, Cleveland, OH separated on or after December 8, 1993.

NAFTA–TAA–00275; Xerox Corp., Oakbrook, IL

A certification was issued covering all workers of Xerox Corp., Oakbrook, IL separated on or after December 8, 1993.

NAFTA–TAA–00271; Curtice Burns Foods, Inc., A Div. of Nalley's Fine Foods, Tacoma, WA

A certification was issued covering all workers of Curtice Burns Foods, Inc., A Div. of Nalley's Fine Foods, Tacoma, WA separated on or after December 8, 1993.

NAFTA–TAA–00273; Continental Apparel Manufacturing Co., Defuniak Springs, FL

A certification was issued covering all workers relating to the assembly of jeans at the Continental Apparel Manufacturing Co., Defuniak Springs, FL separated on or after December 8, 1993.

NAFTA–TAA–00279; ATAPCO—American Trading and Production Co., Bristol, PA

A certification was issued covering all workers engaged in the employment of paper related filing and expanding supplies at ATAPCO—American Trading and Production Co., Bristol, PA separated on or after December 8, 1994.

NAFTA–TAA–00278, NAFTA–TAA–00278A; B; ABEPP Acquisition Corp., DBA Abbott & Co., Marion, OH, North Baltimore, OH, Prospect, OH

A certification was issued covering all workers of ABEPP Acquisition Corp., DBA Abbott & Co., Marion, North Baltimore and Prospect, OH separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of December, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 21, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–32170 Filed 12–30–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 18, 1995, 8:30 a.m. to 5:00 p.m.

Place: NSF, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact: Dr. John B. Scalzi, Program Director, 703–306–1361.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial research.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 28, 1994.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 94–32326 Filed 12–30–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers—Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date/Time: January 18, 1995, 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Conference Room 365.

Type of Meeting: Closed.

Contact Person: Sharon Middledorf and Mary Poats, Engineering Education and Centers Division, National Science Foundation, 4201 Wilson Boulevard, Rm 585, Arlington, VA 22230, (703) 306–1384.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were discussed. If discussions were to open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: December 28, 1994.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 94–32327 Filed 12–30–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Geosciences (1756).

Date and Time: January 17–18, 1995; 8:00 a.m. to 5:00 p.m.

Place: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jarvis L. Moyers (703) 306–1522 and Dr. Sherry O. Farwell (703) 306–1522, Program Directors Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Aerosol Characterization Experiment (ACE–1) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propretary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 28, 1994.

Linda Allen-Benton,

Deputy Director, HRM.

[FR Doc. 94–32329 Filed 12–30–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 95 Funds for Financial Assistance (Grants) To Support Research at Educational Institutions and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 95 funds to support a limited number of research grants to educational institutions. These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 95 ceiling for research grants to educational institutions is approximately $1,050,000.00. Of this amount, approximately $456,000.00 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a two-year period. Proposals for new FY 95 research grants should be submitted between the date of this Notice and February 17, 1995. Proposals received after February 17, 1995 will be considered for FY 95 funding to the extent practicable.

ADDRESS: Nuclear Regulatory Commission. ATTN: Grants Officer, Mail Stop T–7–I–2 Division of Contracts, Office of Administration, Washington, DC, 20555.

FOR FURTHER INFORMATION CONTACT: Shirley Crampton on (301) 415–6589 or Mary Mace on (301) 415–7314.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1994, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice that announced the proposed availability of FY 94 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 95.

Scope and Purpose of This Announcement

Pursuant to Section 31.a and 141.b of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 95 ceiling for these grants is approximately $1,050,000.00 with approximately $456,000.00 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and

safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, e.g., graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Experiments and predictive modeling for thermal stratification, thermal striping and flow-induced vibration in plant fluid systems.

2. Evaluation, modeling, and experiments on phenomena associated with the cooling of molten debris in a reactor vessel lower head and associated lower head failure analyses during a severe accident.

3. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems. Experiments in modeling of passive heat transfer in natural circulation systems.

4. Development of condensation models for systems codes such as RELAP5/MOD3 or TRAC—PFI/MOD2 for two cases: with and without condensible gases.

5. Conduct experimentation and model development of the boron in reactor coolant systems under natural circulation conditions.

6. Development and validation of a standard model of human performance in (a) nuclear power plant operations and maintenance, (b) medical uses of by-product materials, and (c) industrial uses of by-product materials.

7. Effect of digital I&C technology on operator performance, including vigilance, response rate, response accuracy, and completeness.

8. Develop and codify pragmatic, statistically valid methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental and calculation data.

9. Develop methods and comparison of probabilistic risk assessment (PRA) results with operational data and experience.

10. Evaluation and modelling of microstructural and chemistry changes in grain boundaries of irradiated austenitic materials.

11. Development of nondestructive testing methods for in-situ evaluation of reactor vessel material properties and property degradation due to aging, such as fracture toughness, fatigue, residual life, and radiation effects.

12. Determine data requirements to assess system reliability performance to a prescribed goal at a predetermined assurance level.

13. Development of innovative methods for accurate imaging of flaws in thin wall, small diameter tubes.

14. Development of non-intrusive, in-situ condition monitoring and diagnostic methods for detecting and evaluating degradation of electrical insulation materials.

15. Development of methods for predicting and measuring electrochemistry and chemistry in crevices and cracks.

16. Development of and/or validation of models to predict the propagation of seismic ground motion in Central and Eastern United States including the effects of ground motions on the response of NPPs and their site characteristics, taking into consideration uncertainties inherent in such estimates.

17. Development and/or validation of models to explain the quaternary tectonics and seismicity of the Central and Eastern United States (East of 105 degrees W).

18. Development of techniques and QA and QC procedures necessary for rapid bioassay analysis in the event of accidental internal exposure.

19. Studies of volcanism or other disruptive processes or events in the Basin and Range.

20. Development of improved instrumentation or techniques for measuring activity, radiation dose, and dose rates, especially from small radioactive particles, and materials in the environment in concentrations approaching background.

21. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.

22. Validation of approaches to quantitatively assess human health effects of radiation, including new approaches to analyses of human epidemiological studies and experimental animal studies, and investigation of radiation induced effects at the cellular/molecular levels and repairs thereof.

23. Development of, or analysis of the effectiveness of decontamination technologies for land, structures, recycled materials and equipment and estimation of individual comparative costs.

24. Investigations, including natural analogue studies for long-term analyses, of coupling between hydrologic, thermal, chemical, and/or mechanical processes as they affect the simulation of high-level waste repository performance.

25. Development of methods needed for realization of risk-based regulation.

Eligible Applicants

Educational institutions, nonprofit entities, State and Local governments, and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.

3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102 (Revised), Paragraph 6.c). Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A–110, (Attachment M).

The format used for project proposals should give a clear presentation of the

proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of proposal.—To include the term ''research,'' ''study,'' ''conference,'' ''symposium,'' ''workshop,'' or other similar designation to assist in the identification of the project;

Location and Dates for Conferences, Symposium, Workshop, etc.;
Names of Principal Researchers or Participants;
Total cost of Proposal; (Identify Cost by Fiscal Year)
Period of Proposal;
Organization or Institution and Department;
Required Signatures:
Principal Participants:
Name: _____
Date: _____
Address: _____
_____
Telephone No.: _____
Required Organization Approval:
Name: _____
Date: _____
Address: _____
_____
Telephone No.: _____
Organization Financial Officer:
Name: _____
Date: _____
Address: _____
_____
Telephone No.: _____

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas of topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organization shall adhere to the cost principles set forth in OMB Circular A–122. Educational institutions shall adhere to the cost principles set forth in OMB Circular A–21, and state and local government shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

(1) *Salaries*—in proportion to the time or effort directly related to the projects;

(2) Equipment (rental only):

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (Specify)—e.g., supplies or registration fees; Note—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attached negotiated agreement/cost allocation plan); and

(7) *Supporting Documentation.* The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 95 (October 1, 1994 to September 30, 1995). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received after February 17, 1995 will be considered for FY95 funding to the extent practicable.

Funds

For Fiscal Year 95, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately $1,050,000.00 available for funding research grants to educational institutions. Of this amount, approximately $456,000.00 will be available for new research grants in FY95. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a period of two years.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc. will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant applications packages, Standard Form 424, must be requested in writing): U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Mail Stop T–712, Office of Administration, Washington, D.C. 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Mail Stop T–7I2, 11555 Rockville Pike, Rockville, Md. 20852.

Note: Upon delivery of the application to the NRC guard desk (at the above address),

the guard should be requested to telephone the Division of Contracts (415–7314) for pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated Rockville, MD this 20th day of December, 1994.

For the U.S. Nuclear Regulatory Commission.

Mary Mace,

3Grants Officer, Division of Contracts, Office of Administration.

[FR Doc. 94–32301 Filed 12–30–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company, Zion Nuclear Power Station, Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a letter dated November 3, 1994, and a signed petition, Robert K. Rutherford and other Zion Nuclear Power Station security guards (Petitioners) request that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the new response team member (RTM) security plan at Zion Nuclear Power Station.

Petitioners request that the NRC reassess and withdraw its approval of the new RTM security plan and require greater justification from both the licensee and the security contractor about reduction of armed guards and the defense of the plant to what Petitioners characterize as a minimum state of operational readiness. As bases for the request, Petitioners assert that the new RTM security plan degrades actual plant security; that the proposed qualifications in the plan are causing employee turnover, undue stress, labor problems, and inconsistency in plant defense; that monetary considerations should not take priority over plant defense and administrative jobs should not replace front-line security guards; that the total disarming of the Zion owner-controlled area and the Zion-protected area is highly detrimental to plant defense and public safety; and that modern armaments and increased hostility among the general public as well as terrorist threats from either domestic and/or international sources have not abated.

The letter and enclosed petition are being treated as a Petition pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Regulatory Regulation (NRR). As provided by 10 CFR 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 22nd day of December 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Regulatory Regulation.

[FR Doc. 94–32302 Filed 12–30–94; 8:45 am]

BILLING CODE 7590–01–M

Rosemount Nuclear Instruments, Inc.; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated November 21, 1994, Paul M. Blanch (Petitioner) has requested that the NRC take ''prompt'' action with regard to Rosemount Nuclear Instruments, Inc. Specifically, the Petitioner requests that: (1) Rosemount ''immediately'' inform all users of safety related transmitters pursuant to Part 21 of Title 10 of the Code of Federal Regulations (10 CFR Part 21) of the shelf life limitations of the fill oil and that the oil may crystallize if the transmitters are exposed to temperatures of less than 70 degrees Fahrenheit (°F), and provide all available information to each licensee for evaluation as applicable to each facility; (2) the NRC take ''prompt and vigorous'' enforcement against Rosemount for both its failure to report to users of the transmitters the shelf life limitations of the fill oil and its failure to report the potential of the oil to crystallize when exposed to temperatures of less than 70 °F, and that a ''separate violation must be issued'' for each defect and each day of failure to provide the required notice; and (3) the NRC consider escalated enforcement action due to the repetitive nature of these violations. As a basis for his request, the Petitioner asserts that, contrary to 10 CFR Part 21, although Rosemount was aware of a defect that may create a substantial safety hazard, it failed to report this defect to the affected licensees within five working days for evaluation. Specifically, the Petitioner alleged that, although the NRC informed Rosemount by letter dated June 2, 1994, that the fill oil did not meet the specified performance requirements to assure operability of transmitters under normal operating conditions in that crystallization may occur when the transmitters are subjected to temperatures of less than 70 °F, which may inhibit the operation of many transmitters, Rosemount withheld this information from licensees. The Petitioner asserts further that this is a ''repetitive'' violation in that on November 15, 1994, the NRC assessed a Severity Level II violation against Rosemount for failing to properly inform licensees of a potential for a sensor cell oil-loss problem in violation of 10 CFR 21.21.

The request is being treated pursuant to 10 CFR § 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. The request that Rosemount ''immediately'' inform all users of safety related transmitters of the shelf life limitations of the fill oil and the potential for crystallization has been denied. As provided by Section 2.206, action will be taken on the Petitioner's remaining requests within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 22nd day of December, 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–32303 Filed 12–30–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–298]

Nebraska Public Power District; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–46, issued to the Nebraska Public Power District (the licensee) for operation of the Cooper Nuclear Station (CNS) located in Nemaha County, Nebraska.

The proposed amendment is a Line Item Technical Specifications Improvement and would revise the CNS Technical Specifications, definition 1.0.J. concerning entering an operational condition consistent with the wording proposed in NRC Generic Letter 87–09, ''Sections 3.0 and 4.0 of the Standard Technical Specifications on the Applicability of Limiting Conditions for Operation and Surveillance Requirements,'' dated June 4, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The proposed change does not affect plant operation or the design. The change provides specific applicability requirements to the Limiting Conditions for Operation (LCO). The proposed change incorporates only those applicability requirements and exceptions denoted by Generic Letter 87–09, concerning entering an operational condition. Invoking the proposed change in LCO definition does not impact nor alter any LCO Action Requirements in the Technical Specifications. Those LCO Action Statements which do not require shutdown provide acceptable compensatory safety measures for the affected function, and therefore, operational conditions need not be restricted further. Since conformance to these LCO Action Requirements provide an acceptable level of safety for continued operation of the facility, entry into an operational condition or other specified conditions would not increase the probability or consequences of an accident as long as the remedial Action Requirements are met.

Furthermore, the proposed change does not affect any accident or safety analysis event initiator as analyzed in the Updated Safety Analysis Report (USAR), nor involve any modification to equipment. The proposed change is administrative in nature and primarily serves to provide plant personnel with clear guidance regarding compliance with LCOs and Action Requirements under all operating conditions. Therefore, no significant increase in the probability or consequences of an accident previously analyzed would occur.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed change does not affect any equipment design or configuration, nor does the change introduce a new mode of operation therefore, no new or different type of failures are created. The proposed change serves to strengthen the existing Cooper Nuclear Station (CNS) Technical Specifications (TS) requirements by eliminating some areas of confusion and interpretation, and providing a clear statement of the specification's (1.0.J) intent. The proposed change will ensure that appropriate administrative requirements are invoked prior to any change in an operational condition.

The proposed change does not affect the testing methodology for any systems. There will be no change in the types or increase in the amount of effluents released offsite. Since there are no changes to the function, operation, or surveillance test methodology of any system, equipment, or component, the possibility of a new or different kind of accident is not created.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The proposed change does not reduce the margin of safety because it has no impact on any safety analysis assumption. The proposed change clarifies the LCO definition concerning entry into an operational condition. The proposed change ensures that the appropriate administrative requirements are met prior to any change in an operational condition. The proposed change serves to strengthen the philosophy of compliance with the Technical Specifications. The change is administrative in nature and provides explanatory information which does not impact any safety analysis. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. the Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 2, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 22, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 27th day of December 1994.

For the Nuclear Regulatory Commission.

William D. Beckner,

Director, Project Directorate IV–1, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–32304 Filed 12–30–94; 8:45 am]

BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, January 17–18, 1995 at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9:00 a.m. on January 17, 1995, and adjourn at approximately 5:00 p.m. On Wednesday, January 18, 1995, the meeting will convene at 9:00 a.m. and adjourn at noon. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 94–32240 Filed 12–30–94; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35148; File No. SR–NSCC–94–19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Settle Certain Mutual Fund Services Transactions in Same Day Funds

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on November 8, 1994, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's rules relating to Mutual Fund Services transactions to allow NSCC to make and receive same-day funds payments in connection with the settlement of certain mutual fund transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable NSCC to offer same-day funds money settlement capabilities as part of its Fund/Serv Service. Currently, NSCC's Fund/Serv service processes mutual fund transactions in which the money settlement occurs in next-day funds. Money settlement for money market and no-load mutual fund transactions occurs in same-day funds and cannot presently be accommodated by NSCC's Fund/Serv service. The proposed rule change will permit NSCC to make and receive same-day funds payments in connection with the settlement of money market and no-load mutual fund transactions.[2]

NSCC will not net a member's same-day funds debit or credit with the member's next-day funds debit or credit. Accordingly, the proposed rule change modifies NSCC Rule 12 to clarify that there will be more than one mutual funds settling trades summary which will reflect amounts payable to or payable by NSCC for the settlement of Mutual Fund Services transactions. NSCC will produce a mutual funds settling trades summary that will evidence the member's same-day funds mutual funds settlement obligation and a separate mutual funds settling trades summary that will evidence the member's mutual funds obligation settling in next-day funds. The proposed rule change also makes technical changes to Sections B and C of NSCC's Rule 52 to conform the language regarding money settlement and the cross-references to NSCC's settlement rule.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an 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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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 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 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 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 offices of NSCC. All submissions should refer to File No. SR–NSCC–94–19 and should be submitted by January 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–32251 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[2] NSCC presently receives same-day funds payments from Fund Members and Mutual Fund Processors for dividend amounts owed and processed through NSCC's Networking service and for commission amounts owed and processed through NSCC's Commission Settlement Service.

[3] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35139; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 92 To Permit Trading Along With Customers

December 22, 1994.

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 September 27, 1994, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and on December 20, 1994, submitted amendment no. 1 to 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 proposed rule change consists of an amendment to Exchange Rule 92 to permit member organizations to trade along with customers when liquidating a block facilitation position, subject to specified conditions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange Rule 92 provides that members may not trade for their own accounts at a price at which they hold executable customer orders. The rule does not contain any exceptions for any type of proprietary transactions, including transactions where a member firm trades for its own account along with a customer's block-size order when liquidating a proprietary block facilitation position, even if the customer has given permission for the firm to trade along with the order.

The ability to liquidate a block facilitation position in such circumstances, however, is generally perceived by positioning firms and their institutional customers as a reasonable aspect of the block facilitation business, provided there is disclosure to customers and customer consent. The inability to liquidate such positions in these circumstances may impede the block facilitation business, as firms may be reluctant to assume block facilitation positions if they cannot liquidate them, subject to appropriate safeguards, while representing customer orders.

The Exchange is proposing to amend Rule 92 to permit member organizations to trade along with a customer, when liquidating a block facilitation position, subject to the following conditions:

- The customer is not an individual investor;
- The customer's order is for 10,000 shares or more;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports;
- The member organization is liquidating a position acquired in the course of facilitating a block transaction; and
- The member organization's orders are for an account used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders of 10,000 shares or more (a ''proprietary facilitation account'').

The Exchange intends to inform members and member organizations that, although the amended rule does not outline a specific method of record keeping evidencing that a customer has given permission to trade along, the burden of proof to demonstrate that customer consent was obtained will fall on the member or member organization.

Paragraph (a) of the proposed rule change extends the provisions of Rule 92 to trades by an Exchange member or member organization on ''any other market center.'' This provision means that, for Exchange members, the broad concepts of agency law and fiduciary duty codified in paragraph (a) of Rule 92 are intended to apply to all agency representation, irrespective of market center. The limited exception provided in paragraph (b), however, is intended to apply only to transactions by members on the Exchange. Other market centers may choose to adopt, or not adopt, a comparable exception.

The supplementary material in section .10 of the proposed rule change imputes knowledge of customer orders to members or employees engaged in proprietary trading for a member or member organization, unless that organization has a functional separation of the area doing the proprietary trading from other areas of the organization (*e.g.*, as between a broker dealer operating with an exemption from certain specialist rules pursuant to Exchange Rule 98 and an affiliated specialist unit).

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by January 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32252 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35149; File No. SR–OCC–94–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Flexibly Structured Index Options Denominated in a Foreign Currency

December 23, 1994.

On August 19, 1994, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–94–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act).[1] Notice of the proposal was published in the **Federal Register** on October 19, 1994.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

On September 23, 1993, the Commission approved a proposed rule change filed by OCC to accommodate the clearance and settlement of flexibly structured index options.[3] Flexibly structured index options exhibit virtually the same characteristics as regular index options; therefore, OCC establishes long and short flexibly structured index option positions in clearing member accounts in precisely the same way it currently does for regular index options. OCC incorporates flexibly structured index options in its premium settlement, margin collection, exercise notice, exercise assignment, and exercise/expiration statement processes without significant changes to those processes. Premiums and exercise prices for the flexibly structured index options that currently are being traded are denominated in United States dollars. Parties to a transaction in such an option may customize certain terms of the option including the expiration date, the exercise style, the exercise price, the cap interval in the case of capped-style options, and the method to be used for establishing the current index value for purposes of settling expiration date exercises.

Recently, the Chicago Board Options Exchange (''CBOE'') amended its rules regarding flexibly structured index options[4] in order to allow premiums and exercise prices of such options to be denominated in foreign currencies rather than in United States dollars.[5] Accordingly, OCC is amending its By-Laws and Rules in order to clear and settle these options which OCC calls Flexibly Structured Index Options Denominated in a Foreign Currency (''FX Index Options'').

To accommodate the clearance and settlement of FX Index Options, Article XXIII is being added to the Article of OCC By-Laws. Because FX Index Options are a type of index option, the OCC By-Laws governing index options, Article XVII, is being incorporated into new Article XXIII and is being made applicable to FX Index Options. In addition, because FX Index Options will settle in a foreign currency, certain of the OCC By-Laws governing Cross-Rate Foreign Currency Options in Article XX also are being incorporated into new Article XXIII where appropriate. For example, those By-Laws governing extraordinary events, adjustments, and the payment of premiums are being incorporated into the new article.

A Chapter XXIV is being added to the OCC Rules to accommodate FX Index Options. FX Index Options will be exercised pursuant to the rules governing existing index options. Accordingly, the rules governing exercise, assignment, allocation, and the exercise settlement date from Chapter XVIII, which pertains to index options, is being incorporated into new Chapter XXIV. In addition, the settlement procedure for FX Index Options will be the same as the procedure for existing index options. Exercised FX Index Options will be settled through the payment of an exercise settlement amount, which is the difference between the aggregate exercise price and the aggregate current index value. Accordingly, the rules governing exercise settlement and the exercise settlement date from Chapter XVIII are being incorporated into new Chapter XXIV. Because FX Index Options will settle in a foreign currency, certain settlement obligations of a party to an FX Index Option contract will be similar to the settlement obligations of a party to a cross-rate foreign currency option contract. Therefore, certain rules governing settlement obligations from Chapter XXI, which pertains to cross-rate foreign currency options, are being incorporated into new Chapter XXIV. Specifically, these include the obligation to set up bank accounts and the consequence of failing to pay a foreign currency. Finally, FX Index Options will be margined like cross-rate foreign currency options in that the margin requirement will be calculated in the applicable trading currency and then converted to United States dollars. Consequently, the language of Rule 2111 governing margin requirements for cross-rate foreign currency options is being incorporated into new Chapter XXIV.

Two additional changes to the OCC By-Laws and an additional change to OCC's Rules also are being made. Specifically, the term ''FX index option clearing member'' is being added to the definition of ''clearing member'' in Article I, Section 1 of the By-Laws. In addition, the reference to the term ''FLEX'' in the definition of clearing member is being changed to ''flexibly structured option'' in order to make that term more generic. Finally, OCC Rule 401 is being amended to require that the currency in which the option is denominated, the expiration date of the option contract as opposed to the expiration month, and the cap price, if any, be included in the Report of Matched Trades.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[6] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's proposed rule change meets these requirements by establishing a framework in which existing OCC systems, rules, and procedures are extended to the processing of the FX Index Options. OCC should be able to implement the clearance and settlement of the FX Index Options without much difficulty because FX Index Options are similar to regular index options and cross-rate foreign currency options currently cleared by OCC. The Commission believes that the use of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34837 (October 13, 1994), 59 FR 52852.

[3] Securities Exchange Act Release No. 31912 (February 23, 1993), 58 FR 11879 [File No. SR–OCC–92–33] (order approving proposed rule change relating to flexibly structured index options).

[4] Securities Exchange Act Release No. 34203 (June 13, 1994), 59 FR 31658 [File No. SR–CBOE–93–33] (order approving a proposed rule change relating to FLEX options designated in foreign currencies).

[5] Premium and exercise prices for these non-United States dollars flexibly structured index options may be denominated in any of the foreign currencies currently underlying foreign currency options. Those currencies include: (1) Australian dollars, (2) British pounds, (3) Canadian dollars, (4) European Economic Community currency units, (5) French francs, (6) German Deutsche marks, (7) Japanese yen, and (8) Swiss francs.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

OCC's systems for the clearance and settlement of FX Index Options should facilitate promptness and precision.

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–94–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32253 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35140; File No. SR–PSE–94–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Listing and Trading of Small Corporate Offering Registration (''SCOR'') Securities on the Exchange

December 22, 1994.

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 December 15, 1994, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting this rule filing in order to permit the Exchange listing and trading of common stock and preferred stock that qualifies under the Small Corporate Offering Registration (''SCOR'') designation.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange is proposing to list and trade common stock and preferred stock that qualifies under the Small Corporate Offering Registration (''SCOR'') designation. Under the proposal, the SCOR marketplace will be implemented on a three-year pilot basis and the program will be evaluated at least on an annual basis to determine whether this new marketplace has achieved its policy objectives—to facilitate capital formation for small businesses and to provide public market liquidity. The SCOR program will include any securities of an issuer that has been designated as common stock and/or preferred issued pursuant to (i) Regulation A under the Securities Act of 1933 (''Securities Act'') and using the prescribed form as applicable; or (ii) Rule 504 under the Securities Act and using Form U–7 of the North American Securities Administrators Association (''NASAA'') or a state variation of such form with substantially similar requirements.[2] Since such securities are not currently listed or traded on any national securities exchange, the PSE believes that the implementation of the Exchange's proposal will facilitate the capital formation process for small companies and will supply much-needed liquidity to public investors within a regulated marketplace. In addition, under the proposal, companies will be afforded all of the benefits of an Exchange listing, with the exception of the Blue Sky exemption from state securities registration requirements and automatic marginability.

In August 1992, the Commission adopted certain rules as part of its Small Business Initiatives program. The program includes, in part, substantive changes to the ''small issues'' exemption from registration requirements under the Securities Act (Regulation A), as well as changes to the ''seed capital'' registration exemption pursuant to Rule 504 under the Securities Act. These revisions are designed to facilitate the access of small companies to capital markets and to reduce the costs of compliance with the federal securities laws.

Rule 504

The Commission's modifications to Rule 504 include the elimination of several restrictions and other changes that would allow small companies to conduct public offerings of up to $1 million in unrestricted securities during a twelve-month period. These changes are designed to allow small companies to market offerings directly to prospective investors by bypassing both the venture capital and small underwriting houses. At the state level, offerings may be registered using the SCOR registration form, Form U–7; however, such limited offerings must also qualify under state Blue Sky laws that require delivery of a prospectus, offering circular, or disclosure document to all purchasers prior to sale. The Form U–7 has been supported by the American Bar Association as well as NASAA.[3]

Regulation A

The Commission revised Regulation A to exempt from registration public offerings of up to $5 million in a twelve-month period. The disclosure requirements are embodied in the offering statement (SEC Form 1–A), which consists of three parts. The offering circular is contained in Part II and may be prepared in three alternative formats, one of which permits the use of the same simplified disclosure statement (Form U–7) that is prescribed by most states for SCOR offerings.

The Exchange believes these changes to Regulations A and D, in conjunction

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[7] 17 CFR 200.30–3(a)(12) (1994).

[1] The PSE originally proposed to list and trade SCOR securities in 1992. That proposal was published for public comment in Securities Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993) (File No. SR–PSE–92–42). The Commission received several comment letters regarding the proposal, and subsequently published amendments to the proposal for public comment in Securities Exchange Act Release No. 34328 (July 7, 1994), 59 FR 35776 (July 13, 1994). The Exchange withdrew file no. SR–PSE–92–42 on November 22, 1994, and submitted the instant filing that includes modifications to the proposal in response to comments from the public and from Commission staff.

[2] Once a single issuance of securities has been accepted for listing on the Exchange, all securities of that class will be considered to be ''SCOR'' securities for purposes of this rule, including restricted securities (*i.e.*, securities restricted pursuant to federal or state securities laws, by any other law, by any agreement, or in any other manner), provided that such restricted securities may not be eligible for trading on the Exchange.

[3] *See* Small Corporate Offering Registration Program and Form U–7, 1 Blue Sky L. Rep. (CCH) ¶ 6461 (September 1994).

with the efforts of several states that are in the forefront of the small business movement, will clearly benefit both the investing public as well as small companies seeking access to capital markets. The Exchange also believes the expanded use of the Form U–7 in Regulation A offerings will encourage a more effective and simplified system of raising capital. The collective efforts of federal and state agencies to streamline the registration process for small corporate offerings is especially important because the institutional venture capital industry has substantially abandoned the financing of small start-up companies, leaving them the private offering market as the only remaining source of capital. Therefore, the development of the SCOR program has made corporate offerings more flexible and less costly to small companies, without compromising investor protection.

Initial and Continued Listing Requirements

The Exchange has in place a regulatory program that will ensure close scrutiny of any company applying to list its common stock and/or preferred stock under the SCOR program. The listing qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. The merit review process is coordinated by the Exchange's Listings Department, which works directly with the Equity Listing Committee. This Committee, which is comprised of floor members, ''upstairs'' members and member firm representatives, has substantial collective experience in the evaluation of companies for possible listing on the Exchange.

The Exchange's proposed SCOR marketplace is limited to the listing of one class of common stock and preferred stock. To ensure a minimum level of financial performance by issuers under the SCOR program, the Exchange has developed a single set of initial and maintenance listing requirements that will apply to both common stock and preferred stock. In formulating the listing requirements set forth below, the Exchange consulted extensively with committees of NASAA,[4] the California Department of Corporations, and leaders from the small business community. The Exchange believes that the proposal satisfactorily addresses the mutual concerns of these individuals and organizations.

Under the proposal, at the time of application and formal request for listing, the issuer must meet all of the following listing requirements. First, the SCOR offering in the class of security for which the issuer is applying for listing must be at least $5 per share, and constitute at least 150,000 publicly held shares with a minimum public distribution of 250 beneficial holders.[5] Second, the company must have total net tangible assets of at least $500,000 and total net worth of at least $750,000. Third, the issuer must have specific corporate governance policies that comply with PSE Rule 3.3.[6] Fourth, the issuer must provide the Exchange with audited financial statements that are required to be included in the issuer's Exchange Act registration statement. Fifth, the company must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. Finally, the issuer must have registered the securities of the class at the state level using either the state Form U–7 (or the equivalent registration form to which a regulatory review is applied) or a coordinated state filing with the federal Form 1–A offering statement.

In addition, under the proposal, once an issuer's class of security has been approved for listing under the SCOR program, the following requirements must also be met. First, the issuer's class of common stock and/or preferred stock must be registered under section 12(b) of the Exchange Act (before it may be treaded on the Exchange). Second, the issuer must comply with the Exchange's listing policies and agreements, as well as the reporting and disclosure requirements of the Exchange Act. Third, in listing additional shares of the same class of common stock or preferred stock, the issuer must meet the applicable federal securities laws and state registration requirements. Finally, an issuer listed under the SCOR program must comply with the Exchange's listing maintenance requirements set forth in Rule 3.5(r).

Trading Environment and Transaction Reporting

The Exchange intends to allocate common stock and preferred stock listed under the SCOR program to a Specialist for auction market trading. Any transactions in such securities would be reported on a real-time basis. Transactions in SCOR securities would be identified by a special suffix to the ticker symbol so that members, public investors and others can distinguish these securities from other securities traded on the Exchange. Finally, all of the Exchange's rules and equity surveillance procedures would be applicable to transactions in SCOR securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.[7]

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 other period (i) as the Commission may designate up to 90 days of such date if its 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 whether the proposed rule change should be disapproved.

[4] The Exchange discussed its proposal with the Small Business Capital Formation and the Small Business Sales Practices committees of NASAA.

[5] The term ''public beneficial holder'' means a beneficial holder who, with respect to the issuer, is not a director or officer or member of the immediate family thereof or an affiliate or associate thereof, and whose ownership of an equity security is less than 5% of the total number of shares issued and outstanding.

[6] PSE Rule 3.3 contains corporate governance requirements regarding conflicts of interest, independent directors/audit committee, quorum, shareholder approval, annual meetings, solicitation of proxies and consents, and common and preferred stock voting rights. SCOR issues are subject to all of these corporate governance requirements except for the independent directors/audit committee requirement in Rule 3.3(b).

[7] For a discussion of the comments received on the previous PSE SCOR listing proposal *see* Securities Exchange Release No. 34328, *supra* note 1.

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 PSE. All submissions should refer to File No. SR–PSE–94–31 and should be submitted by January 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32254 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35153; File No. SR-Philadep–94–05]

Self-Regulatory Organization; Philadelphia Depository Trust Company; Notice of Proposed Rule Change Concerning Disposal of Expired Securities Certificates of Warrants and Rights

December 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 6, 1994, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR-Philadep–94–05) as described in Items I, II, and III below, which Items have been prepared primarily by Philadep, a self-regulatory organization (''SRO''). 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

Philadep proposes to implement a rule change that would allow the disposal of expired securities certificates of warrants and rights. The proposed rule change would enable Philadep to reduce its administrative expenses associated with keeping expired warrants and rights related certificates in its vault.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the 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. Philadep has prepared summaries, as set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

In order to reduce costs and increase operational efficiency, Philadep proposes to implement a program which would allow it to destroy certain expired securities certificates, specifically expired warrants and rights. This destruction policy would enable Philadep to reduce the administrative and safekeeping expenses associated with keeping expired warrants and rights related certificates in its vault. In implementing this program, Philadep will adhere to serveral procedures to assure that Philadep does not assume any undue risk. First, Philadep will contact the transfer agent or the issuer of the securities after the securities has reached their expiration dates to verify that the respective warrants or rights have expired. Second, Philadep will obtain written confirmation from the transfer agent or the issuer that the certificates representing such warrants or rights have expired. If there is no transfer agent, Philadep personnel will exercise all reasonable due diligence to confirm the expired nature of the respective certificates, including (1) consulting with Philadep's legal department, its internal audit department, and its senior management and (2) receiving a confirmation from the issuer. Third, Philadep (1) will notify its participants that the certificates have expired in the judgment of the transfer agent or, where there is no transfer agent exist, other appropriate parties; (2) will delete such securities positions from its participants' account on or after the thirtieth day following the date of the notice; and (3) will mark the securities certificates and send them to the internal audit department for destruction. Additionally, at Philadep's discretion, it may retain copies of the certificates on microfilm or on other mediums.

Philadep believes that the proposed program complies with Section 17A of the Act[2] in that it is contemplated to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient administrative mechanism to destroy expired securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep believe that the proposed rule change will not pose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Philadep has neither solicited nor received any comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes 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 Philadep 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 such 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 respecting the proposed rule change that

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 15 U.S.C. § 78q–1 (1988).

are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to 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 filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File Number SR–Philadep–94–05 and should be submitted by January 24, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32255 Filed 11–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35143; File No. SR–SCCP–05]

Self-Regulatory Organizations; The Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Change To Amend Rules To Require Execution of a Participant's Agreement by Participants

December 23, 1994.

On October 3, 1994 the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–SCCP–94–05) under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to amend SCCP Rule 2 Section 1. Notice of the proposal was published in the **Federal Register** on November 1, 1994.[2] No comment letters were received regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

SCCP is amending Rule 2, Section 1 with respect to its participants' obligations to SCCP. The amended Rule 2 adds language codifying SCCP's existing but unwritten policy and practice of requiring participants to execute a Participant's Agreement and language stating that SCCP's by-laws, rules, and procedures shall supersede any conflicting provision of the Participant's Agreement. The proposed rule change deletes language requiring participants to execute and deliver a written instrument specifying their adherence to certain obligations set forth in SCCP Rule 2. Such a second written agreement is unnecessary because once a Participant's Agreement is signed, the participant has agreed to abide by all of the rules and obligations of SCCP, including those set forth in SCCP Rule 2. Accordingly, all provisions of Rule 2 will be directly enforceable against participants without the necessity of executing a separate written agreement specifying selected provisions of SCCP's Rule 2.

II. Discussion

The Commission believes that the proposed rule change is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F).[3] Section 17A(b)(3)(F) requires that a clearing agency's rules assure the safe guarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Amended SCCP Rule 2 complies with the requirements of Section 17A(b)(3)(F) in that it requires all participants of SCCP to sign a Participant's Agreement setting forth their rights and obligations. Requiring a signed participant's Agreement should help assure the safekeeping of securities and funds which are in the custody or control of SCCP by creating a contract which binds participants to the provisions of SCCP's by-laws and rules.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File Nos. SR–SCCP–94–05) be, and hereby is approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32256 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

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[3] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34886 (October 24, 1994), 59 FR 54653.

[3] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[4] 17 CFR 200.30–3(a)(12) (1994).

[File No. 1–475]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (A. O. Smith Corporation, Common Stock, $1 Par Value)

December 27, 1994.

A. O. Smith Corporation (''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 Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 14, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the duel trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 18, 1994 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. 94–32305 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Benson Eyecare Corporation, Common Stock, $.01 Par Value); File No. 1–9435

December 27, 1994.

Benson Eyecare Corporation (''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 Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 7, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 18, 1995, 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 Exchange 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. 94–32306 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20797; 812–8422]

MID CAP SPDR Trust, Series 1, et al.; Notice of Application

December 23, 1994.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (''Act'').

APPLICANTS: MID CAP SPDR Trust, Series 1 (''Trust'') and PDR Services Corporation (together with any person directly or indirectly controlling, controlled by, or under common control with, PDR Services, the ''Sponsor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from sections 4(2), 14(a), 17(a) (1), 17(a) (2), 22(d), 22(e), 24(d), 26(a) (C) and rule 22c–1; under section 17(b) granting an exemption from sections 17(a)(1) and 17(a)(2); and under rule 17d–1 to permit certain joint transactions with affiliates.

SUMMARY OF APPLICATION: Applicants request an order permitting:

(1) the Trust to issue non-redeemable securities (''MID CAP SPDRs'');

(2) secondary market transactions in MID CAP SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus;

(3) dealers to sell MID CAP SPDRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933;

(4) certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust, rather than by the Sponsor;

(5) affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of MID CAP SPDRs; and

(6) the Trust to reimburse the Sponsor for payment of an annual licensing fee to Standard & Poor's. The order would also temporarily permit the Trust to satisfy redemption requests within five business days rather than seven calendar days and exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of MID CAP SPDRs;

FILING DATE: The application was filed on May 28, 1993; and amended on July 13, 1994. By letter dated December 23, 1994, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

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 January 17, 1995, 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, N.W., Washington, DC 20549. Applicants, c/o American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 942–0571, or Robert A. Robertson, 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 at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust (''UIT'') that will be organized under the laws of the State of New York. The Trust is designed to provide investors with a low-cost instrument that closely tracks the Standard & Poor's MidCap 400 Index (''S&P MidCap 400 Index''), that trades like a share of common stock, and that pays quarterly dividends proportionate to those paid by the portfolio of stocks that constitutes the S&P MidCap 400 Index.[1] The Sponsor is a wholly-owned subsidiary of the American Stock Exchange (''AMEX''). The Bank of New York (''Trustee'') will act as trustee of the Trust. PDR Distributors, Inc. (''Distributor''), a registered broker-dealer and wholly-owned subsidiary of Signature Financial Group, Inc., will serve as the distributor

[1] The S&P MidCap 400 Index is an index that focuses on middle capitalization stocks not included in the Standard and Poor's 500 Composite Stock Price Index (''S&P 500 Index''). The issues included in the S&P MidCap 400 Index were selected from a population of 1,700 securities, each with a 1990 year-end capitalization of between $200 million and $5 billion. As of December 31, 1993, applicants estimate that over $6 billion was invested in or indexed to the S&P MidCap 400 Index.

of the Trust's securities, known as MID CAP SPDRs (for Standard & Poor's MidCap 400 Portfolio Depositary Receipts).

2. Units of beneficial interest in the Trust will be issued in aggregates of 25,000 MID CAP SPDRs known as ''Creation Units.'' Each MID CAP SPDR will be worth one-fifth the value of the S&P MidCap Index, or approximately $34 at the time of filing the application. Each Creation Unit, therefore, would cost about $850,000.

3. All orders to purchase Creation Units from the Trust must be placed with the Distributor, who shall be responsible for transmitting such orders to the Trustee. The Distributor will furnish to purchasers confirmation that the orders have been accepted, but shall reject any order that is not in proper form. Upon acceptance of an order, the Distributor will instruct the Trustee to initiate the appropriate procedures. The Distributor will maintain records of the orders placed with it, the confirmations of acceptances it issues, and the instructions to implement delivery. The Distributor will be responsible for distributing prospectuses and may provide certain other administrative services, such as those related to state securities compliance. The Sponsor will pay the Distributor a fee for its services. The Sponsor will not seek reimbursement from the Trust for the payment of such fee without obtaining exemptive relief from the SEC.

4. Investors wishing to purchase a Creation Unit must transfer to the Trust a ''Portfolio Deposit,'' which consists of: (a) a portfolio of securities that is substantially similar, in composition, to the component securities (''Index Securities'') of the S&P MidCap 400 Index; (b) a cash payment equal to the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, on a Creation Unit basis; and (c) a cash payment or credit (''Balancing Amount'') designed to equalize the net asset value of the S&P MidCap 400 Index and the net asset value of a Portfolio Deposit. The Balancing Amount is required because, among other things, a Portfolio Deposit, unlike the S&P MidCap 400 Index, cannot contain fractional shares. An investor making a Portfolio Deposit also will be charged a nominal service fee (''Transaction Fee'') to defray securities settlement costs, as discussed below.

5. MID CAP SPDRs will not be individually redeemable, except upon termination of the Trust. To redeem, an investor must accumulate enough MID CAP SPDRs to reconstitute a Creation Unit. An investor redeeming a Creation Unit will receive Index Securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that date.

6. Because a redeeming shareholder will receive a Portfolio Deposit in exchange for its Creation Unit, and only a minute portion of a Portfolio Deposit consists of cash, the Trustee will not be forced to maintain large cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P MidCap 400 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a much greater portion of their assets for cash redemptions.

7. Persons obtaining MID CAP SPDRs from the Trust in Creation Unit size aggregations may hold those MID CAP SPDRs or sell some or all of them into the secondary market. MID CAP SPDRs will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. The price of MID CAP SPDRs on the AMEX will be based on a current bid/offer market. Transactions involving the sale of MID CAP SPDRs will be subject to customary brokerage commissions and charges.

8. Applicants expect that the price at which MID CAP SPDRs trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Unit-size aggregations at net asset value, which should ensure that MID CAP SPDRs will not trade at a material discount or premium in relation to net asset value.

9. To be eligible to purchase a Creation Unit, an organization must be a participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust Company (''DTC'') participant, but is not required to be an AMEX member. The procedures employed to process a purchase order will depend upon whether the transaction is settled through NSCC or DTC. Procedures for redeeming a Creation Unit are analogous to those for purchasing one, although redemption requests are placed with the Trustee, rather than the Distributor.

10. MID CAP SPDRs will be registered in book-entry form only; certificates will not be issued. The DTC or its nominee will be the registered owner of all outstanding MID CAP SPDRs. Records reflecting the beneficial owners of MID CAP SPDRs will be maintained by the DTC or the DTC participants.

11. Persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters. For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from the Trust, breaks them down into the constituent MID CAP SPDRs, and sells the MID CAP SPDRs directly to its customers; or if it chooses to couple the creation of a supply of new MID CAP SPDRs with an active selling effort involving solicitation of a secondary market demand for MID CAP SPDRs. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus will explain that (a) a statutory underwriter will be subject to certain liability provisions of the Securities Act, and (b) dealers who are statutory underwriters, and dealers effecting transactions in MID CAP SPDRs that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, will be unable to take advantage of the prospectus delivery exemption provided to dealers by section 4(3) of the Securities Act.

12. As provided in the rules of the AMEX, applicants will make available a ''Product Description'' of MID CAP SPDRs to members and member organizations for distributions by them to customers purchasing MID CAP SPDRs. In addition, members are required to include the Product Description with sales materials relating to MID CAP SPDRs that is provided to the public. The Product Description is designed to provide a brief and readily understandable description of the salient aspects of MID CAP SPDRs. The Product Description will advise investors that a prospectus is available without charge upon request. Although the AMEX rule cannot ensure delivery of a Product Description to investors purchasing MID CAP SPDRs through a non-member broker-dealer in a transaction away from the AMEX floor, applicants expect that such transactions should be extremely rare. In addition, applicants note that transactions effected on regional exchanges pursuant to unlisted trading privileges can be covered by conditioning the grant of such privileges upon imposition of an exchange requirement that Product Descriptions be delivered. Purchases effected over the counter may be somewhat more difficult to address, although applicants note that the National Association of Securities Dealers, Inc. may wish to promulgate an advice to members regarding the need to distribute a Product Description to every

MID CAP SPDR purchaser on the same terms as required by the AMEX rule.

13. During the first two years of operation, the Trustee will be paid a ''Trustee's Fee'' of 12/100 of 1% of the Trust's net asset value annually. Thereafter, the Trustee's Fee will vary from 10/100 to 14/100 of 1% per annum, depending on the net asset value of the Trust. The Trustee may waive all or a portion of the Trustee's fee. The Trustee also will receive a Transaction Fee directly from investors in connection with certain creations and redemptions of Creation Units to defray securities settlement costs. The Transaction Fee will vary from $250 to $1500 per Creation Unit depending upon the number of Creation Units the investor creates or redeems. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase and redeem via the DTC rather than the continuous net settlement system of NSCC, to cover the increased expense associated with settlement outside the NSCC clearing process. The Sponsor may modify or waive the Transaction Fee for certain lot-size creations or redemptions. Any increase of the Transaction Fee will be subject to a maximum of 20/100 of 1% of the value of a Creation Unit at the time of creation or redemption, as the case may be. All variations in the Transaction Fee will be imposed in compliance with rule 22d–1, as if it were a sales load. The Trustee also will receive as compensation any benefit derived from holding funds of the Trust in non-interest bearing accounts.

14. The Trust will make quarterly distributions of an amount representing the dividends accumulated on portfolio securities during such quarter, net of fees and expenses. Additional distributions will be made to the minimum extent necessary to comply with certain provisions of the Internal Revenue Code and to avoid the imposition of excise taxes imposed by section 4982 of the Code. The Trust also intends to make available the DTC book entry Dividend Reinvestment Service through which investors may have their dividend distributions reinvested in MID CAP SPDRs. The Trust's prospectus will disclose that brokerage commissions, if any, incurred in obtaining the Index Securities necessary to create additional MID CAP SPDRs with the cash from these distributions will be an expense of the Trust.

15. Beneficial owners of MID CAP SPDRs will have no voting rights with respect to the securities held by the Trust. The Trustee will have the right to vote all of the voting stocks in the Trust. The Trustee will vote the Trust's shares in the same proportion as all other shares of the security are voted. If this arrangement is not permitted, the Trustee shall abstain from voting.

16. Applicants assert that MID CAP SPDRs afford significant benefits in the public interest. MID CAP SPDRs, which track non-S&P 500 securities, will broaden the trading, investing, and hedging opportunities available to investors by tracking an alternative segment of the domestic equity securities market, stocks with mid-range capitalizations. Applicants believe that MID CAP SPDRs enhance the choices available to investors and provide a cost-effective mechanism for investing in the targeted market segment. Further, the Trust should be able to track the S&P MidCap 400 Index more closely than other basket products that must allocate a portion of their assets for cash redemptions. In addition, MID CAP SPDRs will provide a low-cost market-basket security that, unlike open-end index funds, can be traded at negotiated prices throughout the business day.

Applicants' Legal Analysis

1. Applicants request an order granting an exemption from sections 4(2), 14(a), 17(a)(1), 17(a)(2), 22(d), 22(e), 24(d), and 26(a)(2)(C) and rule 22c–1 and permitting them to engage in affiliated transactions otherwise prohibited by section 17(d) and rule 17d–1. Applicants represent that the relief requested herein is substantially similar to that granted in the application concerning the Standard and Poor's Depositary Receipts (''SPDRs''), a similar instrument that tracks the S&P 500 Index.[2]

2. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because MID CAP SPDRs are not individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants note that beneficial owners of MID CAP SPDRs wishing to redeem may purchase additional MID CAP SPDRs and tender the resulting Creation Unit for redemption. Moreover, because the market price of MID CAP SPDRs will be disciplined by arbitrage opportunities, beneficial owners should be able to sell MID CAP SPDRs at approximately net asset value.

3. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in MID CAP SPDRs will take place at negotiated prices (generally the current bid/offer price quoted on the AMEX), not at a current offering price described in the prospectus, and not at a price based on net asset value. Thus, purchases and sales of MID CAP SPDRs by dealers in the secondary market will not comply with section 22(d) and rule 22c–1. Accordingly, applicants have requested an exemption from these two provisions.

4. The concerns sought to be addressed by section 22(d) and rule 22c–1 with respect to pricing are equally satisfied by the proposed method of pricing MID CAP SPDRs. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been enacted (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting MID CAP SPDRs to trade in the secondary market at negotiated prices. First, secondary market trading in MID CAP SPDRs, because it does not involve the Trust as a party, cannot result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in MID CAP SPDRs will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of MID CAP SPDRs and their net asset value remains narrow.

5. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer

[2] *See SPDR Trust, Series 1,* Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (October 26, 1992) (order) (''SPDR Order'').

transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. If MID CAP SPDRs are viewed as redeemable because Creation Units are redeemable and MID CAP SPDRs are deemed to be securities of the same class, section 24 would apply. Because the applicability of section 24(d) is not free from doubt, applicants have requested an exemption from that section to permit dealers trading in MID CAP SPDRs to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act. Assuming section 24(d) applies, the exemption is necessary because, according to applicants, the imposition of prospectus delivery requirements on transactions by dealers in the secondary market will materially and adversely impede the success of the MID CAP SPDRs product.

6. Applicants note that the secondary market for MID CAP SPDRs is significantly different from the typical secondary market for UIT securities, which usually is maintained by the sponsor. MID CAP SPDRs will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end funds in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that the MID CAP SPDRs should be subject to the same regulatory scheme as securities issued by operating companies and closed-end funds.

7. Because MID CAP SPDRs will be exchange-listed, prospective investors will have access to several types of information about the product. Information regarding sales price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information will be published daily in the financial section of newspapers. Applicants also will publish daily, on a per MID CAP SPDR basis, the amount of accumulated dividends, net of accrued expenses. In addition, applicants expect that MID CAP SPDRs, like SPDRs, will be viewed as a novel, cost-effective, index security and will generate significant interest in the financial community. Applicants expect that broker-dealers and market analysts will familiarize themselves with the product, follow its performance, and share their opinions of the product with clients and other investors, resulting in even greater amounts of available information for investors.

8. In addition to all the information set forth above, investors will receive the Product Description. While not intended to substitute for a full prospectus, the Product Description will contain useful information about MID CAP SPDRs.

9. Section 26(a)(2)(C) requires, among other things, that the trust indenture prohibit payments to the trust's depositor (*i.e.*, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services not relevant hereto. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor or AMEX, up to a maximum of 30 basis points of the Trust's net asset value on an annualized basis, for the following expenses: (a) annual licensing fees for use of the ''S&P MidCap 400'' trademark; (b) federal and state annual registration fees for the issuance of MID CAP SPDRs; (c) expenses of the Sponsor relating to the printing and distribution of marketing materials describing MID CAP SPDRs and the Trust; and (d) the initial fees and expenses incurred in connection with the organization of the Trust, which will be capitalized and amortized over five years on a straight-line basis.

10. Ordinarily, the sponsor of a UIT has several sources of income, and expenses normally incurred by the sponsor in connection with the creation and maintenance of a UIT can be offset against the income from such sources. As the proposed Trust is structured, however, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the exchange, applicants expect that such fees will generate substantially less revenue than what would have been generated by a normal sales load or sales charges on secondary market trades of MID CAP SPDRs. In light of the above, applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)—''double dipping'' by UIT sponsors collecting money from their captive trusts on top of the profits already generated by sales charges and other sources of income—will not be present if the requested exemption is granted. In any event, the payment is capped at 30 basis points of the Trust's net asset value on an annualized basis. Expenses in excess of that figure will be absorbed by the Sponsor or the AMEX.

11. Section 14(a) provides, in part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of $100,000, or provision is made in connection with the registration of such securities that (i) firm agreements to purchase $100,000 worth of such securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company has a net worth of less than $100,000 within 90 days after the effective date of the registration statement.

12. Rule 14a–3 under the Act provides an exemption from section 14(a) for UITs that invest only in ''eligible trust securities'' and agree to certain investor safeguards, including the refund of any sales loads collected from investors. Applicants will comply in all respects with rule 14a–3, except that the Trust will not restrict its investments to eligible trust securities, which do not include equity securities, and the Trustee will not refund the Transaction Fee discussed above. The fact that the Trust's portfolio is invested in equity rather than debt securities, applicants contend, does not negate the effectiveness of the safeguards nor subject investors to greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants believe that it is not a sales load, and therefore is not covered by the refund provision. In addition, the Transaction Fee will be paid not by small retail investors, but by institutional and other sophisticated, well-capitalized investors who can afford the $850,000 purchase price of a Creation Unit. Such investors are able to assume the risk, which will be disclosed in the prospectus, of forfeiting the relatively small additional amount represented by the Transaction Fee.

13. Section 17(a) generally prohibits an affiliated person of a registered investment company from purchasing from or selling to such company any security or other property. Because purchases and redemptions will be ''in-kind'' rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Moreover, because the definition of affiliated person includes anyone owning 5% or more of an issuer's outstanding voting stock, every purchaser of a Creation Unit will be affiliated with the Trust so long as there are twenty or fewer holders of Creation Units. Applicants request an exemption from section 17(a) pursuant to sections 6(c) and 17(b), to

permit affiliated persons of the Trust to purchase and redeem Creation Units.

14. Applicants contend that no useful purpose would be served by prohibiting affiliated persons from making ''in kind'' purchases or ''in kind'' redemptions of Creation Units. The composition of the Portfolio Deposit deposited by a purchaser or given to a redeemer will be the same regardless of the investor's identity, and will be valued pursuant to the same objective standards applied to valuing the Trust's portfolio securities. Thus, ''in kind'' purchases and redemptions will afford no opportunity for affiliated persons to effect a transaction detrimental to the other holders of MID CAP SPDRs. Applicants believe that ''in kind'' purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

15. Applicants request an order pursuant to rule 17d–1 that would permit the Trust to reimburse the Sponsor or the AMEX for the payment by either such party to Standard & Poor's of the annual fee required under a license agreement. The license agreement allows applicants to use the S&P MidCap 400 Index as a basis for MID CAP SPDRs and to use certain of Standard & Poor's trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor (an affiliated person of the Trust) and/or the AMEX (an affiliated person of the Sponsor) may constitute a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d–1.

16. Applicants request a temporary exemption from the requirement imposed by section 22(e) of the Act to provide payment or satisfaction of redemptions within seven days following tender of a Creation Unit for redemption. Applicant represents that the Trust's clearing agent, NSCC, currently clears all trades through its system in five business days and short settlement of trades will not be available in connection with the MID CAP SPDR clearing process. NSCC is closed for business on certain holidays. Under the present system, if a Beneficial Owner were to tender a Creation Unit for redemption during a seven day period preceding such a holiday, NSCC's five business day settlement system would result in a redemption on the eighth calendar day following tender, resulting in a technical violation of section 22(e). Applicants request relief to permit redemption in five business days following a redemption request until the effective date of rule 15c6–1 adopted under the Securities Exchange Act, which will shorten the settlement period to three business days. The rule provides for a transition period during which securities may settle in four business days. After the effective date of the rule, the NSCC will settle in accordance with the rule and relief from 22(e) will no longer be necessary.

17. Applicants assert that the NSCC is the appropriate institution to provide securities clearing services for the Trust. It is the nation's largest clearing agency, clearing 95% of all domestic equity trades, and has a well-established reputation in the financial community. In addition, the clearance and settlement of four hundred separate securities essentially as a single transaction requires sophisticated clearing services. Applicants have found that NSCC is able to provide these services and has enhanced its existing clearing processes to handle purchases and redemptions of Creation Units. The use of NSCC will provide beneficial owners of MID CAP SPDRs with state-of-the-art securities handling, clearance, and transfer systems services, which, given the complexity of mirroring the component shares of the S&P MidCap 400 Index, is extremely important to all such owners. Applicants also note that the Sponsor has found the clearing process efficient and reliable when clearing SPDRS for the SPDR Trust.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to Series 1, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless Applicants have requested and received with respect to such new series, either exemptive relief from the SEC or a no-action position from the Division of Investment Management of the Commission.

2. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, MID CAP SPDRs are issued by the Trust and that the acquisition of MID CAP SPDRs by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–32257 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pratt & Lambert United, Inc., Common Stock, $.01 Par Value) File No. 1–994

December 27, 1994.

Pratt & Lambert United, Inc. (''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 Company, in addition to being listed on the Amex, the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on December 7, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before January 18, 1995 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 exchange 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. 94–32307 Filed 12–30–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Orange County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, Florida.

FOR FURTHER INFORMATION CONTACT: Jim Travis, Transportation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 942–9587.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to develop a new alignment for the Apopka Bypass, Orange County, Florida. The proposed improvement would involve the development of a roadway within a study area that begins at the intersection of US 441 and the planned Maitland Boulevard extension. The study area extends in a westerly direction until reaching the area of the intersection of Keene Road and Ocoee-Apopka Road. From this location, the study area curves to the north ending at the intersection of US 441 and CR 437 in Orange County, Florida. The study area will vary in width from approximately 1.2 kilometers (4,000 feet) at its eastern terminus to 4 kilometers (2½ miles) at its northern terminus. The approximate length is ±17.7 kilometers (±11 miles). Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: 1) taking no action, 2) alternate corridors, and 3) alternate alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings are planned to be held in Apopka, Orange County between February and June, 1995. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during the early part of 1995.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 20, 1994.

Melisa L. Ridenour,

Transportation Supervisor.

[FR Doc. 94–32200 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on January 27, 1995. The session is expected to focus on: (1) National Intelligent Transportation Systems (ITS) Program Plan Approval; (2) ITS Privacy Principles Approval; (3) System Architecture Development Update; (4) Standards Requirements Process; (5) Telecommunications Strategy; and (6) Report of the Futures Group. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on January 27, 1995, from 8 a.m. to 12 noon e.t.

ADDRESSES: The Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008, (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Mr. Steve Hay at ITS AMERICA by telephone at (202) 484–4665, or by FAX at (202) 484–3483. The DOT contact is Ms. Susan Lauffer, FHWA, HTV–1, Washington, D.C. 20590, (202) 366–0372. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 22, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–32312 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–22–P

State Laws and Regulations Affecting Interstate Motor Carrier Operations; Establishment of a Compliance Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; establishment of compliance date.

SUMMARY: The FHWA is announcing the date by which States must adopt and enforce motor carrier safety regulations that have the same effect as the Federal Motor Carrier Safety Regulations (FMCSRs) and are applicable to all commercial motor vehicles (CMVs) used in interstate commerce with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of greater than 10,000 pounds. A State's failure to comply within three years of January 3, 1995 will subject the State to the loss of Motor Carrier Safety Assistance Program (MCSAP) funding.

DATES: Each State must adopt and enforce compatible interstate weight threshold requirements within three years from January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Brad A. Trullinger, Office of Motor Carrier Standards, (202) 366–4009, or Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (The Act), Pub. L. 98–554, 98 Stat. 2832, (codified as amended at 49 U.S.C. 31111), seeks to promote the safe operation of CMVs in interstate commerce. The Act was intended to assure consistency of State laws and regulatory requirements as they pertain to commercial vehicle safety. The Congress found that there was a need for more uniform CMV safety measures between the State and

Federal governments that, with strengthened enforcement, would reduce the number of fatalities and injuries related to CMV operations. The Act provided that State laws and regulations pertaining to CMV safety could continue to be enforced only if they have the same effect as the Federal regulations.

The Act also created a Commercial Motor Vehicle Safety Regulatory Review Panel to review all State laws and regulations as they pertain to motor carrier safety affecting interstate operations. The focus of the Safety Panel was to determine which State laws and regulations either have the same effect, are more stringent than, or are less stringent than the requirements of the FMCSRs. The Safety Panel initially inventoried over 70,000 State motor carrier safety laws and regulations affecting interstate carriers.

In August of 1990, the Safety Panel submitted a final report of its findings and recommendations to the Secretary of Transportation. (DOT/FHWA, Achieving Compatibility of State and Federal Safety Requirements: A Report to the Secretary of Transportation, August 1990.) The Safety Panel identified many State laws and regulations that were determined to be less stringent than the Federal requirements. The Safety Panel specifically recommended using an approach whereby the FHWA could preempt less stringent State laws or regulations, deny funding under the Motor Carrier Safety Assistance Program, or both. This approach was subsequently adopted by the FHWA, and codified in 49 CFR parts 350 and 355. In fact, appendix A in part 355 specifically uses the 10,001 pound or more weight threshold as an example of a guideline for regulatory review. However, the Safety Panel ''gave States latitude on the compatibility of their weight threshold requirements'' pending the outcome of an FHWA rulemaking action on this issue, initiated by an advance notice of proposed rulemaking (ANPRM) published on February 17, 1989, at 54 FR 7224. (Safety Panel Report, at p. 11)

The FHWA requested comments in the ANPRM on possible changes to the GVWR criterion, including whether the 10,001 pound weight threshold should be raised to as high as 26,001 pounds. Because the information obtained from that effort did not support a change in the weight threshold, the FHWA is closing docket MC–89–5, and is providing notice of the withdrawal of the weight threshold proposal for CMVs, elsewhere in today's **Federal Register**. Consequently, States will be granted a three-year period, from January 3, 1995, to adopt and enforce motor carrier safety laws and regulations having the same effect as the FMCSRs, at the 10,001 pound weight threshold, or be subject to the loss of MCSAP funding. It should be emphasized that this notice is expressly limited to the weight threshold issue concerning the definition of a CMV used in interstate commerce. States are expected to maintain regulatory requirements that are consistent with the FMCSRs. Generally, a State has up to three years from the effective date of the new Federal requirement to adopt and enforce that requirement. The FHWA views this action as falling within that category. Future FHWA rulemaking actions will specify appropriate deadlines for the States to promulgate and adopt their appropriate regulatory changes. See 49 CFR 350.11(f) and part 355, appendix A.

Authority: 49 U.S.C. app. 2301 through 2304, 2505 through 2507; 49 U.S.C. 504 and 3102; 23 U.S.C. 315, 49 CFR 1.48.

Issued on: December 22, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–32310 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Central Puget Sound Regional Transit Authority (RTA)

FRA Docket Numbers SA–94–12 and RSGM–94–26

The RTA, working with the Burlingtion Northern Railroad and the Union Pacific Railroad, is developing a Commuter Rail Demonstration Project (CRDP). The CRDP is part of an ongoing effort to improve mass transit services in the three-county, Seattle-Tacoma-Everett region in the State of Washington. The RTA plans to begin operation in late January or early February of 1995, and be concluded not later than May 31, 1995.

The RTA effort to identify suitable passenger equipment for the CRDP concluded that the only possible source of adequate equipment is GO Transit in Toronto, Ontario, Canada. RTA plans to lease 14 bi-level passenger cars, two auxiliary power car units (APCU) and two locomotives from GO Transit. Some of the same GO Transit equipment was leased for varying lengths of time by other United States commuter railroads in the past, most recently by the Southern California Regional Rail Authority for service in the Los Angeles, California, area to augment its equipment fleet because of the increase in commuter rail demand resulting from the January 17, 1994, earthquake.

The RTA seeks waivers of compliance from certain sections of the FRA regulations which are described herein. Conditional waivers were granted to the other commuter rail operators which leased the GO Transit equipment.

FRA Docket Number SA–94–12

The RTA seeks a temporary waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231) for 14 GO Transit passenger cars which do not fully comply with the regulations. Section 231.14(c)(3) requires that the side corner handholds be located specifically in relation to the center line of the coupler. RTA states that the side corner handholds are not located the correct distance above the centerline of the coupler.

FRA Docket Number RSGM–94–26

The RTA seeks a temporary waiver of compliance with certain provisions of the Railroad Safety Glazing Standards (49 CFR Part 223) for 14 GO Transit bi-level commuter passenger cars, 2 APCU, and 2 locomotives which do not fully comply with the regulation. The glazing material installed in the equipment is manufactured to CSA-D263–1972 (ANSI Z.26.1) standards, laminated safety glass suitable for locomotives and railway cars. The side facing and end facing glazing material is not in compliance with 49 CFR Section 223.15.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–94–12) and

must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before February 10, 1995 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on December 27, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–32243 Filed 12–30–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 27, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0184.

Form Number: ATF F 5400.4.

Type of Review: Extension.

Title: Explosives Transaction Record.

Description: This form is used to verify the qualification and identification of unlicensed persons wishing to purchase explosive materials from licensed dealers, as well as the location in which the explosives are intended for storage and/or use. ATF uses the information in its investigations and inspections to establish leads and determine compliance.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,140.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,227 hours.

OMB Number: 1512–0500.

Form Number: ATF F 5630.5R and ATF F 5630.5RC.

Type of Review: Extension.

Title: Special Tax ''Renewal'' Registration and Return and Special Tax Location Registration Listing.

Description: 26 U.S.C. Chapters 51, 52 and 53 authorize the collection of special occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF F 5630.5R and ATF F 5630.5RC are used for the annual renewal cycle to both compute and report the tax and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 402,000.

Estimated Burden Hours Per Respondent: 24 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 160,800 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–32292 Filed 12–30–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

December 27, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0042.

Form Number: PD F 2216.

Type of Review: Extension.

Title: Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $500 (Face Amount).

Description: This form is used by a preferred creditor of a decedent's estate to request payment of savings bonds/notes and/or related checks not exceeding $500 when estate is not being administered.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 835 hours.

OMB Number: 1535–0092.

Form Number: PD Fs 4144, 4144–1, 4144–2, 4144–3 and 4144–4.

Type of Review: Extension.

Title: Subscription for Purchase and Issue of U.S. Treasury Time Deposit Securities—State and Local Government Series.

Description: The information collected is necessary to establish the accounts for owners of Time Deposit Securities of State and Local Government Series.

Respondents: State or local governments.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,585 hours.

OMB Number: 1535–0093.

Form Number: PD Fs 5291, 5291–1, 5291–2 and 5291–3.

Type of Review: Extension.

Title: Subscription for Purchase and Issue of U.S. Treasury Special Zero Interest Securities—State and Local Government Series (plus Schedule 1 for Certificates of Deposit and Schedule 2 for Notes).

Description: The information is necessary to establish the accounts for owners of Special Zero Interest Time Deposit Securities of State and Local Government Series.

Respondents: State or local governments.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 485 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7340. Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–32293 Filed 12–30–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

December 19, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0732.

Regulation ID Number: LR–236–81 Final (T.D. 8251).

Type of Review: Extension.

Title: Credit for Increasing Research Activity.

Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by Tax Reform Act (TRA) 1984 and section 30 before change by Tax Reform Act (TRA) 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 63 hours.

OMB Number: 1545–1291.

Regulation ID Number: PS–78–91.

Type of Review: Extension.

Title: Procedure for Monitoring Compliance with Low-Income Housing Credit Requirements.

Description: The regulations require state allocation plans to provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 and report any noncompliance to the Internal Revenue Service.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 18,750 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–32294 Filed 12–30–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

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Tuesday, January 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 9, 1995, and at 8:30 a.m. on Tuesday, January 10, 1995, in Washington, D.C.

The January 9 meeting is closed to the public. (See 59 FR 64014, December 12, 1994, and 59 FR 66591, December 27, 1994.) The January 10 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

January 9–1:00 p.m. (Closed)

1. Consideration of R&D Funding for Electronic Commerce, (Robert A. F. Reisner, Vice President, Technology Applications.)
2. Consideration of Funding for the Santa Barbara, California, Processing & Distribution Center. (Gene R. Howard, Vice President, Pacific Area Operations)

Tuesday Session

January 10–8:30 a.m. (Open)

1. Minutes of the Previous Meetings, December 5–6, and 12, 1994.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Consideration of Board Resolution on Capital Funding. (Chairman Sam Winters)
4. Consideration of Amendments to the BOG Bylaws. (Chairman Winters)
5. Annual Report on Government in the Sunshine Act Compliance. (David F. Harris, Secretary for the Board of Governors)
6. Capital Investments. (All Decision Items)
   a. 29 Remote Computer Readers. (William J. Dowling, Vice President, Engineering)
   b. Small Bulk Mail Center Parcel Sorting Machine Slide Modifications. (William J. Dowling, Vice President, Engineering)
7. Postmaster General's FY 1994 Annual Report. (Larry M. Speakes, Vice President, Corporate Relations)
8. Annual 1994 Comprehensive Statement on Postal Operations to Congress. (Larry M. Speakes, Vice President, Corporate Relations)
9. Status Report on Washington, DC, and Baltimore, MD, Mail Service. (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations)
10. Election of Chairman and Vice Chairman of the Board of Governors.
11. Tentative Agenda for the February 6–7, 1995, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 94–32334 Filed 12–29–94; 8:45 am]

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federal register

Tuesday
January 3, 1995

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Nutrition Labeling of Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–029F]

Nutrition Labeling of Meat and Poultry Products; Codification

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its final nutrition labeling regulations to provide codified language for provisions that previously cross-referenced those requirements contained in the final nutrition labeling regulations of the Food and Drug Administration (FDA) that FSIS adopted. FSIS is taking this action to provide complete codified language for the nutrition labeling of meat and poultry products in the regulations under 9 CFR parts 317 and 381. Full codification of the final FSIS nutrition labeling regulations will facilitate their use by improving their clarity and accessibility.

EFFECTIVE DATE: January 3, 1995, except that the amendments to §§ 317.363 and 381.463 are effective on November 10, 1995. The incorporation by reference of Agriculture Handbook No. 74 (Slightly revised February 1973), pages 2, 3, 9–11, and 25, and the ''Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' Rome, 1990, sections 5.4.1, 7.2.1, and 8, contained in these regulations, is approved by the Director of the Office of the Federal Register as of January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Background

FSIS published its final nutrition labeling regulations in the **Federal Register** on January 6, 1993 (58 FR 632). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787), and September 10, 1993 (58 FR 47624), respectively. The technical amendments, which were issued as an interim final rule, were confirmed as final on March 16, 1994 (59 FR 12157). FSIS also published a final rule on placement of nutrition labeling on meat and poultry products on August 8, 1994 (59 FR 40209), and a final rule with additional technical amendments to the nutrition labeling regulations on September 1, 1994 (59 FR 45189). Most of the changes FSIS made in the final rules pertaining to technical amendments and the placement of nutrition labeling on meat and poultry products were designed to parallel similar changes that FDA made to its nutrition labeling regulations. FSIS adopted certain changes made by FDA in cross-referenced provisions, in addition to amending certain of its own provisions to be consistent with those changes.

The codified portion of FSIS's final regulations published on January 6, 1993, cross-referenced provisions of FDA's regulations where the requirements are identical, and, for the most part, provided codified language only for those provisions where there are variations from FDA because of the different products that FSIS regulates. FSIS used cross-references in order to issue its final nutrition labeling regulations simultaneously with FDA on January 6, 1993. In the preamble to its final rule of January 6, 1993, FSIS said that it had received many comments which suggested that the Agency include all of the codified language for the nutrition labeling of meat and poultry products in the regulations under 9 CFR parts 317 and 381. The commenters stated that it is very difficult to go back and forth between FDA and FSIS regulations to look up different provisions for the nutrition labeling regulations. FSIS agreed with these comments and said it planned to publish the codified language in its entirety, while noting that future codification did not postpone the implementation date of the nutrition labeling regulations.

The Amendments

This document sets forth in entirety the codified language for previously cross-referenced nutrition labeling provisions. It includes all changes in the above-mentioned final rules as they apply to the cross-referenced provisions. Sections that contain cross-referenced provisions include those pertaining to the nutrition label content (serving sizes; mandatory and voluntary nutrients; and format requirements for the standard display, dual column display, and simplified format); Reference Amounts Customarily Consumed per eating occasion; general principles for nutrient content claims; nutrient content claims (claims for ''good source,'' ''high,'' and ''more''; ''light'' or ''lite''; calorie content; sodium content; and fat, fatty acids, and cholesterol content); and label statements for reducing or maintaining body weight.

In incorporating the previously cross-referenced provisions contained in 21 CFR, FSIS has made an effort to order the paragraphs and subdivisions, to the extent possible, in the same sequence as the comparable paragraphs and subdivisions in FDA's nutrition labeling regulations in 21 CFR. Accordingly, some existing paragraphs have been redesignated. FSIS believes that such consistency of presentation will be useful to interested parties who compare the FSIS and FDA provisions, and to those manufacturers producing both FSIS- and FDA-regulated products who refer to both agencies' regulations for nutrition labeling requirements.

FSIS is also making several amendments to sections of the nutrition labeling regulations (9 CFR part 317, subpart B, and part 381, subpart Y) that do not contain cross-referenced provisions to correct typographical errors, make minor editorial changes for clarity and accuracy, and reorder information in several paragraphs to improve clarity and readability. For example, in part 317, the terminology for ''meat products'' is changed, in most cases, to ''meat or meat food products,'' which mirrors the statutory language contained in the Federal Meat Inspection Act. The term ''product component'' is changed to ''food component'' when it refers to a constituent of food whose declaration on product labeling is mandatory or voluntary under the regulations, and ingredients with specific food factors for calorie calculations. Cross-references within paragraphs in various sections of the nutrition labeling provisions are changed to conform with any redesignated paragraph that is the subject of the cross-reference. Units of measure and weights are, for the most part, abbreviated after their first appearance within a section.

FSIS provided provisions at 9 CFR 317.309(e)(2)(i) and 381.409(e)(2)(i) for use of an aggregate display of nutrition information on the outer label or labeling of products that contain two or more products in the same package. However, in 9 CFR 317.309(e)(2)(ii) and 381.409(e)(2)(ii) that specify the format requirements for the aggregate display, FSIS inadvertently provided that the identity of each food shall be specified immediately under the ''Nutrition Facts'' title. In fact, the identity of the food is placed to the right of the ''Nutrition Facts'' title as illustrated by a sample label for the aggregate display at 21 CFR 101.9(d)(13)(ii). FSIS is correcting this oversight in paragraphs 9

CFR 317.309(e)(2)(ii) and 381.409(e)(2)(ii), which are redesignated as 9 CFR 317.309(d)(13)(ii) and 381.409(d)(13)(ii), respectively.

FSIS is revising the language of 9 CFR 317.309(g) and 381.409(g) to clarify the identity of nutrients that shall be included in a simplified format and those that may be included voluntarily. Sections 317.309(g)(2) and 381.409(g)(2) (9 CFR 317.309(g)(2) and 381.409(g)(2)) specify that the simplified format shall include serving size, number of servings per container, calories, total fat, total carbohydrate, protein, and sodium. The provisions do not provide specifically that calories from fat, saturated fat, cholesterol, dietary fiber, sugars, vitamin A, vitamin C, calcium, and iron also must be declared in the simplified format when any are present in more than insignificant amounts, as must any added vitamins and minerals for which Reference Daily Intakes (RDI) are established if their addition were to be allowed. Those provisions also do not indicate that other nutrients for which nutrition labeling is voluntary (e.g., sugar alcohol or thiamin) may also be declared in the simplified format. FSIS is redesignating sections 317.309(g) and 381.409(g) as 317.309(f) and 381.409(f), respectively, revising the newly designated paragraphs, and adding a paragraph to specify the requirements completely. This action provides codified language that is consistent with comparable FDA provisions at 21 CFR 101.9(f) and prevents misinterpretation of the simplified format provisions.

FSIS is amending 9 CFR 317.313(q)(4) and 381.414(q)(4) pertaining to exemptions from the general principles for nutrient content claims by correcting the terminology for the products that are not subject to the provisions in the sections. Accordingly, the term ''products for special dietary use'' is changed to read ''infant formulas and medical foods,'' which is the terminology employed by FDA in the comparable provision in 21 CFR at 101.13(q)(4). Products for special dietary use, as described in 21 CFR part 105, include products such as hypoallergenic products, products designed for weight reduction or weight maintenance, products for use in diets of diabetics, and products used to regulate sodium intake, all of which are subject to the provisions of 9 CFR 317.313 and 381.413. To leave the terminology uncorrected creates an apparent conflict with provisions in the sections of the nutrition labeling regulations pertaining to nutrient content claims about calorie content (9 CFR 317.360 and 381.460) and sodium content (9 CFR 313.361 and 381.461), and label or labeling statements relating to usefulness in reducing or maintaining body weight (9 CFR 317.380 and 381.480).

At 9 CFR 317.345(a)(2) and 381.445(a)(2), FSIS set forth guidelines for voluntary nutrition labeling of single-ingredient, raw products that specify that point-of-purchase materials are not subject to any format requirements if only nutrition information, and not a nutrition claim, is supplied on point-of-purchase materials. FSIS specifically mentioned that listing of Daily Reference Values, which is a footnote, is voluntary but did not specify that the listing of percent of Daily Value is also a format requirement. FSIS is making minor editorial changes in 9 CFR 317.345(a)(2) and 381.445(a)(2) to clarify this point and is reordering some of the information to improve readability.

In addition, at 9 CFR 317.362(f)(1) and 381.462(f)(2), FSIS used the following statements as examples of declarations of quantitative information for claims of cholesterol free, low cholesterol, or reduced cholesterol that compare the level of cholesterol in an individual food product with that of a reference food: (e.g., ''contains no cholesterol compared with 30 mg in one serving of 'reference food'; contains 11 g of fat per serving'' or ''cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving''). FSIS is not including in these amendments those portions of the statements that disclose fat contents, that is, ''contains 11 grams of fat per serving'' and ''contains 13 g of fat per serving,'' because FSIS does not require such disclosure but, rather, permits disclosure on an optional basis.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule simply codifies into 9 CFR the 21 CFR provisions that were previously cross-referenced in 9 CFR 317 and 381 pertaining to nutrition labeling. In addition, small entities are exempt from nutrition labeling regulations, provided their products do not make nutrition claims or nutrition information.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Incorporation by reference, Meat inspection.

9 CFR Part 381

Food labeling, Incorporation by reference, Poultry and poultry products.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.300 is amended by revising the section heading, paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 317.300 Nutrition labeling of meat or meat food products.

(a) Nutrition labeling shall be provided for all meat or meat food products intended for human consumption and offered for sale, except single-ingredient, raw products, in accordance with the requirements of § 317.309; except as exempted under § 317.400 of this subpart.

(b) Nutrition labeling may be provided for single-ingredient, raw meat or meat food products in accordance with the requirements of §§ 317.309 and 317.345. * * *

3. Section 317.302 is amended by adding the words ''or meat food'' after the words ''packaged meat'' in paragraph (a) and after the word ''Meat'' in the first sentence of paragraph (c).

4. Section 317.308 is amended by adding the words ''or meat food'' after the word ''meat'' in the section title and after the word ''meat'' in the text.

5. Section 317.309 is amended by changing the section reference in the fifth sentence of paragraph (h)(2) from ''317.309(b)'' to ''317.309(c)'' and revising paragraphs (a) through (g) to read as follows:

§ 317.309 Nutrition label content.

(a) All nutrient and food component quantities shall be declared in relation to a serving as defined in this section.

(b)(1) The term ''serving'' or ''serving size'' means an amount of food customarily consumed per eating occasion by persons 4 years of age or older, which is expressed in a common household measure that is appropriate to the product. When the product is specially formulated or processed for use by infants or by toddlers, a serving or serving size means an amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively.

(2) Except as provided in paragraphs (b)(8), (b)(12), and (b)(14) of this section and for products that are intended for weight control and are available only through a weight-control or weight-maintenance program, serving size declared on a product label shall be determined from the ''Reference Amounts Customarily Consumed Per Eating Occasion—General Food Supply'' (Reference Amount(s)) that appear in § 317.312(b) using the procedures described in this paragraph (b). For products that are both intended for weight control and available only through a weight-control program, a manufacturer may determine the serving size that is consistent with the meal plan of the program. Such products must bear a statement, ''for sale only through the _____ program'' (fill in the blank with the name of the appropriate weight-control program, e.g., Smith's Weight Control), on the principal display panel. However, the Reference Amounts in § 317.312(b) shall be used for purposes of evaluating whether weight-control products that are available only through a weight-control program qualify for nutrition claims.

(3) The declaration of nutrient and food component content shall be on the basis of the product ''as packaged'' for all products, except that single-ingredient, raw products may be declared on the basis of the product ''as consumed'' as set forth in § 317.345(a)(1). In addition to the required declaration on the basis of ''as packaged'' for products other than single-ingredient, raw products, the declaration may also be made on the basis of ''as consumed,'' provided that preparation and cooking instructions are clearly stated.

(4) For products in discrete units (e.g., hot dogs, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category.

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size.

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit.

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., beef fritters and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 317.312(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in this section (i.e., are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

(5) For products in large discrete units that are usually divided for consumption (e.g., pizza), for unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g. pizza kit), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a large discrete unit usually divided for consumption, the serving size shall be the fractional slice of the ready-to-eat product (e.g., ⅛ quiche, ¼ pizza) that most closely approximates the Reference Amount for the product category. The serving size may be the fraction of the package used to make the Reference Amount for the unprepared product determined in § 317.312(d) or the fraction of the large discrete unit represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount of the combined product determined in § 317.312(c). In expressing the fractional slice, manufacturers shall use ½, ⅓, ¼, ⅕, ⅙, or smaller fractions that can be generated by further division by 2 or 3.

(6) For nondiscrete bulk products (e.g., whole roast beef, marinated beef tenderloin, large can of chili), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a bulk product (e.g., roast beef and gravy), the serving size shall be the amount in household measure that most closely approximates the Reference Amount for the product category and may be the amount of the bulk product represented as the main ingredient plus proportioned minor ingredients used to

make the Reference Amount for the combined product determined in § 317.312(c).

(7) For labeling purposes, the term ''common household measure'' or ''common household unit'' means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar or tray). In expressing serving size in household measures, except as specified in paragraphs (b)(7)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1 ⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term ''about'' (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., chop, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) For products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., ham with a glaze packet), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 grams (g).

(viii) When a serving size, determined from the Reference Amount in § 317.312(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving size up to the next incremental size.

(8) A product that is packaged and sold individually and that contains less than 200 percent of the applicable Reference Amount shall be considered to be a single-serving container, and the entire content of the product shall be labeled as one serving, except for products that have Reference Amounts of 100 g (or mL) or larger, manufacturers may decide whether a package that contains more than 150 percent but less than 200 percent of the Reference Amount is 1 or 2 servings. Packages sold individually that contain 200 percent or more of the applicable Reference Amount may be labeled as a single-serving if the entire content of the package can reasonably be consumed at a single-eating occasion.

(9) A label statement regarding a serving shall be the serving size expressed in common household measures as set forth in paragraphs (b)(2) through (b)(8) of this section and shall be followed by the equivalent metric quantity in parenthesis (fluids in milliliters and all other foods in grams), except for single-serving containers.

(i) For a single-serving container, the parenthetical metric quantity, which will be presented as part of the net weight statement on the principal display panel, is not required except where nutrition information is required on a drained weight basis according to paragraph (b)(11) of this section. However, if a manufacturer voluntarily provides the metric quantity on products that can be sold as single-servings, then the numerical value provided as part of the serving size declaration must be identical to the metric quantity declaration provided as part of the net quantity of contents statement.

(ii) The gram or milliliter quantity equivalent to the household measure should be rounded to the nearest whole number except for quantities that are less than 5 g (mL). The gram (mL) quantity between 2 and 5 g (mL) should be rounded to the nearest 0.5 g (mL) and the g (mL) quantity less than 2 g (mL) should be expressed in 0.1-g (mL) increments.

(iii) In addition, serving size may be declared in ounce, in parenthesis, following the metric measure separated by a slash where other common household measures are used as the primary unit for serving size, e.g., 1 slice (28 g/1 oz) for sliced bologna. The ounce quantity equivalent to the metric quantity should be expressed in 0.1-oz increments.

(iv) If a manufacturer elects to use abbreviations for units, the following abbreviations shall be used: tbsp for tablespoon, tsp for teaspoon, g for gram, mL for milliliter, and oz for ounce.

(10) Determination of the number of servings per container shall be based on the serving size of the product determined by following the procedures described in this section.

(i) The number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings and random weight products. The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term ''about'' (e.g., about 2 servings; about 3.5 servings).

(ii) When the serving size is required to be expressed on a drained solids basis and the number of servings varies because of a natural variation in unit size (e.g., pickled pigs feet), the manufacturer may state the typical number of servings per container (e.g., usually 5 servings).

(iii) For random weight products, a manufacturer may declare ''varied'' for the number of servings per container provided the nutrition information is based on the Reference Amount expressed in ounces. The manufacturer may provide the typical number of servings in parenthesis following the ''varied'' statement (e.g., varied (approximately 8 servings per pound)).

(iv) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in this section (i.e., are labeled appropriately for individual sale as single-serving containers), the number of servings shall be the number of individual packages within the total package.

(v) For packages containing several individually packaged multi-serving units, the number of servings shall be determined by multiplying the number of individual multi-serving units in the total package by the number of servings in each individual unit.

(11) The declaration of nutrient and food component content shall be on the basis of product as packaged or purchased with the exception of

products that are packed or canned in water, brine, or oil but whose liquid packing medium is not customarily consumed. Declaration of the nutrient and food component content of products that are packed in liquid which is not customarily consumed shall be based on the drained solids.

(12) Serving size for meal-type products as defined in § 317.313(l) shall be the entire content (edible portion only) of the package.

(13) Another column of figures may be used to declare the nutrient and food component information in the same format as required by § 317.309(e),

(i) Per 100 grams, 100 milliliters, or 1 ounce of the product as packaged or purchased.

(ii) Per one unit if the serving size of a product in discrete units in a multi-serving container is more than one unit.

(14) If a product consists of assortments of meat or meat food products (e.g., variety packs) in the same package, nutrient content shall be expressed on the entire package contents or on each individual product.

(15) If a product is commonly combined with other ingredients or is cooked or otherwise prepared before eating, and directions for such combination or preparations are provided, another column of figures may be used to declare the nutrient contents on the basis of the product as consumed for the product alone (e.g., a cream soup mix may be labeled with one set of Daily Values for the dry mix (per serving), and another set for the serving of the final soup when prepared (e.g., per serving of cream soup mix and 1 cup of vitamin D fortified whole milk)): *Provided,* That the type and quantity of the other ingredients to be added to the product by the user and the specific method of cooking and other preparation shall be specified prominently on the label.

(c) The declaration of nutrition information on the label or in labeling of a meat or meat food product shall contain information about the level of the following nutrients, except for those nutrients whose inclusion, and the declaration of amounts, is voluntary as set forth in this paragraph. No nutrients or food components other than those listed in this paragraph as either mandatory or voluntary may be included within the nutrition label. Except as provided for in paragraph (f) or (g) of this section, nutrient information shall be presented using the nutrient names specified and in the following order in the formats specified in paragraph (d) or (e) of this section.

(1) ''Calories, total,'' ''Total calories,'' or ''Calories'': A statement of the caloric content per serving, expressed to the nearest 5-calorie increment up to and including 50 calories, and 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed as zero. Energy content per serving may also be expressed in kilojoule units, added in parenthesis immediately following the statement of the caloric content.

(i) Caloric content may be calculated by the following methods. Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

(A) Using specific Atwater factors (i.e., the Atwater method) given in Table 13, page 25, ''Energy Value of Foods—Basis and Derivation,'' by A. L. Merrill and B. K. Watt, United States Department of Agriculture (USDA), Agriculture Handbook No. 74 (Slightly revised February 1973), which is incorporated by reference. Table 13 of the ''Energy Value of Foods—Basis and Derivation,'' Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available for inspection at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC, or at the office of the FSIS Docket Clerk, Room 3171, South Building, 14th and Independence Avenue, SW., Washington, DC. Copies of the incorporation by reference are available from the Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 329, West End Court Building, Washington, DC 20250–3700;

(B) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate, and total fat, respectively, as described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 9–11, which is incorporated by reference. Pages 9–11, Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.);

(C) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate less the amount of insoluble dietary fiber, and total fat, respectively, as described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 9–11, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.); or

(D) Using data for specific food factors for particular foods or ingredients approved by the Food and Drug Administration (FDA) and provided in parts 172 or 184 of 21 CFR, or by other means, as appropriate.

(ii) ''Calories from fat'': A statement of the caloric content derived from total fat as defined in paragraph (c)(2) of this section per serving, expressed to the nearest 5-calorie increment, up to and including 50 calories, and the nearest 10-calorie increment above 50 calories, except that label declaration of ''calories from fat'' is not required on products that contain less than 0.5 gram of fat per serving and amounts less than 5 calories may be expressed as zero. This statement shall be declared as provided in paragraph (d)(5) of this section.

(iii) ''Calories from saturated fat'' or ''Calories from saturated'' (VOLUNTARY): A statement of the caloric content derived from saturated fat as defined in paragraph (c)(2)(i) of this section per serving may be declared voluntarily, expressed to the nearest 5-calorie increment, up to and including 50 calories, and the nearest 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed as zero. This statement shall be indented under the statement of calories from fat as provided in paragraph (d)(5) of this section.

(2) ''Fat, total'' or ''Total fat'': A statement of the number of grams of total fat per serving defined as total lipid fatty acids and expressed as triglycerides. Amounts shall be expressed to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(i) ''Saturated fat'' or ''Saturated'': A statement of the number of grams of saturated fat per serving defined as the sum of all fatty acids containing no double bonds, except that label declaration of saturated fat content information is not required for products that contain less than 0.5 gram of total fat per serving if no claims are made about fat or cholesterol content, and if ''calories from saturated fat'' is not declared. Saturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5

gram, the content shall be expressed as zero.

(A) ''Stearic Acid'' (VOLUNTARY): A statement of the number of grams of stearic acid per serving may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the nearest 0.5 (½)-gram increment below 5 grams and the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(B) [Reserved]

(ii) ''Polyunsaturated fat'' or ''Polyunsaturated'' (VOLUNTARY): A statement of the number of grams of polyunsaturated fat per serving defined as *cis,cis*-methylene-interrupted polyunsaturated fatty acids may be declared voluntarily, except that when monounsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a product other than one that meets the criteria in § 317.362(b)(1) for a claim for ''fat free,'' label declaration of polyunsaturated fat is required. Polyunsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(iii) ''Monounsaturated fat'' or ''Monounsaturated'' (VOLUNTARY): A statement of the number of grams of monounsaturated fat per serving defined as *cis*-monounsaturated fatty acids may be declared voluntarily, except that when polyunsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a product other than one that meets the criteria in § 317.362(b)(1) for a claim for ''fat free,'' label declaration of monounsaturated fat is required. Monounsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(3) ''Cholesterol'': A statement of the cholesterol content per serving expressed in milligrams to the nearest 5-milligram increment, except that label declaration of cholesterol information is not required for products that contain less than 2 milligrams of cholesterol per serving and make no claim about fat, fatty acids, or cholesterol content, or such products may state the cholesterol content as zero. If the product contains 2 to 5 milligrams of cholesterol per serving, the content may be stated as ''less than 5 milligrams.''

(4) ''Sodium'': A statement of the number of milligrams of sodium per serving expressed as zero when the serving contains less than 5 milligrams of sodium, to the nearest 5-milligram increment when the serving contains 5 to 140 milligrams of sodium, and to the nearest 10-milligram increment when the serving contains greater than 140 milligrams.

(5) ''Potassium'' (VOLUNTARY): A statement of the number of milligrams of potassium per serving may be declared voluntarily, except that when a claim is made about potassium content, label declaration shall be required. Potassium content shall be expressed as zero when the serving contains less than 5 milligrams of potassium, to the nearest 5-milligram increment when the serving contains 5 to 140 milligrams of potassium, and to the nearest 10-milligram increment when the serving contains greater than 140 milligrams.

(6) ''Carbohydrate, total'' or ''Total carbohydrate'': A statement of the number of grams of total carbohydrate per serving expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, or, if the serving contains less than 0.5 gram, the content may be expressed as zero. Total carbohydrate content shall be calculated by subtraction of the sum of the crude protein, total fat, moisture, and ash from the total weight of the product. This calculation method is described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 2 and 3, which is incorporated by reference. Pages 2 and 3, Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.)

(i) ''Dietary fiber'': A statement of the number of grams of total dietary fiber per serving, indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, declaration of dietary fiber is not required, or, alternatively, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(A) ''Soluble fiber'' (VOLUNTARY): A statement of the number of grams of soluble dietary fiber per serving may be declared voluntarily except when a claim is made on the label or in labeling about soluble fiber, label declaration shall be required. Soluble fiber content shall be indented under dietary fiber and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(B) ''Insoluble fiber'' (VOLUNTARY): A statement of the number of grams of insoluble dietary fiber per serving may be declared voluntarily except when a claim is made on the label or in labeling about insoluble fiber, label declaration shall be required. Insoluble fiber content shall be indented under dietary fiber and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(ii) ''Sugars'': A statement of the number of grams of sugars per serving, except that label declaration of sugars content is not required for products that contain less than 1 gram of sugars per serving if no claims are made about sweeteners, sugars, or sugar alcohol content. Sugars shall be defined as the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose). Sugars content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(iii) ''Sugar alcohol'' (VOLUNTARY): A statement of the number of grams of sugar alcohols per serving may be declared voluntarily on the label, except that when a claim is made on the label or in labeling about sugar alcohol or sugars when sugar alcohols are present in the product, sugar alcohol content shall be declared. For nutrition labeling purposes, sugar alcohols are defined as the sum of saccharide derivatives in which a hydroxyl group replaces a ketone or aldehyde group and whose use in the food is listed by FDA (e.g., mannitol or xylitol) or is generally recognized as safe (e.g., sorbitol). In lieu of the term ''sugar alcohol,'' the name of the specific sugar alcohol (e.g., ''xylitol'') present in the product may be used in the nutrition label, provided

that only one sugar alcohol is present in the product. Sugar alcohol content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less then 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(iv) ''Other carbohydrate'' (VOLUNTARY): A statement of the number of grams of other carbohydrate per serving may be declared voluntarily. Other carbohydrate shall be defined as the difference between total carbohydrate and the sum of dietary fiber, sugars, and sugar alcohol, except that if sugar alcohol is not declared (even if present), it shall be defined as the difference between total carbohydrate and the sum of dietary fiber and sugars. Other carbohydrate content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(7) ''Protein'': A statement of the number of grams of protein per serving expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero. When the protein in products represented or purported to be for adults and children 4 or more years of age has a protein quality value that is a protein digestibility-corrected amino acid score of less than 20 expressed as a percent, or when the protein in a product represented or purported to be for children greater than 1 but less than 4 years of age has a protein quality value that is a protein digestibility-corrected amino acid score of less than 40 expressed as a percent, either of the following shall be placed adjacent to the declaration of protein content by weight: The statement ''not a significant source of protein,'' or a listing aligned under the column headed ''Percent Daily Value'' of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the Daily Reference Value (DRV) or Reference Daily Intake (RDI), as appropriate, for protein and expressed as percent of Daily Value. When the protein quality in a product as measured by the Protein Efficiency Ratio (PER) is less than 40 percent of the reference standard (casein) for a product represented or purported to be for infants, the statement ''not a significant source of protein'' shall be placed adjacent to the declaration of protein content. Protein content may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food as determined by appropriate methods of analysis in accordance with § 317.309(h), except when the procedure for a specific food requires another factor.

(i) A statement of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein, as appropriate, and expressed as percent of Daily Value, may be placed on the label, except that such a statement shall be given if a protein claim is made for the product, or if the product is represented or purported to be for infants or children under 4 years of age. When such a declaration is provided, it shall be placed on the label adjacent to the statement of grams of protein and aligned under the column headed ''Percent Daily Value,'' and expressed to the nearest whole percent. However, the percentage of the RDI for protein shall not be declared if the product is represented or purported to be for infants and the protein quality value is less than 40 percent of the reference standard.

(ii) The corrected amount of protein (grams) per serving for products represented or purported to be for adults and children 1 or more years of age is equal to the actual amount of protein (grams) per serving multiplied by the amino acid score corrected for protein digestibility. If the corrected score is above 1.00, then it shall be set at 1.00. The protein digestibility-corrected amino acid score shall be determined by methods given in sections 5.4.1, 7.2.1, and 8 in ''Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' Rome, 1990, which is incorporated by reference. Sections 5.4.1, 7.2.1, and 8 of the ''Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' as published by the Food and Agriculture Organization of the United Nations/World Health Organization, is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available for inspection at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC, or at the office of the FSIS Docket Clerk, Room 3171, South Building, 14th and Independence Avenue, SW., Washington, DC. Copies of the incorporation by reference are available from the Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 329, West End Court Building, Washington, DC 20250–3700. For products represented or purported to be for infants, the corrected amount of protein (grams) per serving is equal to the actual amount of protein (grams) per serving multiplied by the relative protein quality value. The relative protein quality value shall be determined by dividing the subject product's protein PER value by the PER value for casein. If the relative protein value is above 1.00, it shall be set at 1.00.

(iii) For the purpose of labeling with a percent of the DRV or RDI, a value of 50 grams of protein shall be the DRV for adults and children 4 or more years of age, and the RDI for protein for children less than 4 years of age, infants, pregnant women, and lactating women shall be 16 grams, 14 grams, 60 grams, and 65 grams, respectively.

(8) Vitamins and minerals: A statement of the amount per serving of the vitamins and minerals as described in this paragraph, calculated as a percent of the RDI and expressed as percent of Daily Value.

(i) For purposes of declaration of percent of Daily Value as provided for in paragraphs (d) through (g) of this section, products represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women shall use the RDI's that are specified for the intended group. For products represented or purported to be for use by both infants and children under 4 years of age, the percent of Daily Value shall be presented by separate declarations according to paragraph (e) of this section based on the RDI values for infants from birth to 12 months of age and for children under 4 years of age. Similarly, the percent of Daily Value based on both the RDI values for pregnant women and for lactating women shall be declared separately on products represented or purported to be for use by both pregnant and lactating women. When such dual declaration is used on any label, it shall be included in all labeling, and equal prominence shall be given to both values in all such labeling. All other products shall use the RDI for adults and children 4 or more years of age.

(ii) The declaration of vitamins and minerals as a percent of the RDI shall include vitamin A, vitamin C, calcium, and iron, in that order, and shall

include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are added, or when a claim is made about them. Other vitamins and minerals need not be declared if neither the nutrient nor the component is otherwise referred to on the label or in labeling or advertising and the vitamins and minerals are:

(A) Required or permitted in a standardized food (e.g., thiamin, riboflavin, and niacin in enriched flour) and that standardized food is included as an ingredient (i.e., component) in another product; or

(B) Included in a product solely for technological purposes and declared only in the ingredients statement. The declaration may also include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are naturally occurring in the food. The additional vitamins and minerals shall be listed in the order established in paragraph (c)(8)(iv) of this section.

(iii) The percentages for vitamins and minerals shall be expressed to the nearest 2-percent increment up to and including the 10-percent level, the nearest 5-percent increment above 10 percent and up to and including the 50-percent level, and the nearest 10-percent increment above the 50-percent level. Amounts of vitamins and minerals present at less than 2 percent of the RDI are not required to be declared in nutrition labeling but may be declared by a zero or by the use of an asterisk (or other symbol) that refers to another asterisk (or symbol) that is placed at the bottom of the table and that is followed by the statement ''Contains less than 2 percent of the Daily Value of this (these) nutrient (nutrients).'' Alternatively, if vitamin A, vitamin C, calcium, or iron is present in amounts less than 2 percent of the RDI, label declaration of the nutrient(s) is not required if the statement ''Not a significant source of _____ (listing the vitamins or minerals omitted)'' is placed at the bottom of the table of nutrient values.

(iv) The following RDI's and nomenclature are established for the following vitamins and minerals which are essential in human nutrition:

Vitamin A, 5,000 International Units
Vitamin C, 60 milligrams
Calcium, 1.0 gram
Iron, 18 milligrams
Vitamin D, 400 International Units
Vitamin E, 30 International Units
Thiamin, 1.5 milligrams
Riboflavin, 1.7 milligrams
Niacin, 20 milligrams
Vitamin B_6, 2.0 milligrams
Folate, 0.4 milligram
Vitamin B_{12}, 6 micrograms
Biotin, 0.3 milligram
Pantothenic acid, 10 milligrams
Phosphorus, 1.0 gram
Iodine, 150 micrograms
Magnesium, 400 milligrams
Zinc, 15 milligrams
Copper, 2.0 milligrams

(v) The following synonyms may be added in parenthesis immediately following the name of the nutrient or dietary component:

Vitamin C—Ascorbic acid
Thiamin—Vitamin B_1
Riboflavin—Vitamin B_2
Folate—Folacin
Calories—Energy

(vi) A statement of the percent of vitamin A that is present as *beta*-carotene may be declared voluntarily. When the vitamins and minerals are listed in a single column, the statement shall be indented under the information on vitamin A. When vitamins and minerals are arrayed horizontally, the statement of percent shall be presented in parenthesis following the declaration of vitamin A and the percent of Daily Value of vitamin A in the product (e.g., ''Percent Daily Value: Vitamin A 50 (90 percent as *beta*-carotene)''). When declared, the percentages shall be expressed in the same increments as are provided for vitamins and minerals in paragraph (c)(8)(iii) of this section.

(9) For the purpose of labeling with a percent of the DRV, the following DRV's are established for the following food components based on the reference caloric intake of 2,000 calories:

Food component	Unit of measurement	DRV
Fat	grams (g)	65
Saturated fatty acids.	do	20
Cholesterol	milligrams (mg)	300
Total carbohydrate.	grams (g)	300
Fiber	do	25
Sodium	milligrams (mg)	2,400
Potassium	do	3,500
Protein	grams (g)	50

(d)(1) Nutrient information specified in paragraph (c) of this section shall be presented on products in the following format, except on products on which dual columns of nutrition information are declared as provided for in paragraph (e) of this section, on those products on which the simplified format is permitted to be used as provided for in paragraph (f) of this section, on products for infants and children less than 4 years of age as provided for in § 317.400(c), and on products in packages that have a total surface area available to bear labeling of 40 or less square inches as provided for in paragraph (g) of this section.

(i) The nutrition information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the nutrition label shall utilize:

(A) A single easy-to-read type style,

(B) Upper and lower case letters,

(C) At least one point leading (i.e., space between two lines of text) except that at least four points leading shall be utilized for the information required by paragraphs (d)(7) and (d)(8) of this section, and

(D) Letters should never touch.

(iii) Information required in paragraphs (d)(3), (d)(5), (d)(7), and (d)(8) of this section shall be in type size no smaller than 8 point. Except for the heading ''Nutrition Facts,'' the information required in paragraphs (d)(4), (d)(6), and (d)(9) of this section and all other information contained within the nutrition label shall be in type size no smaller than 6 point. When provided, the information described in paragraph (d)(10) of this section shall also be in type no smaller than 6 point.

(iv) The headings required by paragraphs (d)(2), (d)(4), and (d)(6) of this section (i.e., ''Nutrition Facts,'' ''Amount per Serving,'' and ''% Daily Value*''), the names of all nutrients that are not indented according to requirements of paragraph (c) of this section (i.e., Calories, Total fat, Cholesterol, Sodium, Potassium, Total carbohydrate, and Protein), and the percentage amounts required by paragraph (d)(7)(ii) of this section shall be highlighted by bold or extra bold type or other highlighting (reverse printing is not permitted as a form of highlighting) that prominently distinguishes it from other information. No other information shall be highlighted.

(v) A hairline rule that is centered between the lines of text shall separate ''Amount Per Serving'' from the calorie statements required in paragraph (d)(5) of this section and shall separate each nutrient and its corresponding percent of Daily Value required in paragraphs (d)(7)(i) and (d)(7)(ii) of this section from the nutrient and percent of Daily Value above and below it.

(2) The information shall be presented under the identifying heading of ''Nutrition Facts'' which shall be set in a type size larger than all other print size in the nutrition label and, except for labels presented according to the format provided for in paragraph (d)(11) of this section, unless impractical, shall be set the full width of the information

provided under paragraph (d)(7) of this section.

(3) Information on serving size shall immediately follow the heading. Such information shall include:

(i) ''Serving Size'': A statement of the serving size as specified in paragraph (b)(9) of this section.

(ii) ''Servings Per Container'': The number of servings per container, except that this statement is not required on single-serving containers as defined in paragraph (b)(8) of this section.

(4) A subheading ''Amount Per Serving'' shall be separated from serving size information by a bar.

(5) Information on calories shall immediately follow the heading ''Amount Per Serving'' and shall be declared in one line, leaving sufficient space between the declaration of ''Calories'' and ''Calories from fat'' to allow clear differentiation, or, if ''Calories from saturated fat'' is declared, in a column with total ''Calories'' at the top, followed by ''Calories from fat'' (indented), and ''Calories from saturated fat'' (indented).

(6) The column heading ''% Daily Value,'' followed by an asterisk (e.g., ''% Daily Value*''), shall be separated from information on calories by a bar. The position of this column heading shall allow for a list of nutrient names and amounts as described in paragraph (d)(7) of this section to be to the left of, and below, this column heading. The column headings ''Percent Daily Value,'' ''Percent DV,'' or ''% DV'' may be substituted for ''% Daily Value.''

(7) Except as provided for in paragraph (g) of this section, and except as permitted by § 317.400(d)(2), nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label, except vitamins and minerals, shall be declared as follows:

(i) The name of each nutrient, as specified in paragraph (c) of this section, shall be given in a column and followed immediately by the quantitative amount by weight for that nutrient appended with a ''g'' for grams or ''mg'' for milligrams.

(ii) A listing of the percent of the DRV as established in paragraphs (c)(7)(iii) and (c)(9) of this section shall be given in a column aligned under the heading ''% Daily Value'' established in paragraph (d)(6) of this section with the percent expressed to the nearest whole percent for each nutrient declared in the column described in paragraph (d)(7)(i) of this section for which a DRV has been established, except that the percent for protein may be omitted as provided in paragraph (c)(7) of this section. The percent shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the DRV for the nutrient, except that the percent for protein shall be calculated as specified in paragraph (c)(7)(ii) of this section. The numerical value shall be followed by the symbol for percent (i.e., %).

(8) Nutrient information for vitamins and minerals shall be separated from information on other nutrients by a bar and shall be arrayed horizontally (e.g., Vitamin A 4%, Vitamin C 2%, Calcium 15%, Iron 4%) or may be listed in two columns, except that when more than four vitamins and minerals are declared, they may be declared vertically with percentages listed under the column headed ''% Daily Value.''

(9) A footnote, preceded by an asterisk, shall be placed beneath the list of vitamins and minerals and shall be separated from that list by a hairline.

(i) The footnote shall state: Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total fat	Less than	65 g	80 g
Saturated fat	Less than	20 g	25 g
Cholesterol	Less than	300 mg	300 mg
Sodium	Less than	2,400 mg	2,400 mg
Total carbohydrate		300 g	375 g
Dietary fiber		25 g	30 g

(ii) If the percent of Daily Value is given for protein in the Percent of Daily Value column as provided in paragraph (d)(7)(ii) of this section, protein shall be listed under dietary fiber, and a value of 50 g shall be inserted on the same line in the column headed ''2,000'' and value of 65 g in the column headed ''2,500.''

(iii) If potassium is declared in the column described in paragraph (d)(7)(i) of this section, potassium shall be listed under sodium and the DRV established in paragraph (c)(9) of this section shall be inserted on the same line in the numeric columns.

(iv) The abbreviations established in paragraph (g)(2) of this section may be used within the footnote.

(10) Caloric conversion information on a per-gram basis for fat, carbohydrate, and protein may be presented beneath the information required in paragraph (d)(9), separated from that information by a hairline. This information may be presented horizontally (i.e., ''Calories per gram: Fat 9, Carbohydrate 4, Protein 4'') or vertically in columns.

(11)(i) If the space beneath the information on vitamins and minerals is not adequate to accommodate the information required in paragraph (d)(9) of this section, the information required in paragraph (d)(9) may be moved to the right of the column required in paragraph (d)(7)(ii) of this section and set off by a line that distinguishes it and sets it apart from the percent of Daily Value information. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(ii) If the space beneath the mandatory declaration of iron is not adequate to accommodate any remaining vitamins and minerals to be declared or the information required in paragraph (d)(9) of this section, the remaining information may be moved to the right and set off by a line that distinguishes it and sets it apart from the percent of Daily Value information given to the left. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(iii) If there is not sufficient continuous vertical space (i.e., approximately 3 inches) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label may be presented in a tabular display in which the footnote required by paragraph (d)(9) of the section is given to the far right of the label, and additional vitamins and minerals beyond the four that are required (i.e., vitamin A, vitamin C, calcium, and iron) are

arrayed horizontally following declarations of the required vitamins and minerals.

(12) The following sample label illustrates the provisions of paragraph (d) of this section:

BILLING CODE 3410–DM–P

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving	
Calories 260 Calories from Fat 120	
	% Daily Value*
Total Fat 13g	**20%**
Saturated Fat 5g	**25%**
Cholesterol 30mg	**10%**
Sodium 660mg	**28%**
Total Carbohydrate 31g	**10%**
Dietary Fiber 0g	**0%**
Sugars 5g	
Protein 5g	

Vitamin A 4% • Vitamin C 2%
Calcium 15% • Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 3410–DM–C

(13)(i) Nutrition labeling on the outer label of packages of meat or meat food products that contain two or more products in the same packages (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., meat salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph

(d) of this section to the maximum extent possible, except that the identity of each food shall be specified to the right of the ''Nutrition Facts'' title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(14) When nutrition labeling appears in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in both languages need not be repeated (e.g., ''Protein/Proteinas 2 g''). All required information must be included in both languages.

(e) Nutrition information may be presented for two or more forms of the same product (e.g., both ''raw'' and ''cooked'') or for common combinations of foods as provided for in paragraph (b) of this section, or for different units (e.g., per 100 grams) as provided for in paragraph (b) of this section, or for two or more groups for which RDI's are established (e.g., both infants and children less than 4 years of age) as provided for in paragraph (c)(8)(i) of this section. When such dual labeling is provided, equal prominence shall be given to both sets of values. Information shall be presented in a format consistent with paragraph (d) of this section, except that:

(1) Following the subheading of ''Amount Per Serving,'' there shall be two or more column headings accurately describing the forms of the same product (e.g., ''raw'' and ''roasted''), the combinations of foods, the units, or the RDI groups that are being declared. The column representing the product as packaged and according to the label serving size based on the Reference Amount in § 317.312(b) shall be to the left of the numeric columns.

(2) When the dual labeling is presented for two or more forms of the same product, for combinations of foods, or for different units, total calories and calories from fat (and calories from saturated fat, when declared) shall be listed in a column and indented as specified in paragraph (d)(5) of this section with quantitative amounts declared in columns aligned under the column headings set forth in paragraph (e)(1) of this section.

(3) Quantitative information by weight required in paragraph (d)(7)(i) of this section shall be specified for the form of the product as packaged and according to the label serving size based on the Reference Amount in § 317.312(b).

(i) Quantitative information by weight may be included for other forms of the product represented by the additional column(s) either immediately adjacent to the required quantitative information by weight for the product as packaged and according to the label serving size based on the Reference Amount in § 317.312(b) or as a footnote.

(A) If such additional quantitative information is given immediately adjacent to the required quantitative information, it shall be declared for all nutrients listed and placed immediately following and differentiated from the required quantitative information (e.g., separated by a comma). Such information shall not be put in a separate column.

(B) If such additional quantitative information is given in a footnote, it shall be declared in the same order as the nutrients are listed in the nutrition label. The additional quantitative information may state the total nutrient content of the product identified in the second column or the nutrient amounts added to the product as packaged for only those nutrients that are present in different amounts than the amounts declared in the required quantitative information. The footnote shall clearly identify which amounts are declared. Any subcomponents declared shall be listed parenthetically after principal components (e.g., ½ cup skim milk contributes an additional 40 calories, 65 mg sodium, 6 g total carbohydrate (6 g sugars), and 4 g protein).

(ii) Total fat and its quantitative amount by weight shall be followed by an asterisk (or other symbol) (e.g., ''Total fat (2 g)*'') referring to another asterisk (or symbol) at the bottom of the nutrition label identifying the form(s) of the product for which quantitative information is presented.

(4) Information required in paragraphs (d)(7)(ii) and (d)(8) of this section shall be presented under the subheading ''% DAILY VALUE'' and in columns directly under the column headings set forth in paragraph (e)(1) of this section.

(5) The following sample label illustrates the provisions of paragraph (e) of this section:

BILLING CODE 3410–DM–P

Nutrition Facts

Serving Size 1/12 package
(44g, about 1/4 cup dry mix)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	8%	24%
Saturated Fat 2g	10%	13%
Cholesterol 0mg	0%	23%
Sodium 300mg	13%	13%
Total Carbohydrate 34g	11%	11%
Dietary Fiber 0g	0%	0%
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

* Amount in Mix

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 3410–DM–C

(f)(1) Nutrition information may be presented in a simplified format as set forth herein when any required nutrients, other than the core nutrients (i.e., calories, total fat, sodium, total carbohydrate, and protein), are present in insignificant amounts. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars and protein, it shall be an amount less than 1 gram.

(2) The simplified format shall include information on the following nutrients:

(i) Total calories, total fat, total carbohydrate, sodium, and protein;

(ii) Any of the following that are present in more than insignificant amounts: Calories from fat, saturated fat, cholesterol, dietary fiber, sugars, vitamin A, vitamin C, calcium, and iron; and

(iii) Any vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are added in fortified or fabricated foods.

(3) Other nutrients that are naturally present in the product in more than insignificant amounts may be

voluntarily declared as part of the simplified format.

(4) Any required nutrient, other than a core nutrient, that is present in an insignificant amount may be omitted from the tabular listing, provided that the following statement is included at the bottom of the nutrition label, ''Not a significant source of _____.'' The blank shall be filled in with the appropriate nutrient or food component. Alternatively, amounts of vitamins and minerals present in insignificant amounts may be declared by the use of an asterisk (or symbol) that is placed at the bottom of the table of nutrient values and that is followed by the statement ''Contains less than 2 percent of the Daily Value of this (these) nutrient (nutrients).''

(5) Except as provided for in paragraph (g) of this section and in § 317.400(c) and (d), nutrient information declared in the simplified format shall be presented in the same manner as specified in paragraphs (d) or (e) of this section, except that the footnote required in paragraph (d)(9) of this section is not required. When the footnote is omitted, an asterisk shall be placed at the bottom of the label followed by the statement ''Percent Daily Values are based on a 2,000 calorie diet'' and, if the term ''Daily Value'' is not spelled out in the heading, a statement that ''DV'' represents ''Daily Value.''

(g) Foods in packages that have a total surface area available to bear labeling of 40 or less square inches may modify the requirements of paragraphs (c) through (f) of this section and § 317.302(a) by one or more of the following means:

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title ''Nutrition Facts'' and is allowed for nutrient names for ''Calories,'' ''Total fat,'' ''Cholesterol,'' ''Sodium,'' ''Total carbohydrate,'' and ''Protein.''

(2) Using any of the following abbreviations:

Serving size—Serv size
Servings per container—Servings
Calories from fat—Fat cal
Calories from saturated fat—Sat fat cal
Saturated fat—Sat fat
Monounsaturated fat—Monounsat fat
Polyunsaturated fat—Polyunsat fat
Cholesterol—Cholest
Total carbohydrate—Total carb
Dietary fiber—Fiber
Soluble fiber—Sol fiber
Insoluble fiber—Insol fiber
Sugar alcohol—Sugar alc
Other carbohydrate—Other carb

(3) Omitting the footnote required in paragraph (d)(9) of this section and placing another asterisk at the bottom of the label followed by the statement ''Percent Daily Values are based on a 2,000 calorie diet'' and, if the term ''Daily Value'' is not spelled out in the heading, a statement that ''DV'' represents ''Daily Value.''

(4) Presenting the required nutrition information on any other label panel.

* * * * *

6. Section 317.312 is amended by redesignating paragraph (d) as (g), correcting the spelling of the word ''Nationwide'' in footnote 1 of Table 2 in paragraph (b), revising paragraph (a), and adding new paragraphs (d), (e), and (f) to read as follows:

§ 317.312 Reference amounts customarily consumed per eating occasion.

(a) The general principles followed in arriving at the reference amounts customarily consumed per eating occasion (Reference Amount(s)), as set forth in paragraph (b) of this section, are:

(1) The Reference Amounts are calculated for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These Reference Amounts are based on data set forth in appropriate national food consumption surveys.

(2) The Reference Amounts are calculated for an infant or child under 4 years of age to reflect the amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively. These Reference Amounts are based on data set forth in appropriate national food consumption surveys. Such Reference Amounts are to be used only when the product is specially formulated or processed for use by an infant or by a child under 4 years of age.

(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

(4) To determine the amount of food customarily consumed per eating occasion, the mean, median, and mode of the consumed amount per eating occasion were considered.

(5) When survey data were insufficient, FSIS took various other sources of information on serving sizes of food into consideration. These other sources of information included:

(i) Serving sizes used in dietary guidance recommendations or recommended by other authoritative systems or organizations;

(ii) Serving sizes recommended in comments;

(iii) Serving sizes used by manufacturers and grocers; and

(iv) Serving sizes used by other countries.

(6) Because they reflect the amount customarily consumed, the Reference Amount and, in turn, the serving size declared on the product label are based on only the edible portion of food, and not bone, seed, shell, or other inedible components.

(7) The Reference Amount is based on the major intended use of the product (e.g., a mixed dish measurable with a cup as a main dish and not as a side dish).

(8) The Reference Amounts for products that are consumed as an ingredient of other products, but that may also be consumed in the form in which they are purchased (e.g., ground beef), are based on use in the form purchased.

(9) FSIS sought to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform Reference Amount.

* * * * *

(d) If a product requires further preparation, e.g., cooking or the addition of water or other ingredients, and if paragraph (b) of this section provides a Reference Amount for the product in the prepared form, then the Reference Amount for the unprepared product shall be determined using the following rules:

(1) Except as provided for in paragraph (d)(2) of this section, the Reference Amount for the unprepared product shall be the amount of the

unprepared product required to make the Reference Amount for the prepared product as established in paragraph (b) of this section.

(2) For products where the entire contents of the package is used to prepare one large discrete unit usually divided for consumption, the Reference Amount for the unprepared product shall be the amount of the unprepared product required to make the fraction of the large discrete unit closest to the Reference Amount for the prepared product as established in paragraph (b) of this section.

(e) The Reference Amount for an imitation or substitute product or altered product as defined in § 317.313(d), such as a ''low calorie'' version, shall be the same as for the product for which it is offered as a substitute.

(f) The Reference Amounts set forth in paragraphs (b) through (e) of this section shall be used in determining whether a product meets the criteria for nutritional claims. If the serving size declared on the product label differs from the Reference Amount, and the product meets the criteria for the claim only on the basis of the Reference Amount, the claim shall be followed by a statement that sets forth the basis on which the claim is made. That statement shall include the Reference Amount as it appears in paragraph (b) of this section followed, in parentheses, by the amount in common household measure if the Reference Amount is expressed in measures other than common household measures.

* * * * *

7. Section 317.313 is amended by revising paragraphs (a), (b), (g), (i), (j), (k), (p), and (q)(4) and adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 317.313 Nutrient content claims; general principles.

(a) This section applies to meat or meat food products that are intended for human consumption and that are offered for sale.

(b) A claim which, expressly or by implication, characterizes the level of a nutrient (nutrient content claim) of the type required in nutrition labeling pursuant to § 317.309, may not be made on a label or in labeling of that product unless the claim is made in accordance with the applicable provisions in this subpart.

(1) An expressed nutrient content claim is any direct statement about the level (or range) of a nutrient in the product, e.g., ''low sodium'' or ''contains 100 calories.''

(2) An implied nutrient content claim is any claim that:

(i) Describes the product or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (e.g., ''high in oat bran''); or

(ii) Suggests that the product, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (e.g., ''healthy, contains 3 grams (g) of fat'').

(3) Except for claims regarding vitamins and minerals described in paragraph (q)(3) of this section, no nutrient content claims may be made on products intended specifically for use by infants and children less than 2 years of age unless the claim is specifically provided for in subpart B of this part.

(4) Reasonable variations in the spelling of the terms defined in applicable provisions in this subpart and their synonyms are permitted provided these variations are not misleading (e.g., ''hi'' or ''lo'').

(c) Information that is required or permitted by § 317.309 to be declared in nutrition labeling, and that appears as part of the nutrition label, is not a nutrient content claim and is not subject to the requirements of this section. If such information is declared elsewhere on the label or in labeling, it is a nutrient content claim and is subject to the requirements for nutrient content claims.

(d) A ''substitute'' product is one that may be used interchangeably with another product that it resembles, i.e., that it is organoleptically, physically, and functionally (including shelf life) similar to, and that it is not nutritionally inferior to unless it is labeled as an ''imitation.''

(1) If there is a difference in performance characteristics that materially limits the use of the product, the product may still be considered a substitute if the label includes a disclaimer adjacent to the most prominent claim as defined in paragraph (j)(2)(iii) of this section, informing the consumer of such difference (e.g., ''not recommended for frying'').

(2) This disclaimer shall be in easily legible print or type and in a size no less than that required by § 317.2(h) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 317.400(d)(2).

(e)(1) Because the use of a ''free'' or ''low'' claim before the name of a product implies that the product differs from other products of the same type by virtue of its having a lower amount of the nutrient, only products that have been specially processed, altered, formulated, or reformulated so as to lower the amount of the nutrient in the product, remove the nutrient from the product, or not include the nutrient in the product, may bear such a claim (e.g., ''low sodium beef noodle soup'').

(2) Any claim for the absence of a nutrient in a product, or that a product is low in a nutrient when the product has not been specially processed, altered, formulated, or reformulated to qualify for that claim shall indicate that the product inherently meets the criteria and shall clearly refer to all products of that type and not merely to the particular brand to which the labeling attaches (e.g., ''lard, a sodium free food'').

(f) A nutrient content claim shall be in type size and style no larger than two times that of the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

(g) Labeling information required in §§ 317.313, 317.354, 317.356, 317.360, 317.361, 317.362, and 317.380, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height, except as permitted by § 317.400(d)(2).

(h) [Reserved]

(i) Except as provided in § 317.309 or in paragraph (q)(3) of this section, the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if:

(1) The use of the statement on the product implicitly characterizes the level of the nutrient in the product and is consistent with a definition for a claim, as provided in subpart B of this part, for the nutrient that the label addresses. Such a claim might be, ''less than 10 g of fat per serving;''

(2) The use of the statement on the product implicitly characterizes the level of the nutrient in the product and is not consistent with such a definition, but the label carries a disclaimer adjacent to the statement that the product is not ''low'' in or a ''good source'' of the nutrient, such as ''only 200 milligrams (mg) sodium per serving, not a low sodium product.'' The disclaimer must be in easily legible print or type and in a size no less than required by § 317.2(h) for the net quantity of contents, except where the size of the claim is less than two times

the required size of the net quantity of contents statement, in which case the disclaimer statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 317.400(d)(2);

(3) The statement does not in any way implicitly characterize the level of the nutrient in the product and it is not false or misleading in any respect (e.g., ''100 calories'' or ''5 grams of fat''), in which case no disclaimer is required.

(4) ''Percent fat free'' claims are not authorized by this paragraph. Such claims shall comply with § 317.362(b)(6).

(j) A product may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference product. These statements shall be known as ''relative claims'' and include ''light,'' ''reduced,'' ''less'' (or ''fewer''), and ''more'' claims.

(1) To bear a relative claim about the level of a nutrient, the amount of that nutrient in the product must be compared to an amount of nutrient in an appropriate reference product as specified in this paragraph (j).

(i)(A) For ''less'' (or ''fewer'') and ''more'' claims, the reference product may be a dissimilar product within a product category that can generally be substituted for one another in the diet or a similar product.

(B) For ''light,'' ''reduced,'' and ''added'' claims, the reference product shall be a similar product, and

(ii)(A) For ''light'' claims, the reference product shall be representative of the type of product that includes the product that bears the claim. The nutrient value for the reference product shall be representative of a broad base of products of that type; e.g., a value in a representative, valid data base; an average value determined from the top three national (or regional) brands, a market basket norm; or, where its nutrient value is representative of the product type, a market leader. Firms using such a reference nutrient value as a basis for a claim, are required to provide specific information upon which the nutrient value was derived, on request, to consumers and appropriate regulatory officials.

(B) For relative claims other than ''light,'' including ''less'' and ''more'' claims, the reference product may be the same as that provided for ''light'' in paragraph (j)(1)(ii)(A) of this section or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name, provided the name of the competitor is not used on the labeling of the product. The nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting labeling is internally consistent (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause consumer confusion when compared), and that the actual modification is at least equal to the percentage specified in the definition of the claim.

(2) For products bearing relative claims:

(i) The label or labeling must state the identity of the reference product and the percent (or fraction) of the amount of the nutrient in the reference product by which the nutrient has been modified, (e.g., ''50 percent less fat than 'reference product' '' or ''1/3 fewer calories than 'reference product' ''); and

(ii) This information shall be immediately adjacent to the most prominent claim in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, that is no less than that required by § 317.2(h) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim, but no smaller than 1/16-inch minimum height, except as permitted by § 317.400(d)(2).

(iii) The determination of which use of the claim is in the most prominent location on the label or labeling will be made based on the following factors, considered in order:

(A) A claim on the principal display panel adjacent to the statement of identity;

(B) A claim elsewhere on the principal display panel;

(C) A claim on the information panel; or

(D) A claim elsewhere on the label or labeling.

(iv) The label or labeling must also bear:

(A) Clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving size with that in the reference product; and

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

(3) A relative claim for decreased levels of a nutrient may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the requirement for a ''low'' claim for that nutrient.

(k) The term ''modified'' may be used in the statement of identity of a product that bears a relative claim that complies with the requirements of this part, followed immediately by the name of the nutrient whose content has been altered (e.g., ''modified fat 'product' ''). This statement of identity must be immediately followed by the comparative statement such as ''contains 35 percent less fat than 'reference product'.'' The label or labeling must also bear the information required by paragraph (j)(2) of this section in the manner prescribed.

* * * * *

(p)(1) Unless otherwise specified, the reference amount customarily consumed set forth in § 317.312(b) through (e) shall be used in determining whether a product meets the criteria for a nutrient content claim. If the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the descriptor for that nutrient, the claim shall be followed by the criteria for the claim as required by § 317.312(f) (e.g., ''very low sodium, 35 mg or less per 55 grams'').

(2) The criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size that is no less than that required by § 317.2(h) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the criteria statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 317.400(d)(2).

(q) * * *

(4) The requirements of this section do not apply to infant formulas and medical foods, as described in 21 CFR 101.13(q)(4).

* * * * *

8. Section 317.345 is amended by revising the section reference in paragraph (c) from ''§ 317.309(g)'' to ''§ 317.309(f)'' and revising paragraphs (a)(2) introductory text, (a)(2)(ii) and (a)(2)(iii) to read as follows:

§ 317.345 Guidelines for voluntary nutrition labeling of single-ingredient, raw products.

(a) * * *

(2) A retailer may choose to provide nutrition information at the point-of-purchase, such as by posting a sign, or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials all of the requirements of the mandatory nutrition labeling program apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials:

(i) * * *

(ii) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 317.309(c)(8)) and footnote required by § 317.309(d)(9) may be omitted; and

(iii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

9. Section 317.354 is revised to read as follows:

§ 317.354 Nutrient content claims for ''good source,'' ''high,'' and ''more.''

(a) *General requirements.* Except as provided in paragraph (e) of this section, a claim about the level of a nutrient in a product in relation to the Reference Daily Intake (RDI) or Daily Reference Value (DRV) established for that nutrient (excluding total carbohydrate) in § 317.309(c), may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 317.313; and

(3) The product for which the claim is made is labeled in accordance with § 317.309.

(b) *''High'' claims.* (1) The terms ''high,'' ''rich in,'' or ''excellent source of'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that the product contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (b)(1) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains a food that meets the definition of ''high'' in paragraph (b)(1) of this section; and

(ii) The label or labeling clearly identifies the food that is the subject of the claim (e.g., ''the serving of broccoli in this meal is high in vitamin C'').

(c) *''Good Source'' claims.* (1) The terms ''good source,'' ''contains,'' or ''provides'' may be used on the label or in labeling of products, except meal-type products as described in § 317.313(l), provided that the product contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (c)(1) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains a food that meets the definition of ''good source'' in paragraph (c)(1) of this section; and

(ii) The label or labeling clearly identifies the food that is the subject of the claim (e.g., ''the serving of sweet potatoes in this meal is a good source of fiber'').

(d) *Fiber claims.* (1) If a nutrient content claim is made with respect to the level of dietary fiber, i.e., that the product is high in fiber, a good source of fiber, or that the product contains ''more'' fiber, and the product is not ''low'' in total fat as defined in § 317.362(b)(2) or, in the case of a meal-type product, is not ''low'' in total fat as defined in § 317.362(b)(3), then the labeling shall disclose the level of total fat per labeled serving size (e.g., ''contains 12 grams (g) of fat per serving''); and

(2) The disclosure shall appear in immediate proximity to such claim and be in a type size no less than one-half the size of the claim.

(e) *''More'' claims.* (1) A relative claim using the terms ''more'' and ''added'' may be used on the label or in labeling to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in a product, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 10 percent more of the RDI or the DRV for protein, vitamins, minerals, dietary fiber, or potassium (expressed as a percent of the Daily Value) per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the nutrient is greater relative to the RDI or DRV are declared in immediate proximity to the most prominent such claim (e.g., ''contains 10 percent more of the Daily Value for fiber than 'reference product' ''); and

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fiber content of 'reference product' is 1 g per serving; 'this product' contains 4 g per serving'').

(2) A relative claim using the terms ''more'' and ''added'' may be used on the label or in labeling to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 10 percent more of the RDI or the DRV for protein, vitamins, minerals, dietary fiber, or potassium (expressed as a percent of the Daily Value) per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the nutrient is greater relative to the RDI or DRV are declared in immediate proximity to the most prominent such claim (e.g., ''contains 10 percent more of the Daily Value for fiber per 3 ounces (oz) than does 'reference product' ''), and

(B) Quantitative information comparing the level of the nutrient in the meal-type product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz'').

10. Section 317.356 is revised to read as follows:

§ 317.356 Nutrient content claims for ''light'' or ''lite.''

(a) *General requirements.* A claim using the terms ''light'' or ''lite'' to describe a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 317.313; and

(3) The product for which the claim is made is labeled in accordance with § 317.309.

(b) *''Light'' claims.* The terms ''light'' or ''lite'' may be used on the label or in

labeling of products, except meal-type products as defined in § 317.313(l), without further qualification, provided that:

(1) If the product derives 50 percent or more of its calories from fat, its fat content is reduced by 50 percent or more per reference amount customarily consumed compared to an appropriate reference product as described in § 317.313(j)(1); or

(2) If the product derives less than 50 percent of its calories from fat:

(i) The number of calories is reduced by at least one-third (33⅓ percent) per reference amount customarily consumed compared to an appropriate reference product as described in § 317.313(j)(1); or

(ii) Its fat content is reduced by 50 percent or more per reference amount customarily consumed compared to the appropriate reference product as described in § 317.313(j)(1); and

(3) As required in § 317.313(j)(2) for relative claims:

(i) The identity of the reference product and the percent (or fraction) that the calories and the fat were reduced are declared in immediate proximity to the most prominent such claim (e.g., ''⅓ fewer calories and 50 percent less fat than the market leader''); and

(ii) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''lite 'this product'—200 calories, 4 grams (g) fat; regular 'reference product'—300 calories, 8 g fat per serving''); and

(iii) If the labeled product contains less than 40 calories or less than 3 g fat per reference amount customarily consumed, the percentage reduction for that nutrient need not be declared.

(4) A ''light'' claim may not be made on a product for which the reference product meets the definition of ''low fat'' and ''low calorie.''

(c)(1)(i) A product for which the reference product contains 40 calories or less and 3 g fat or less per reference amount customarily consumed may use the terms ''light'' or ''lite'' without further qualification if it is reduced by 50 percent or more in sodium content compared to the reference product; and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''50 percent less sodium than the market leader''); and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''lite 'this product'—500 milligrams (mg) sodium per serving; regular 'reference product'—1,000 mg sodium per serving'').

(2)(i) A product for which the reference product contains more than 40 calories or more than 3 g fat per reference amount customarily consumed may use the terms ''light in sodium'' or ''lite in sodium'' if it is reduced by 50 percent or more in sodium content compared to the reference product, provided that ''light'' or ''lite'' is presented in immediate proximity with ''in sodium'' and the entire term is presented in uniform type size, style, color, and prominence; and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''50 percent less sodium than the market leader''); and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., or ''lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving'').

(3) Except for meal-type products as defined in § 317.313(l), a ''light in sodium'' claim may not be made on a product for which the reference product meets the definition of ''low in sodium.''

(d)(1) The terms ''light'' or ''lite'' may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product meets the definition of:

(A) ''Low in calories'' as defined in § 317.360(b)(3); or

(B) ''Low in fat'' as defined in § 317.362(b)(3); and

(ii)(A) A statement appears on the principal display panel that explains whether ''light'' is used to mean ''low fat,'' ''low calories,'' or both (e.g., ''Light Delight, a low fat meal''); and

(B) The accompanying statement is no less than one-half the type size of the ''light'' or ''lite'' claim.

(2)(i) The terms ''light in sodium'' or ''lite in sodium'' may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that the product meets the definition of ''low in sodium'' as defined in § 317.361(b)(5)(i); and

(ii) ''Light'' or ''lite'' and ''in sodium'' are presented in uniform type size, style, color, and prominence.

(3) The term ''light'' or ''lite'' may be used in the brand name of a product to describe the sodium content, provided that:

(i) The product is reduced by 50 percent or more in sodium content compared to the reference product;

(ii) A statement specifically stating that the product is ''light in sodium'' or ''lite in sodium'' appears:

(A) Contiguous to the brand name; and

(B) In uniform type size, style, color, and prominence as the product name; and

(iii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim; and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information.

(e) Except as provided in paragraphs (b) through (d) of this section, the terms ''light'' or ''lite'' may not be used to refer to a product that is not reduced in fat by 50 percent, or, if applicable, in calories by ⅓ or, when properly qualified, in sodium by 50 percent unless:

(1) It describes some physical or organoleptic attribute of the product such as texture or color and the information (e.g., ''light in color'' or ''light in texture'') so stated, clearly conveys the nature of the product; and

(2) The attribute (e.g., ''color'' or ''texture'') is in the same style, color, and at least one-half the type size as the word ''light'' and in immediate proximity thereto.

(f) If a manufacturer can demonstrate that the word ''light'' has been associated, through common use, with a particular product to reflect a physical or organoleptic attribute to the point where it has become part of the statement of identity, such use of the term ''light'' shall not be considered a nutrient content claim subject to the requirements in this part.

(g) The term ''lightly salted'' may be used on a product to which has been added 50 percent less sodium than is normally added to the reference product

as described in § 317.313(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not ''low in sodium'' as defined in § 317.361(b)(4), the statement ''not a low sodium food,'' shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 317.313(j)(2).

11. Section 317.360 is revised to read as follows:

§ 317.360 Nutrient content claims for calorie content.

(a) *General requirements.* A claim about the calorie or sugar content of a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 317.313; and

(3) The product for which the claim is made is labeled in accordance with § 317.309.

(b) *Calorie content claims.* (1) The terms ''calorie free,'' ''free of calories,'' ''no calories,'' ''zero calories,'' ''without calories,'' ''trivial source of calories,'' ''negligible source of calories,'' or ''dietarily insignificant source of calories'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 5 calories per reference amount customarily consumed and per labeled serving size; and

(ii) If the product meets this condition without the benefit of special processing, alteration, formulation, or reformulation to lower the caloric content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''low calorie,'' ''few calories,'' ''contains a small amount of calories,'' ''low source of calories,'' or ''low in calories'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons (tbsp) and does not provide more than 40 calories per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and does not provide more than 40 calories per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 317.309(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form).

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the caloric content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (b)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 120 calories or less per 100 g of product; and

(ii) If the product meets this condition without the benefit of special processing, alteration, formulation, or reformulation to lower the calorie content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which it attaches.

(4) The terms ''reduced calorie,'' ''reduced in calories,'' ''calorie reduced,'' ''fewer calories,'' ''lower calorie,'' or ''lower in calories'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent fewer calories per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the calories differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., lower calorie 'product'—''33⅓ percent fewer calories than our regular 'product' ''); and

(B) Quantitative information comparing the level of calories in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''calorie content has been reduced from 150 to 100 calories per serving'').

(iii) Claims described in paragraph (b)(4) of this section may not be made on the label or in labeling of products if the reference product meets the definition for ''low calorie.''

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent fewer calories per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the calories differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''calorie reduced 'product', 25% less calories per ounce (oz) (or 3 oz) than our regular 'product' ''); and

(B) Quantitative information comparing the level of calories in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz'').

(iii) Claims described in paragraph (b)(5) of this section may not be made on the label or in labeling of products if the reference product meets the definition for ''low calorie.''

(c) *Sugar content claims.* (1) Terms such as ''sugar free,'' ''free of sugar,'' ''no sugar,'' ''zero sugar,'' ''without sugar,'' ''sugarless,'' ''trivial source of sugar,'' ''negligible source of sugar,'' or ''dietarily insignificant source of sugar'' may reasonably be expected to be regarded by consumers as terms that represent that the product contains no sugars or sweeteners, e.g., ''sugar free,'' or ''no sugar,'' as indicating a product which is low in calories or significantly reduced in calories. Consequently, except as provided in paragraph (c)(2) of this section, a product may not be labeled with such terms unless:

(i) The product contains less than 0.5 g of sugars, as defined in § 317.309(c)(6)(ii), per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of sugars per labeled serving size;

(ii) The product contains no ingredient that is a sugar or that is generally understood by consumers to contain sugars unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of sugar,'' ''adds a negligible amount of sugar,'' or ''adds a dietarily insignificant amount of sugar;'' and

(iii)(A) It is labeled ''low calorie'' or ''reduced calorie'' or bears a relative claim of special dietary usefulness

labeled in compliance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of this section; or

(B) Such term is immediately accompanied, each time it is used, by either the statement ''not a reduced calorie product,'' ''not a low calorie product,'' or ''not for weight control.''

(2) The terms ''no added sugar,'' ''without added sugar,'' or ''no sugar added'' may be used only if:

(i) No amount of sugars, as defined in § 317.309(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging;

(ii) The product does not contain an ingredient containing added sugars such as jam, jelly, or concentrated fruit juice;

(iii) The sugars content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, except where the intended functional effect of the process is not to increase the sugars content of a product, and a functionally insignificant increase in sugars results;

(iv) The product that it resembles and for which it substitutes normally contains added sugars; and

(v) The product bears a statement that the product is not ''low calorie'' or ''calorie reduced'' (unless the product meets the requirements for a ''low'' or ''reduced calorie'' product) and that directs consumers' attention to the nutrition panel for further information on sugar and calorie content.

(3) Paragraph (c)(1) of this section shall not apply to a factual statement that a product, including products intended specifically for infants and children less than 2 years of age, is unsweetened or contains no added sweeteners in the case of a product that contains apparent substantial inherent sugar content, e.g., juices.

(4) The terms ''reduced sugar,'' ''reduced in sugar,'' ''sugar reduced,'' ''less sugar,'' ''lower sugar,'' or ''lower in sugar'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less sugars per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sugars differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''this product contains 25 percent less sugar than our regular product''); and

(B) Quantitative information comparing the level of the sugar in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sugar content has been lowered from 8 g to 6 g per serving'').

(5) The terms defined in paragraph (c)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less sugars per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sugars differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sugar 'product'—25% less sugar than our regular 'product' ''); and

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz'').

12. Section 317.361 is revised to read as follows:

§ 317.361 Nutrient content claims for the sodium content.

(a) *General requirements.* A claim about the level of sodium in a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 317.313; and

(3) The product for which the claim is made is labeled in accordance with § 317.309.

(b) *Sodium content claims.* (1) The terms ''sodium free,'' ''free of sodium,'' ''no sodium,'' ''zero sodium,'' ''without sodium,'' ''trivial source of sodium,'' ''negligible source of sodium,'' or ''dietarily insignificant source of sodium'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 5 milligrams (mg) of sodium per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 5 mg of sodium per labeled serving size;

(ii) The product contains no ingredient that is sodium chloride or is generally understood by consumers to contain sodium unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of sodium,'' ''adds a negligible amount of sodium'' or ''adds a dietarily insignificant amount of sodium''; and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''very low sodium'' or ''very low in sodium'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons (tbsp) and contains 35 mg or less sodium per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and contains 35 mg or less sodium per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 317.309(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form); and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (b)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 35 mg or less of sodium per 100 g of product; and

(ii) If the product meets this condition without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely

to the particular brand to which the label attaches.

(4) The terms ''low sodium,'' ''low in sodium,'' ''little sodium,'' ''contains a small amount of sodium,'' or ''low source of sodium'' may be used on the label and in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 g or greater than 2 tbsp and contains 140 mg or less sodium per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and contains 140 mg or less sodium per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 317.309(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form); and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 140 mg or less sodium per 100 g of product; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(6) The terms ''reduced sodium,'' ''reduced in sodium,'' ''sodium reduced,'' ''less sodium,'' ''lower sodium,'' or ''lower in sodium'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less sodium per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sodium 'product', 50 percent less sodium than regular 'product' ''); and

(B) Quantitative information comparing the level of sodium in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sodium content has been lowered from 300 to 150 mg per serving'').

(iii) Claims described in paragraph (b)(6) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low sodium.''

(7) The terms defined in paragraph (b)(6) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less sodium per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sodium 'product'—30% less sodium per 3 oz than our 'regular product' ''); and

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz'').

(iii) Claims described in paragraph (b)(7) of this section may not be made on the label or in labeling of products if the nutrient content of the reference product meets the definition for ''low sodium.''

(c) The term ''salt'' is not synonymous with ''sodium.'' Salt refers to sodium chloride. However, references to salt content such as ''unsalted,'' ''no salt,'' ''no salt added'' are potentially misleading.

(1) The term ''salt free'' may be used on the label or in labeling of products only if the product is ''sodium free'' as defined in paragraph (b)(1) of this section.

(2) The terms ''unsalted,'' ''without added salt,'' and ''no salt added'' may be used on the label or in labeling of products only if:

(i) No salt is added during processing;

(ii) The product that it resembles and for which it substitutes is normally processed with salt; and

(iii) If the product is not sodium free, the statement, ''not a sodium free product'' or ''not for control of sodium in the diet'' appears adjacent to the nutrition information of the product bearing the claim.

(3) Paragraph (c)(2) of this section shall not apply to a factual statement that a product intended specifically for infants and children less than 2 years of age is unsalted, provided such statement refers to the taste of the product and is not false or otherwise misleading.

13. Section 317.362 is revised to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content.

(a) *General requirements.* A claim about the level of fat, fatty acid, and cholesterol in a product may only be made on the label or in labeling of products if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 317.313; and

(3) The product for which the claim is made is labeled in accordance with § 317.309.

(b) *Fat content claims.* (1) The terms ''fat free,'' ''free of fat,'' ''no fat,'' ''zero fat,'' ''without fat,'' ''nonfat,'' ''trivial source of fat,'' ''negligible source of fat,'' or ''dietarily insignificant source of fat'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 0.5 gram (g) of fat per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of fat per labeled serving size;

(ii) The product contains no added ingredient that is a fat or is generally understood by consumers to contain fat unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of fat,'' ''adds a negligible amount of fat,'' or ''adds a dietarily insignificant amount of fat''; and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the

particular brand to which the label attaches.

(2) The terms ''low fat,'' ''low in fat,'' ''contains a small amount of fat,'' ''low source of fat,'' or ''little fat'' may be used on the label and in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons (tbsp) and contains 3 g or less of fat per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and contains 3 g or less of fat per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 317.309(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form).

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (b)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 3 g or less of total fat per 100 g of product and not more than 30 percent of calories from fat; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced fat,'' ''reduced in fat,'' ''fat reduced,'' ''less fat,'' ''lower fat,'' or ''lower in fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less fat per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced fat—50 percent less fat than our regular 'product' ''); and

(B) Quantitative information comparing the level of fat in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fat content has been reduced from 8 g to 4 g per serving'').

(iii) Claims described in paragraph (b)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low fat.''

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less fat per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced fat 'product', 33 percent less fat per 3 oz than our regular 'product' ''); and

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., ''fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz'').

(iii) Claims described in paragraph (b)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low fat.''

(6) The term ''_____ percent fat free'' may be used on the label or in labeling of products, provided that:

(i) The product meets the criteria for ''low fat'' in paragraph (b)(2) or (b)(3) of this section;

(ii) The percent declared and the words ''fat free'' are in uniform type size; and

(iii) A ''100 percent fat free'' claim may be made only on products that meet the criteria for ''fat free'' in paragraph (b)(1) of this section, that contain less than 0.5 g of fat per 100 g, and that contain no added fat.

(iv) A synonym for ''_____ percent fat free'' is ''_____ percent lean.''

(c) *Fatty acid content claims.* (1) The terms ''saturated fat free,'' ''free of saturated fat,'' ''no saturated fat,'' ''zero saturated fat,'' ''without saturated fat,'' ''trivial source of saturated fat,'' ''negligible source of saturated fat,'' or ''dietarily insignificant source of saturated fat'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acids per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acids per labeled serving size;

(ii) The product contains no ingredient that is generally understood by consumers to contain saturated fat unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of saturated fat,'' ''adds a negligible amount of saturated fat,'' or ''adds a dietarily insignificant amount of saturated fat;'' and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower saturated fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''low in saturated fat,'' ''low saturated fat,'' ''contains a small amount of saturated fat,'' ''low source of saturated fat,'' or ''a little saturated fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains 1 g or less of saturated fat per reference amount customarily consumed and not more than 15 percent of calories from saturated fat; and

(ii) If the product meets these conditions without benefit of special processing, alteration, formulation, or reformulation to lower saturated fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (c)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 1 g or less of saturated fat per 100 g and less than 10 percent calories from saturated fat; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower saturated fat

content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced saturated fat,'' ''reduced in saturated fat,'' ''saturated fat reduced,'' ''less saturated fat,'' ''lower saturated fat,'' or ''lower in saturated fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less saturated fat per reference amount customarily consumed than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the saturated fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced saturated fat 'product', contains 50 percent less saturated fat than the national average for 'product' ''); and

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''saturated fat reduced from 3 g to 1.5 g per serving'').

(iii) Claims described in paragraph (c)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low saturated fat.''

(5) The terms defined in paragraph (c)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains at least 25 percent less saturated fat per 100 g of product than an appropriate reference product as described in § 317.313(j)(1); and

(ii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the saturated fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced saturated fat 'product','' ''50 percent less saturated fat than our regular 'product' ''); and

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''saturated fat content has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz'').

(iii) Claims described in paragraph (c)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low saturated fat.''

(d) *Cholesterol content claims.* (1) The terms ''cholesterol free,'' ''free of cholesterol,'' ''zero cholesterol,'' ''without cholesterol,'' ''no cholesterol,'' ''trivial source of cholesterol,'' ''negligible source of cholesterol,'' or ''dietarily insignificant source of cholesterol'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 2 milligrams (mg) of cholesterol per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product as defined in § 317.313(l), less than 2 mg of cholesterol per labeled serving size;

(ii) The product contains no ingredient that is generally understood by consumers to contain cholesterol, unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of cholesterol,'' ''adds a negligible amount of cholesterol,'' or ''adds a dietarily insignificant amount of cholesterol'';

(iii) The product contains 2 g or less of saturated fat per reference amount customarily consumed or, in the case of a meal-type product as defined in § 317.313(l), 2 g or less of saturated fat per labeled serving size; and

(iv) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which it attaches; or

(v) If the product meets these conditions only as a result of special processing, alteration, formulation, or reformulation, the amount of cholesterol is reduced by 25 percent or more from the reference product it replaces as described in § 317.313(j)(1) and for which it substitutes as described in § 317.313(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share. As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''cholesterol free 'product', contains 100 percent less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''contains no cholesterol compared with 30 mg in one serving of 'reference product' '').

(2) The terms ''low in cholesterol,'' ''low cholesterol,'' ''contains a small amount of cholesterol,'' ''low source of cholesterol,'' or ''little cholesterol'' may be used on the label or in labeling of products, except meal-type products as defined in § 317.313(l), provided that:

(i)(A) If the product has a reference amount customarily consumed greater than 30 g or greater than 2 tbsp:

(*1*) The product contains 20 mg or less of cholesterol per reference amount customarily consumed; and

(*2*) The product contains 2 g or less of saturated fat per reference amount customarily consumed; or

(B) If the product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less:

(*1*) The product contains 20 mg or less of cholesterol per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 317.309(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form); and

(*2*) The product contains 2 g or less of saturated fat per reference amount customarily consumed.

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches; or

(iii) If the product contains 20 mg or less of cholesterol only as a result of special processing, alteration, formulation, or reformulation, the amount of cholesterol is reduced by 25 percent or more from the reference product it replaces as described in § 317.313(j)(1) and for which it substitutes as described in § 317.313(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share. As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced

are declared in immediate proximity to the most prominent such claim (e.g., ''low cholesterol 'product', contains 85 percent less cholesterol than our regular 'product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol lowered from 30 mg to 5 mg per serving'').

(3) The terms defined in paragraph (d)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product contains 20 mg or less of cholesterol per 100 g of product;

(ii) The product contains 2 g or less of saturated fat per 100 g of product; and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced cholesterol,'' ''reduced in cholesterol,'' ''cholesterol reduced,'' ''less cholesterol,'' ''lower cholesterol,'' or ''lower in cholesterol'' may be used on the label or in labeling of products or products that substitute for those products as specified in § 317.313(d), excluding meal-type products as defined in § 317.313(l), provided that:

(i) The product has been specifically formulated, altered, or processed to reduce its cholesterol by 25 percent or more from the reference product it replaces as described in § 317.313(j)(1) and for which it substitutes as described in § 317.313(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share;

(ii) The product contains 2 g or less of saturated fat per reference amount customarily consumed; and

(iii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced are declared in immediate proximity to the most prominent such claim (e.g., ''25 percent less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol lowered from 55 mg to 30 mg per serving'').

(iv) Claims described in paragraph (d)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low cholesterol.''

(5) The terms defined in paragraph (d)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 317.313(l), provided that:

(i) The product has been specifically formulated, altered, or processed to reduce its cholesterol by 25 percent or more from the reference product it replaces as described in § 317.313(j)(1) and for which it substitutes as described in § 317.313(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share;

(ii) The product contains 2 g or less of saturated fat per 100 g of product; and

(iii) As required in § 317.313(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced are declared in immediate proximity to the most prominent such claim (e.g., ''25% less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz).

(iv) Claims described in paragraph (d)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low cholesterol.''

(e) *''Lean'' and ''Extra Lean'' claims.* (1) The term ''lean'' may be used on the label or in labeling of a product, provided that the product contains less than 10 g of fat, 4.5 g or less of saturated fat, and less than 95 mg of cholesterol per 100 g of product and per reference amount customarily consumed for individual foods, and per 100 g of product and per labeled serving size for meal-type products as defined in § 317.313(l).

(2) The term ''extra lean'' may be used on the label or in labeling of a product, provided that the product contains less than 5 g of fat, less than 2 g of saturated fat, and less than 95 mg of cholesterol per 100 g of product and per reference amount customarily consumed for individual foods, and per 100 g of product and per labeled serving size for meal-type products as defined in § 317.313(l).

§ 317.363 [Amended]

14. Section 317.363 is amended by revising the section reference in paragraphs (b)(2) introductory text and (b)(3) introductory text from ''§ 317.309(g)(1)'' to ''§ 317.309(f)(1).''

§ 317.369 [Amended]

15. Section 317.369 is amended by adding the word ''meat'' before the words ''food products'' in the last sentence of paragraph (k)(5) introductory text; by replacing the word ''preceding'' in paragraph (k)(5)(i)(A) with the word ''proceeding''; and by replacing the word ''application'' in the second sentence of paragraph (k)(5)(i)(B) with the word ''applicant''.

16. Section 317.380 is amended by revising paragraphs (e) and (f) to read as follows:

§ 317.380 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *''Label terms suggesting usefulness as low calorie or reduced calorie foods''.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, a product may be labeled with terms such as ''diet,'' ''dietetic,'' ''artificially sweetened,'' or ''sweetened with nonnutritive sweetener'' only if the claim is not false or misleading, and the product is labeled ''low calorie'' or ''reduced calorie'' or bears another comparative calorie claim in compliance with the applicable provisions in this subpart.

(2) Paragraph (e)(1) of this section shall not apply to any use of such terms that is specifically authorized by regulation governing a particular food, or, unless otherwise restricted by regulation, to any use of the term ''diet'' that clearly shows that the product is offered solely for a dietary use other than regulating body weight, e.g., ''for low sodium diets.''

(3) Paragraph (e)(1) of this section shall not apply to any use of such terms on a formulated meal replacement or other product that is represented to be of special dietary use as a whole meal, pending the issuance of a regulation governing the use of such terms on foods.

(f) *''Sugar free'' and ''no added sugar''.* Criteria for the use of the terms ''sugar free'' and ''no added sugar'' are provided for in § 317.360(c).

§ 317.400 [Amended]

17. Section 317.400 is amended by adding the words ''meat or'' before the words ''meat food products'' in paragraph (a) introductory text; by revising the section reference in

paragraph (c)(2)(iii) from ''§ 317.309(e)'' to ''§ 317.309(d)(6)''; and by revising the words ''at 21 CFR 101.9(d)(9)'' in paragraph (c)(2)(v) to the words ''in § 317.309(d)(9).''

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

18. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.400 [Amended]

19. Section 381.400 is amended by adding the words ''intended for human consumption and offered for sale'' after the words ''poultry products'' in paragraph (a).

20. Section 381.409 is amended by revising the section reference in the fifth sentence of paragraph (h)(2) from ''§ 381.409(b)'' to ''§ 381.409(c)'' and revising paragraphs (a) through (g) to read as follows:

§ 381.409 Nutrition label content.

(a) All nutrient and food component quantities shall be declared in relation to a serving as defined in this section.

(b)(1) The term ''serving'' or ''serving size'' means an amount of food customarily consumed per eating occasion by persons 4 years of age or older, which is expressed in a common household measure that is appropriate to the product. When the product is specially formulated or processed for use by infants or by toddlers, a serving or serving size means an amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively.

(2) Except as provided in paragraphs (b)(8), (b)(12), and (b)(14) of this section and for products that are intended for weight control and are available only through a weight-control or weight-maintenance program, the serving size declared on a product label shall be determined from the ''Reference Amounts Customarily Consumed Per Eating Occasion—General Food Supply'' (Reference Amount(s)) that appear in § 381.412(b) using the procedures described in this paragraph (b). For products that are both intended for weight control and available only through a weight-control program, a manufacturer may determine the serving size that is consistent with the meal plan of the program. Such products must bear a statement, ''for sale only through the _____ program'' (fill in the blank with the name of the appropriate weight-control program, e.g., Smith's Weight Control), on the principal display panel. However, the Reference Amounts in § 381.412(b) shall be used for purposes of evaluating whether weight-control products that are available only through a weight-control program qualify for nutrition claims.

(3) The declaration of nutrient and food component content shall be on the basis of the product ''as packaged'' for all products, except that single-ingredient, raw products may be declared on the basis of the product ''as consumed'' as set forth in § 381.445(a)(1). In addition to the required declaration on the basis of ''as packaged'' for products other than single ingredient, raw products, the declaration may also be made on the basis of ''as consumed,'' provided that preparation and cooking instructions are clearly stated.

(4) For products in discrete units (e.g., chicken wings, and individually packaged products within a multi-serving package), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size shall be declared as follows:

(i) If a unit weighs 50 percent or less of the Reference Amount, the serving size shall be the number of whole units that most closely approximates the Reference Amount for the product category.

(ii) If a unit weighs more than 50 percent but less than 67 percent of the Reference Amount, the manufacturer may declare one unit or two units as the serving size.

(iii) If a unit weighs 67 percent or more but less than 200 percent of the Reference Amount, the serving size shall be one unit.

(iv) If a unit weighs 200 percent or more of the Reference Amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single eating occasion.

(v) For products that have Reference Amounts of 100 grams (or milliliter) or larger and are individual units within a multi-serving package, if a unit contains more than 150 percent but less than 200 percent of the Reference Amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(vi) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., chicken wings and barbecue sauce), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product as determined in § 381.412(c).

(vii) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in this section (i.e., are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

(5) For products in large discrete units that are usually divided for consumption (e.g., pizza, pan of poultry lasagna), for unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a large discrete unit usually divided for consumption, the serving size shall be the fractional slice of the ready-to-eat product (e.g., ⅛ quiche, ¼ pizza) that most closely approximates the Reference Amount for the product category. The serving size may be the fraction of the package used to make the Reference Amount for the unprepared product determined in § 381.412(d) or the fraction of the large discrete unit represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount of the combined product determined in § 381.412(c). In expressing the fractional slice, manufacturers shall use ½, ⅓, ¼, ⅕, ⅙, or smaller fractions that can be generated by further division by 2 or 3.

(6) For nondiscrete bulk products (e.g., whole turkey, turkey breast, ground poultry), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a bulk product (e.g., turkey breast and gravy), the serving size shall be the amount in household measure that most closely approximates the Reference Amount for the product category and may be the amount of the bulk product represented as the main ingredient plus proportioned minor ingredients used to make the Reference Amount for the combined product determined in § 381.412(c).

(7) For labeling purposes, the term ''common household measure'' or ''common household unit'' means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., ¼ pizza), ounce (oz), or other common household equipment used to package food products (e.g., jar

or tray). In expressing serving size in household measures, except as specified in paragraphs (b)(7)(iv), (v), and (vi) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate. Cups shall be expressed in ¼- or ⅓-cup increments, tablespoons in whole number of tablespoons for quantities less than ¼ cup but greater than or equal to 2 tablespoons (tbsp), 1, 1⅓, 1½, or 1⅔ tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in ¼-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If cups, tablespoons and teaspoons, or units such as piece, slice, tray, jar, or fraction are not applicable, ounces may be used. Ounce measurements shall be expressed in 0.5-ounce increments most closely approximating the Reference Amount with rounding indicated by the use of the term ''about'' (e.g., about 2.5 ounces).

(iv) A description of the individual container or package shall be used for single-serving containers and meal-type products and for individually packaged products within multi-serving containers (e.g., can, box, package, meal, or dinner). A description of the individual unit shall be used for other products in discrete units (e.g., wing, slice, link, or patty).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., pizza kit), the fraction or portion of the package may be used.

(vi) For products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g., chicken wings with a glaze packet), the nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(vii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, and 1 oz in weight means 28 grams (g).

(viii) When a serving size, determined from the Reference Amount in § 381.412(b) and the procedures described in this section, falls exactly half way between two serving sizes (e.g., 2.5 tbsp), manufacturers shall round the serving size up to the next incremental size.

(8) A product that is packaged and sold individually and that contains less than 200 percent of the applicable Reference Amount shall be considered to be a single-serving container, and the entire content of the product shall be labeled as one serving, except for products that have Reference Amounts of 100 g (or mL) or larger, manufacturers may decide whether a package that contains more than 150 percent but less than 200 percent of the Reference Amount is 1 or 2 servings. Packages sold individually that contain 200 percent or more of the applicable Reference Amount may be labeled as a single-serving if the entire content of the package can reasonably be consumed at a single-eating occasion.

(9) A label statement regarding a serving shall be the serving size expressed in common household measures as set forth in paragraphs (b)(2) through (b)(8) of this section and shall be followed by the equivalent metric quantity in parenthesis (fluids in milliliters and all other foods in grams), except for single-serving containers.

(i) For a single-serving container, the parenthetical metric quantity, which will be presented as part of the net weight statement on the principal display panel, is not required except where nutrition information is required on a drained weight basis according to paragraph (b)(11) of this section. However, if a manufacturer voluntarily provides the metric quantity on products that can be sold as single servings, then the numerical value provided as part of the serving size declaration must be identical to the metric quantity declaration provided as part of the net quantity of contents statement.

(ii) The gram or milliliter quantity equivalent to the household measure should be rounded to the nearest whole number except for quantities that are less than 5 g (mL). The gram (mL) quantity between 2 and 5 g (mL) should be rounded to the nearest 0.5 g (mL) and the g (mL) quantity less than 2 g (mL) should be expressed in 0.1-g (mL) increments.

(iii) In addition, serving size may be declared in ounce, in parenthesis, following the metric measure separated by a slash where other common household measures are used as the primary unit for serving size, e.g., 1 slice (28 g/1 oz) for sliced chicken roll. The ounce quantity equivalent to the metric quantity should be expressed in 0.1-oz increments.

(iv) If a manufacturer elects to use abbreviations for units, the following abbreviations shall be used: tbsp for tablespoon, tsp for teaspoon, g for gram, mL for milliliter, and oz for ounce.

(10) Determination of the number of servings per container shall be based on the serving size of the product determined by following the procedures described in this section.

(i) The number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings and random weight products. The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term ''about'' (e.g., about 2 servings; about 3.5 servings).

(ii) When the serving size is required to be expressed on a drained solids basis and the number of servings varies because of a natural variation in unit size, the manufacturer may state the typical number of servings per container (e.g., usually 5 servings).

(iii) For random weight products, a manufacturer may declare ''varied'' for the number of servings per container provided the nutrition information is based on the Reference Amount expressed in ounces. The manufacturer may provide the typical number of servings in parenthesis following the ''varied'' statement (e.g., varied (approximately 8 servings per pound)).

(iv) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in this section (i.e., are labeled appropriately for individual sale as single-serving containers), the number of servings shall be the number of individual packages within the total package.

(v) For packages containing several individually packaged multi-serving units, the number of servings shall be determined by multiplying the number of individual multi-serving units in the total package by the number of servings in each individual unit.

(11) The declaration of nutrient and food component content shall be on the basis of product as packaged or purchased with the exception of products that are packed or canned in water, brine, or oil but whose liquid packing medium is not customarily consumed. Declaration of the nutrient and food component content of products that are packed in liquid which is not customarily consumed shall be based on the drained solids.

(12) Serving size for meal-type products as defined in § 381.413(l) shall

be the entire content (edible portion only) of the package.

(13) Another column of figures may be used to declare the nutrient and food component information in the same format as required by § 381.409(e),

(i) Per 100 grams, 100 milliliters, or 1 ounce of the product as packaged or purchased.

(ii) Per one unit if the serving size of a product in discrete units in a multi-serving container is more than one unit.

(14) If a product consists of assortments of poultry products (e.g., variety packs) in the same package, nutrient content shall be expressed on the entire package contents or on each individual product.

(15) If a product is commonly combined with other ingredients or is cooked or otherwise prepared before eating, and directions for such combination or preparations are provided, another column of figures may be used to declare the nutrient contents on the basis of the product as consumed for the product alone (e.g., a cream soup mix may be labeled with one set of Daily Values for the dry mix (per serving), and another set for the serving of the final soup when prepared (e.g., per serving of cream soup mix and 1 cup of vitamin D fortified whole milk)): *Provided,* that the type and quantity of the other ingredients to be added to the product by the user and the specific method of cooking and other preparation shall be specified prominently on the label.

(c) The declaration of nutrition information on the label or in labeling of a poultry product shall contain information about the level of the following nutrients, except for those nutrients whose inclusion, and the declaration of amounts, is voluntary as set forth in this paragraph. No nutrients or food components other than those listed in this paragraph as either mandatory or voluntary may be included within the nutrition label. Except as provided for in paragraph (f) or (g) of this section, nutrient information shall be presented using the nutrient names specified and in the following order in the formats specified in paragraph (d) or (e) of this section.

(1) ''Calories, total,'' ''Total calories,'' or ''Calories'': A statement of the caloric content per serving, expressed to the nearest 5-calorie increment up to and including 50 calories, and 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed as zero. Energy content per serving may also be expressed in kilojoule units, added in parenthesis immediately following the statement of the caloric content.

(i) Caloric content may be calculated by the following methods. Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

(A) Using specific Atwater factors (i.e., the Atwater method) given in Table 13, page 25, ''Energy Value of Foods—Basis and Derivation,'' by A. L. Merrill and B. K. Watt, United States Department of Agriculture (USDA), Agriculture Handbook No. 74 (Slightly revised February 1973), which is incorporated by reference. Table 13 of the ''Energy Value of Foods—Basis and Derivation,'' Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available for inspection at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC, or at the office of the FSIS Docket Clerk, Room 3171, South Building, 14th and Independence Avenue, SW., Washington, DC. Copies of the incorporation by reference are available from the Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 329, West End Court Building, Washington, DC 20250–3700;

(B) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate, and total fat, respectively, as described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 9–11, which is incorporated by reference. Pages 9–11, Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.);

(C) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate less the amount of insoluble dietary fiber, and total fat, respectively, as described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 9–11, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.); or

(D) Using data for specific food factors for particular foods or ingredients approved by the Food and Drug Administration (FDA) and provided in parts 172 or 184 of 21 CFR, or by other means, as appropriate.

(ii) ''Calories from fat'': A statement of the caloric content derived from total fat as defined in paragraph (c)(2) of this section per serving, expressed to the nearest 5-calorie increment, up to and including 50 calories, and the nearest 10-calorie increment above 50 calories, except that label declaration of ''calories from fat'' is not required on products that contain less than 0.5 gram of fat per serving and amounts less than 5 calories may be expressed as zero. This statement shall be declared as provided in paragraph (d)(5) of this section.

(iii) ''Calories from saturated fat'' or ''Calories from saturated'' (VOLUNTARY): A statement of the caloric content derived from saturated fat as defined in paragraph (c)(2)(i) of this section per serving may be declared voluntarily, expressed to the nearest 5-calorie increment, up to and including 50 calories, and the nearest 10-calorie increment above 50 calories, except that amounts less than 5 calories may be expressed as zero. This statement shall be indented under the statement of calories from fat as provided in paragraph (d)(5) of this section.

(2) ''Fat, total'' or ''Total fat'': A statement of the number of grams of total fat per serving defined as total lipid fatty acids and expressed as triglycerides. Amounts shall be expressed to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(i) ''Saturated fat'' or ''Saturated'': A statement of the number of grams of saturated fat per serving defined as the sum of all fatty acids containing no double bonds, except that label declaration of saturated fat content information is not required for products that contain less than 0.5 gram of total fat per serving if no claims are made about fat or cholesterol content, and if ''calories from saturated fat'' is not declared. Saturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(A) ''Stearic Acid'' (VOLUNTARY): A statement of the number of grams of stearic acid per serving may be declared voluntarily, except that when a claim is made about stearic acid, label declaration shall be required. Stearic acid content shall be indented under saturated fat and expressed to the

nearest 0.5 (½)-gram increment below 5 grams and the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(B) [Reserved]

(ii) ''Polyunsaturated fat'' or ''Polyunsaturated'' (VOLUNTARY): A statement of the number of grams of polyunsaturated fat per serving defined as *cis,cis*-methylene-interrupted polyunsaturated fatty acids may be declared voluntarily, except that when monounsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a product other than one that meets the criteria in § 381.462(b)(1) for a claim for ''fat free,'' label declaration of polyunsaturated fat is required. Polyunsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(iii) ''Monounsaturated fat'' or ''Monounsaturated'' (VOLUNTARY): A statement of the number of grams of monounsaturated fat per serving defined as *cis*-monounsaturated fatty acids may be declared voluntarily, except that when polyunsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a product other than one that meets the criteria in § 381.462(b)(1) for a claim for ''fat free,'' label declaration of monounsaturated fat is required. Monounsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(3) ''Cholesterol'': A statement of the cholesterol content per serving expressed in milligrams to the nearest 5-milligram increment, except that label declaration of cholesterol information is not required for products that contain less than 2 milligrams of cholesterol per serving and make no claim about fat, fatty acids, or cholesterol content, or such products may state the cholesterol content as zero. If the product contains 2 to 5 milligrams of cholesterol per serving, the content may be stated as ''less than 5 milligrams.''

(4) ''Sodium'': A statement of the number of milligrams of sodium per serving expressed as zero when the serving contains less than 5 milligrams of sodium, to the nearest 5-milligram increment when the serving contains 5 to 140 milligrams of sodium, and to the nearest 10-milligram increment when the serving contains greater than 140 milligrams.

(5) ''Potassium'' (VOLUNTARY): A statement of the number of milligrams of potassium per serving may be declared voluntarily, except that when a claim is made about potassium content, label declaration shall be required. Potassium content shall be expressed as zero when the serving contains less than 5 milligrams of potassium, to the nearest 5-milligram increment when the serving contains 5 to 140 milligrams of potassium, and to the nearest 10-milligram increment when the serving contains greater than 140 milligrams.

(6) ''Carbohydrate, total'' or ''Total carbohydrate'': A statement of the number of grams of total carbohydrate per serving expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, or, if the serving contains less than 0.5 gram, the content may be expressed as zero. Total carbohydrate content shall be calculated by subtraction of the sum of the crude protein, total fat, moisture, and ash from the total weight of the product. This calculation method is described in USDA's Agriculture Handbook No. 74 (Slightly revised February 1973), pages 2 and 3, which is incorporated by reference. Pages 2 and 3, Agriculture Handbook No. 74 is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section.).

(i) ''Dietary fiber'': A statement of the number of grams of total dietary fiber per serving, indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, declaration of dietary fiber is not required, or, alternatively, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(A) ''Soluble fiber'' (VOLUNTARY): A statement of the number of grams of soluble dietary fiber per serving may be declared voluntarily except when a claim is made on the label or in labeling about soluble fiber, label declaration shall be required. Soluble fiber content shall be indented under dietary fiber and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(B) ''Insoluble fiber'' (VOLUNTARY): A statement of the number of grams of insoluble dietary fiber per serving may be declared voluntarily except when a claim is made on the label or in labeling about insoluble fiber, label declaration shall be required. Insoluble fiber content shall be indented under dietary fiber and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(ii) ''Sugars'': A statement of the number of grams of sugars per serving, except that label declaration of sugars content is not required for products that contain less than 1 gram of sugars per serving if no claims are made about sweeteners, sugars, or sugar alcohol content. Sugars shall be defined as the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose). Sugars content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(iii) ''Sugar alcohol'' (VOLUNTARY): A statement of the number of grams of sugar alcohols per serving may be declared voluntarily on the label, except that when a claim is made on the label or in labeling about sugar alcohol or sugars when sugar alcohols are present in the product, sugar alcohol content shall be declared. For nutrition labeling purposes, sugar alcohols are defined as the sum of saccharide derivatives in which a hydroxyl group replaces a ketone or aldehyde group and whose use in the food is listed by FDA (e.g., mannitol or xylitol) or is generally recognized as safe (e.g., sorbitol). In lieu of the term ''sugar alcohol,'' the name of the specific sugar alcohol (e.g., ''xylitol'') present in the product may be used in the nutrition label, provided that only one sugar alcohol is present in the product. Sugar alcohol content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(iv) ''Other carbohydrate'' (VOLUNTARY): A statement of the number of grams of other carbohydrate per serving may be declared voluntarily. Other carbohydrate shall be defined as the difference between total carbohydrate and the sum of dietary fiber, sugars, and sugar alcohol, except that if sugar alcohol is not declared (even if present), it shall be defined as the difference between total carbohydrate and the sum of dietary fiber and sugars. Other carbohydrate content shall be indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(7) ''Protein'': A statement of the number of grams of protein per serving expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero. When the protein in products represented or purported to be for adults and children 4 or more years of age has a protein quality value that is a protein digestibility-corrected amino acid score of less than 20 expressed as a percent, or when the protein in a product represented or purported to be for children greater than 1 but less than 4 years of age has a protein quality value that is a protein digestibility-corrected amino acid score of less than 40 expressed as a percent, either of the following shall be placed adjacent to the declaration of protein content by weight: The statement ''not a significant source of protein,'' or a listing aligned under the column headed ''Percent Daily Value'' of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the Daily Reference Value (DRV) or Reference Daily Intake (RDI), as appropriate, for protein and expressed as percent of Daily Value. When the protein quality in a product as measured by the Protein Efficiency Ratio (PER) is less than 40 percent of the reference standard (casein) for a product represented or purported to be for infants, the statement ''not a significant source of protein'' shall be placed adjacent to the declaration of protein content. Protein content may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food as determined by appropriate methods of analysis in accordance with § 381.409(h), except when the procedure for a specific food requires another factor.

(i) A statement of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein, as appropriate, and expressed as percent of Daily Value, may be placed on the label, except that such a statement shall be given if a protein claim is made for the product, or if the product is represented or purported to be for infants or children under 4 years of age. When such a declaration is provided, it shall be placed on the label adjacent to the statement of grams of protein and aligned under the column headed ''Percent Daily Value,'' and expressed to the nearest whole percent. However, the percentage of the RDI for protein shall not be declared if the product is represented or purported to be for infants and the protein quality value is less than 40 percent of the reference standard.

(ii) The corrected amount of protein (grams) per serving for products represented or purported to be for adults and children 1 or more years of age is equal to the actual amount of protein (grams) per serving multiplied by the amino acid score corrected for protein digestibility. If the corrected score is above 1.00, then it shall be set at 1.00. The protein digestibility-corrected amino acid score shall be determined by methods given in sections 5.4.1, 7.2.1, and 8 in ''Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' Rome, 1990, which is incorporated by reference. Sections 5.4.1, 7.2.1, and 8 of the ''Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation,'' as published by the Food and Agriculture Organization of the United Nations/World Health Organization, is incorporated as it exists on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available for inspection at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC, or at the office of the FSIS Docket Clerk, Room 3171, South Building, 14th and Independence Avenue, SW., Washington, DC. Copies of the incorporation by reference are available from the Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 329, West End Court Building, Washington, DC 20250–3700. For products represented or purported to be for infants, the corrected amount of protein (grams) per serving is equal to the actual amount of protein (grams) per serving multiplied by the relative protein quality value. The relative protein quality value shall be determined by dividing the subject product's protein PER value by the PER value for casein. If the relative protein value is above 1.00, it shall be set at 1.00.

(iii) For the purpose of labeling with a percent of the DRV or RDI, a value of 50 grams of protein shall be the DRV for adults and children 4 or more years of age, and the RDI for protein for children less than 4 years of age, infants, pregnant women, and lactating women shall be 16 grams, 14 grams, 60 grams, and 65 grams, respectively.

(8) Vitamins and minerals: A statement of the amount per serving of the vitamins and minerals as described in this paragraph, calculated as a percent of the RDI and expressed as percent of Daily Value.

(i) For purposes of declaration of percent of Daily Value as provided for in paragraphs (d) through (g) of this section, products represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women shall use the RDI's that are specified for the intended group. For products represented or purported to be for use by both infants and children under 4 years of age, the percent of Daily Value shall be presented by separate declarations according to paragraph (e) of this section based on the RDI values for infants from birth to 12 months of age and for children under 4 years of age. Similarly, the percent of Daily Value based on both the RDI values for pregnant women and for lactating women shall be declared separately on products represented or purported to be for use by both pregnant and lactating women. When such dual declaration is used on any label, it shall be included in all labeling, and equal prominence shall be given to both values in all such labeling. All other products shall use the RDI for adults and children 4 or more years of age.

(ii) The declaration of vitamins and minerals as a percent of the RDI shall include vitamin A, vitamin C, calcium, and iron, in that order, and shall include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are added, or when a claim is made about them. Other vitamins and minerals need not be declared if neither the nutrient nor the component is otherwise referred to on the label or in labeling or advertising and the vitamins and minerals are:

(A) Required or permitted in a standardized food (e.g., thiamin, riboflavin, and niacin in enriched flour) and that standardized food is included as an ingredient (i.e., component) in another product; or

(B) Included in a product solely for technological purposes and declared only in the ingredients statement. The declaration may also include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are naturally occurring in the food. The additional vitamins and minerals shall be listed in the order established in paragraph (c)(8)(iv) of this section.

(iii) The percentages for vitamins and minerals shall be expressed to the nearest 2-percent increment up to and including the 10-percent level, the nearest 5-percent increment above 10 percent and up to and including the 50-percent level, and the nearest 10-percent increment above the 50-percent level. Amounts of vitamins and minerals present at less than 2 percent of the RDI are not required to be declared in nutrition labeling but may be declared by a zero or by the use of an asterisk (or other symbol) that refers to another asterisk (or symbol) that is placed at the bottom of the table and that is followed by the statement ''Contains less than 2 percent of the Daily Value of this (these) nutrient (nutrients).'' Alternatively, if vitamin A, vitamin C, calcium, or iron is present in amounts less than 2 percent of the RDI, label declaration of the nutrient(s) is not required if the statement ''Not a significant source of _____ (listing the vitamins or minerals omitted)'' is placed at the bottom of the table of nutrient values.

(iv) The following RDI's and nomenclature are established for the following vitamins and minerals which are essential in human nutrition:

Vitamin A, 5,000 International Units
Vitamin C, 60 milligrams
Calcium, 1.0 gram
Iron, 18 milligrams
Vitamin D, 400 International Units
Vitamin E, 30 International Units
Thiamin, 1.5 milligrams
Riboflavin, 1.7 milligrams
Niacin, 20 milligrams
Vitamin B_6, 2.0 milligrams
Folate, 0.4 milligram
Vitamin B_{12}, 6 micrograms
Biotin, 0.3 milligram
Pantothenic acid, 10 milligrams
Phosphorus, 1.0 gram
Iodine, 150 micrograms
Magnesium, 400 milligrams
Zinc, 15 milligrams
Copper, 2.0 milligrams

(v) The following synonyms may be added in parenthesis immediately following the name of the nutrient or dietary component:

Vitamin C—Ascorbic acid
Thiamin—Vitamin B_1
Riboflavin—Vitamin B_2
Folate—Folacin
Calories—Energy

(vi) A statement of the percent of vitamin A that is present as *beta*-carotene may be declared voluntarily. When the vitamins and minerals are listed in a single column, the statement shall be indented under the information on vitamin A. When vitamins and minerals are arrayed horizontally, the statement of percent shall be presented in parenthesis following the declaration of vitamin A and the percent of Daily Value of vitamin A in the product (e.g., ''Percent Daily Value: Vitamin A 50 (90 percent as *beta*-carotene)''). When declared, the percentages shall be expressed in the same increments as are provided for vitamins and minerals in paragraph (c)(8)(iii) of this section.

(9) For the purpose of labeling with a percent of the DRV, the following DRV's are established for the following food components based on the reference caloric intake of 2,000 calories:

Food component	Unit of measurement	DRV
Fat	grams (g)	65
Saturated fatty acids.	do	20
Cholesterol	milligrams (mg)	300
Total carbohydrate.	grams (g)	300
Fiber	do	25
Sodium	milligrams (mg)	2400
Potassium	do	3500
Protein	grams (g)	50

(d)(1) Nutrient information specified in paragraph (c) of this section shall be presented on products in the following format, except on products on which dual columns of nutrition information are declared as provided for in paragraph (e) of this section, on those products on which the simplified format is permitted to be used as provided for in paragraph (f) of this section, on products for infants and children less than 4 years of age as provided for in § 381.500(c), and on products in packages that have a total surface area available to bear labeling of 40 or less square inches as provided for in paragraph (g) of this section.

(i) The nutrition information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the nutrition label shall utilize:

(A) A single easy-to-read type style,

(B) Upper and lower case letters,

(C) At least one point leading (i.e., space between two lines of text) except that at least four points leading shall be utilized for the information required by paragraphs (d)(7) and (d)(8) of this section, and

(D) Letters should never touch.

(iii) Information required in paragraphs (d)(3), (d)(5), (d)(7), and (d)(8) of this section shall be in type size no smaller than 8 point. Except for the heading ''Nutrition Facts,'' the information required in paragraphs (d)(4), (d)(6), and (d)(9) of this section and all other information contained within the nutrition label shall be in type size no smaller than 6 point. When provided, the information described in paragraph (d)(10) of this section shall also be in type no smaller than 6 point.

(iv) The headings required by paragraphs (d)(2), (d)(4), and (d)(6) of this section (i.e., ''Nutrition Facts,'' ''Amount Per Serving,'' and ''% Daily Value*''), the names of all nutrients that are not indented according to requirements of paragraph (c) of this section (i.e., Calories, Total fat, Cholesterol, Sodium, Potassium, Total carbohydrate, and Protein), and the percentage amounts required by paragraph (d)(7)(ii) of this section shall be highlighted by bold or extra bold type or other highlighting (reverse printing is not permitted as a form of highlighting) that prominently distinguishes it from other information. No other information shall be highlighted.

(v) A hairline rule that is centered between the lines of text shall separate ''Amount Per Serving'' from the calorie statements required in paragraph (d)(5) of this section and shall separate each nutrient and its corresponding percent of Daily Value required in paragraphs (d)(7)(i) and (d)(7)(ii) of this section from the nutrient and percent of Daily Value above and below it.

(2) The information shall be presented under the identifying heading of ''Nutrition Facts'' which shall be set in a type size larger than all other print size in the nutrition label and, except for labels presented according to the format provided for in paragraph (d)(11) of this section, unless impractical, shall be set the full width of the information provided under paragraph (d)(7) of this section.

(3) Information on serving size shall immediately follow the heading. Such information shall include:

(i) ''Serving Size'': A statement of the serving size as specified in paragraph (b)(9) of this section.

(ii) ''Servings Per Container'': The number of servings per container, except that this statement is not required on single-serving containers as defined in paragraph (b)(8) of this section.

(4) A subheading ''Amount Per Serving'' shall be separated from serving size information by a bar.

(5) Information on calories shall immediately follow the heading ''Amount Per Serving'' and shall be declared in one line, leaving sufficient space between the declaration of ''Calories'' and ''Calories from fat'' to allow clear differentiation, or, if ''Calories from saturated fat'' is declared, in a column with total ''Calories'' at the top, followed by ''Calories from fat'' (indented), and ''Calories from saturated fat'' (indented).

(6) The column heading ''% Daily Value,'' followed by an asterisk (e.g., ''% Daily Value*''), shall be separated from information on calories by a bar. The position of this column heading shall allow for a list of nutrient names and amounts as described in paragraph (d)(7) of this section to be to the left of, and below, this column heading. The column heading ''Percent Daily Value,'' ''Percent DV,'' or ''% DV'' may be substituted for ''% Daily Value.''

(7) Except as provided for in paragraph (g) of this section, and except as permitted by § 381.500(d)(2), nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label, except vitamins and minerals, shall be declared as follows:

(i) The name of each nutrient, as specified in paragraph (c) of this section, shall be given in a column and followed immediately by the quantitative amount by weight for that nutrient appended with a ''g'' for grams or ''mg'' for milligrams.

(ii) A listing of the percent of the DRV as established in paragraphs (c)(7)(iii) and (c)(9) of this section shall be given in a column aligned under the heading ''% Daily Value'' established in paragraph (d)(6) of this section with the percent expressed to the nearest whole percent for each nutrient declared in the column described in paragraph (d)(7)(i) of this section for which a DRV has been established, except that the percent for protein may be omitted as provided in paragraph (c)(7) of this section. The percent shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the DRV for the nutrient, except that the percent for protein shall be calculated as specified in paragraph (c)(7)(ii) of this section. The numerical value shall be followed by the symbol for percent (i.e., %).

(8) Nutrient information for vitamins and minerals shall be separated from information on other nutrients by a bar and shall be arrayed horizontally (e.g., Vitamin A 4%, Vitamin C 2%, Calcium 15%, Iron 4%) or may be listed in two columns, except that when more than four vitamins and minerals are declared, they may be declared vertically with percentages listed under the column headed ''% Daily Value.''

(9) A footnote, preceded by an asterisk, shall be placed beneath the list of vitamins and minerals and shall be separated from that list by a hairline.

(i) The footnote shall state: Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total fat	Less than	65 g	80 g
Saturated fat.	Less than	20 g	25 g
Cholesterol.	Less than	300 mg	300 mg
Sodium	Less than	2400 mg	2400 mg
Total carbohydrate.	.....	300 g	375 g
Dietary fiber.	.....	25 g	30 g

(ii) If the percent of Daily Value is given for protein in the Percent of Daily Value column as provided in paragraph (d)(7)(ii) of this section, protein shall be listed under dietary fiber, and a value of 50 g shall be inserted on the same line in the column headed ''2,000'' and value of 65 g in the column headed ''2,500.''

(iii) If potassium is declared in the column described in paragraph (d)(7)(i) of this section, potassium shall be listed under sodium and the DRV established in paragraph (c)(9) of this section shall be inserted on the same line in the numeric columns.

(iv) The abbreviations established in paragraph (g)(2) of this section may be used within the footnote.

(10) Caloric conversion information on a per-gram basis for fat, carbohydrate, and protein may be presented beneath the information required in paragraph (d)(9), separated from that information by a hairline. This information may be presented horizontally (i.e., ''Calories per gram: Fat 9, Carbohydrate 4, Protein 4'') or vertically in columns.

(11)(i) If the space beneath the information on vitamins and minerals is not adequate to accommodate the information required in paragraph (d)(9) of this section, the information required in paragraph (d)(9) may be moved to the right of the column required in paragraph (d)(7)(ii) of this section and set off by a line that distinguishes it and sets it apart from the percent of Daily Value information. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(ii) If the space beneath the mandatory declaration of iron is not adequate to accommodate any remaining vitamins and minerals to be declared or the information required in paragraph (d)(9) of this section, the remaining information may be moved to the right and set off by a line that distinguishes it and sets it apart from the percent of Daily Value information given to the left. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(iii) If there is not sufficient continuous vertical space (i.e., approximately 3 inches) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label may be presented in a tabular display in which the footnote required by paragraph (d)(9) of the section is given to the far right of the label, and additional vitamins and minerals beyond the four that are required (i.e., vitamin A, vitamin C, calcium, and iron) are arrayed horizontally following declarations of the required vitamins and minerals.

(12) The following sample label illustrates the provisions of paragraph (d) of this section:

BILLING CODE 3410–DM–P

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving	
Calories 260 Calories from Fat 120	
	% Daily Value*
Total Fat 13g	**20%**
Saturated Fat 5g	**25%**
Cholesterol 30mg	**10%**
Sodium 660mg	**28%**
Total Carbohydrate 31g	**10%**
Dietary Fiber 0g	**0%**
Sugars 5g	
Protein 5g	

Vitamin A 4%	•	Vitamin C 2%
Calcium 15%	•	Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • **Carbohydrate 4** • **Protein 4**

BILLING CODE 3410–DM–C

(13)(i) Nutrition labeling on the outer label of packages of poultry products that contain two or more products in the same packages (e.g., variety packs) or of packages that are used interchangeably for the same type of food (e.g., poultry salad containers) may use an aggregate display.

(ii) Aggregate displays shall comply with format requirements of paragraph (d) of this section to the maximum extent possible, except that the identity of each food shall be specified to the right of the ''Nutrition Facts'' title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food.

(14) When nutrition labeling appears in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in both languages need not be repeated (e.g., ''Protein/Proteinas 2 g''). All required information must be included in both languages.

(e) Nutrition information may be presented for two or more forms of the same product (e.g., both ''raw'' and ''cooked'') or for common combinations of foods as provided for in paragraph (b) of this section, or for different units (e.g., per 100 grams) as provided for in paragraph (b) of this section, or for two or more groups for which RDI's are established (e.g., both infants and children less than 4 years of age) as provided for in paragraph (c)(8)(i) of this section. When such dual labeling is provided, equal prominence shall be given to both sets of values. Information shall be presented in a format consistent with paragraph (d) of this section, except that:

(1) Following the subheading of ''Amount Per Serving,'' there shall be two or more column headings accurately describing the forms of the same product (e.g., ''raw'' and ''roasted''), the combinations of foods, the units, or the RDI groups that are being declared. The column representing the product as packaged and according to the label serving size based on the Reference Amount in § 381.412(b) shall be to the left of the numeric columns.

(2) When the dual labeling is presented for two or more forms of the same product, for combinations of foods, or for different units, total calories and calories from fat (and calories from saturated fat, when declared) shall be listed in a column and indented as specified in paragraph (d)(5) of this section with quantitative amounts declared in columns aligned under the column headings set forth in paragraph (e)(1) of this section.

(3) Quantitative information by weight required in paragraph (d)(7)(i) of this section shall be specified for the form of the product as packaged and according to the label serving size based on the Reference Amount in § 381.412(b).

(i) Quantitative information by weight may be included for other forms of the product represented by the additional column(s) either immediately adjacent to the required quantitative information by weight for the product as packaged and according to the label serving size based on the Reference Amount in § 381.412(b) or as a footnote.

(A) If such additional quantitative information is given immediately adjacent to the required quantitative information, it shall be declared for all nutrients listed and placed immediately following and differentiated from the required quantitative information (e.g., separated by a comma). Such information shall not be put in a separate column.

(B) If such additional quantitative information is given in a footnote, it shall be declared in the same order as the nutrients are listed in the nutrition label. The additional quantitative information may state the total nutrient content of the product identified in the second column or the nutrient amounts added to the product as packaged for only those nutrients that are present in different amounts than the amounts declared in the required quantitative information. The footnote shall clearly identify which amounts are declared. Any subcomponents declared shall be listed parenthetically after principal components (e.g., ½ cup skim milk contributes an additional 40 calories, 65 mg sodium, 6 g total carbohydrate (6 g sugars), and 4 g protein).

(ii) Total fat and its quantitative amount by weight shall be followed by an asterisk (or other symbol) (e.g., ''Total fat (2 g)*'') referring to another asterisk (or symbol) at the bottom of the nutrition label identifying the form(s) of the product for which quantitative information is presented.

(4) Information required in paragraphs (d)(7)(ii) and (d)(8) of this section shall be presented under the subheading ''% DAILY VALUE'' and in columns directly under the column headings set forth in paragraph (e)(1) of this section.

(5) The following sample label illustrates the provisions of paragraph (e) of this section:

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Nutrition Facts

Serving Size 1/12 package
(44g, about 1/4 cup dry mix)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	8%	24%
Saturated Fat 2g	10%	13%
Cholesterol 0mg	0%	23%
Sodium 300mg	13%	13%
Total Carbohydrate 34g	11%	11%
Dietary Fiber 0g	0%	0%
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

*Amount in Mix

**Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 3410–DM–C

(f)(1) Nutrition information may be presented in a simplified format as set forth herein when any required nutrients, other than the core nutrients (i.e., calories, total fat, sodium, total carbohydrate, and protein), are present in insignificant amounts. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars and protein, it shall be an amount less than 1 gram.

(2) The simplified format shall include information on the following nutrients:

(i) Total calories, total fat, total carbohydrate, sodium, and protein;

(ii) Any of the following that are present in more than insignificant amounts: Calories from fat, saturated fat, cholesterol, dietary fiber, sugars, vitamin A, vitamin C, calcium, and iron; and

(iii) Any vitamins and minerals listed in paragraph (c)(8)(iv) of this section when they are added in fortified or fabricated foods.

(3) Other nutrients that are naturally present in the product in more than insignificant amounts may be voluntarily declared as part of the simplified format.

(4) Any required nutrient, other than a core nutrient, that is present in an insignificant amount may be omitted from the tabular listing, provided that the following statement is included at the bottom of the nutrition label, ''Not a significant source of _____.'' The

blank shall be filled in with the appropriate nutrient or food component. Alternatively, amounts of vitamins and minerals present in insignificant amounts may be declared by the use of an asterisk (or symbol) that is placed at the bottom of the table of nutrient values and that is followed by the statement ''Contains less than 2 percent of the Daily Value of this (these) nutrient (nutrients).''

(5) Except as provided for in paragraph (g) of this section and in § 381.500(c) and (d), nutrient information declared in the simplified format shall be presented in the same manner as specified in paragraphs (d) or (e) of this section, except that the footnote required in paragraph (d)(9) of this section is not required. When the footnote is omitted, an asterisk shall be placed at the bottom of the label followed by the statement ''Percent Daily Values are based on a 2,000 calorie diet'' and, if the term ''Daily Value'' is not spelled out in the heading, a statement that ''DV'' represents ''Daily Value.''

(g) Foods in packages that have a total surface area available to bear labeling of 40 or less square inches may modify the requirements of paragraphs (c) through (f) of this section and § 381.402(a) by one or more of the following means:

(1)(i) Presenting the required nutrition information in a tabular or linear (i.e., string) fashion, rather than in vertical columns if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the package shape or size will not accommodate a tabular display.

(ii) When nutrition information is given in a linear display, the nutrition information shall be set off in a box by the use of a hairline. The percent Daily Value is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients, both principal components and subcomponents, are treated similarly. Bolding is required only on the title ''Nutrition Facts'' and is allowed for nutrient names for ''Calories,'' ''Total fat,'' ''Cholesterol,'' ''Sodium,'' ''Total carbohydrate,'' and ''Protein.''

(2) Using any of the following abbreviations:

Serving size—Serv size
Servings per container—Servings
Calories from fat—Fat cal
Calories from saturated fat—Sat fat cal
Saturated fat—Sat fat
Monounsaturated fat—Monounsat fat
Polyunsaturated fat—Polyunsat fat
Cholesterol—Cholest
Total carbohydrate—Total carb
Dietary fiber—Fiber
Soluble fiber—Sol fiber
Insoluble fiber—Insol fiber
Sugar alcohol—Sugar alc
Other carbohydrate—Other carb

(3) Omitting the footnote required in paragraph (d)(9) of this section and placing another asterisk at the bottom of the label followed by the statement ''Percent Daily Values are based on a 2,000 calorie diet'' and, if the term ''Daily Value'' is not spelled out in the heading, a statement that ''DV'' represents ''Daily Value.''

* * * * *

21. Section 381.412 is amended by redesignating paragraph (d) as (g), revising paragraph (a), and adding new paragraphs (d), (e), and (f) to read as follows: *§ 381.412 Reference amounts customarily consumed per eating occasion.*

(a) The general principles followed in arriving at the reference amounts customarily consumed per eating occasion (Reference Amount(s)), as set forth in paragraph (b) of this section, are:

(1) The Reference Amounts are calculated for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These Reference Amounts are based on data set forth in appropriate national food consumption surveys.

(2) The Reference Amounts are calculated for an infant or child under 4 years of age to reflect the amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively. These Reference Amounts are based on data set forth in appropriate national food consumption surveys. Such Reference Amounts are to be used only when the product is specially formulated or processed for use by an infant or by a child under 4 years of age.

(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

(4) To determine the amount of food customarily consumed per eating occasion, the mean, median, and mode of the consumed amount per eating occasion were considered.

(5) When survey data were insufficient, FSIS took various other sources of information on serving sizes of food into consideration. These other sources of information included:

(i) Serving sizes used in dietary guidance recommendations or recommended by other authoritative systems or organizations;

(ii) Serving sizes recommended in comments;

(iii) Serving sizes used by manufacturers and grocers; and

(iv) Serving sizes used by other countries.

(6) Because they reflect the amount customarily consumed, the Reference Amount and, in turn, the serving size declared on the product label are based on only the edible portion of food, and not bone, seed, shell, or other inedible components.

(7) The Reference Amount is based on the major intended use of the product (e.g., a mixed dish measurable with a cup as a main dish and not as a side dish).

(8) The Reference Amounts for products that are consumed as an ingredient of other products, but that may also be consumed in the form in which they are purchased (e.g., ground poultry), are based on use in the form purchased.

(9) FSIS sought to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform Reference Amount.

* * * * *

(d) If a product requires further preparation, e.g., cooking or the addition of water or other ingredients, and if paragraph (b) of this section provides a Reference Amount for the product in the prepared form, then the Reference Amount for the unprepared product shall be determined using the following rules:

(1) Except as provided for in paragraph (d)(2) of this section, the Reference Amount for the unprepared product shall be the amount of the unprepared product required to make the Reference Amount for the prepared product as established in paragraph (b) of this section.

(2) For products where the entire contents of the package is used to prepare one large discrete unit usually divided for consumption, the Reference Amount for the unprepared product shall be the amount of the unprepared product required to make the fraction of the large discrete unit closest to the Reference Amount for the prepared product as established in paragraph (b) of this section.

(e) The Reference Amount for an imitation or substitute product or altered product as defined in § 381.413(d), such as a ''low calorie'' version, shall be the same as for the product for which it is offered as a substitute.

(f) The Reference Amounts set forth in paragraphs (b) through (e) of this section shall be used in determining whether a product meets the criteria for nutritional claims. If the serving size declared on the product label differs from the Reference Amount, and the product meets the criteria for the claim only on the basis of the Reference Amount, the claim shall be followed by a statement that sets forth the basis on which the claim is made. That statement shall include the Reference Amount as it appears in paragraph (b) of this section followed, in parenthesis, by the amount in common household measure if the Reference Amount is expressed in measures other than common household measures.

* * * * *

22. Section 381.413 is amended by revising paragraphs (b), (g), (i), (j), (k), (p), and (q)(4) and adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(b) A claim which, expressly or by implication, characterizes the level of a nutrient (nutrient content claim) of the type required in nutrition labeling pursuant to § 381.409, may not be made on a label or in labeling of that product unless the claim is made in accordance with the applicable provisions in this subpart.

(1) An expressed nutrient content claim is any direct statement about the level (or range) of a nutrient in the product, e.g., ''low sodium'' or ''contains 100 calories.''

(2) An implied nutrient content claim is any claim that:

(i) Describes the product or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (e.g., ''high in oat bran''); or

(ii) Suggests that the product, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (e.g., ''healthy, contains 3 grams (g) of fat'').

(3) Except for claims regarding vitamins and minerals described in paragraph (q)(3) of this section, no nutrient content claims may be made on products intended specifically for use by infants and children less than 2 years of age unless the claim is specifically provided for in subpart Y of this part.

(4) Reasonable variations in the spelling of the terms defined in applicable provisions in this subpart and their synonyms are permitted provided these variations are not misleading (e.g., ''hi'' or ''lo'').

(c) Information that is required or permitted by § 381.409 to be declared in nutrition labeling, and that appears as part of the nutrition label, is not a nutrient content claim and is not subject to the requirements of this section. If such information is declared elsewhere on the label or in labeling, it is a nutrient content claim and is subject to the requirements for nutrient content claims.

(d) A ''substitute'' product is one that may be used interchangeably with another product that it resembles, i.e., that it is organoleptically, physically, and functionally (including shelf life) similar to, and that it is not nutritionally inferior to unless it is labeled as an ''imitation.''

(1) If there is a difference in performance characteristics that materially limits the use of the product, the product may still be considered a substitute if the label includes a disclaimer adjacent to the most prominent claim as defined in paragraph (j)(2)(iii) of this section, informing the consumer of such difference (e.g., ''not recommended for frying'').

(2) This disclaimer shall be in easily legible print or type and in a size no less than that required by § 381.121(c) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(e)(1) Because the use of a ''free'' or ''low'' claim before the name of a product implies that the product differs from other products of the same type by virtue of its having a lower amount of the nutrient, only products that have been specially processed, altered, formulated, or reformulated so as to lower the amount of the nutrient in the product, remove the nutrient from the product, or not include the nutrient in the product, may bear such a claim (e.g., ''low sodium chicken noodle soup'').

(2) Any claim for the absence of a nutrient in a product, or that a product is low in a nutrient when the product has not been specially processed, altered, formulated, or reformulated to qualify for that claim shall indicate that the product inherently meets the criteria and shall clearly refer to all products of that type and not merely to the particular brand to which the labeling attaches (e.g., ''chicken breast meat, a low sodium food'').

(f) A nutrient content claim shall be in type size and style no larger than two times that of the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

(g) Labeling information required in §§ 381.413, 381.454, 381.456, 381.460, 381.461, 381.462, and 381.480, whose type size is not otherwise specified, is required to be in letters and/or numbers no less than 1/16 inch in height, except as permitted by § 381.500(d)(2).

(h) [Reserved]

(i) Except as provided in § 381.409 or in paragraph (q)(3) of this section, the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if:

(1) The use of the statement on the product implicitly characterizes the level of the nutrient in the product and is consistent with a definition for a claim, as provided in subpart Y of this part, for the nutrient that the label addresses. Such a claim might be, ''less than 10 g of fat per serving;''

(2) The use of the statement on the product implicitly characterizes the level of the nutrient in the product and is not consistent with such a definition, but the label carries a disclaimer adjacent to the statement that the product is not ''low'' in or a ''good source'' of the nutrient, such as ''only 200 milligrams (mg) sodium per serving, not a low sodium product.'' The disclaimer must be in easily legible print or type and in a size no less than required by § 381.121(c) for the net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2);

(3) The statement does not in any way implicitly characterize the level of the nutrient in the product and it is not false or misleading in any respect (e.g., ''100 calories'' or ''5 grams of fat''), in which case no disclaimer is required.

(4) ''Percent fat free'' claims are not authorized by this paragraph. Such claims shall comply with § 381.462(b)(6).

(j) A product may bear a statement that compares the level of a nutrient in the product with the level of a nutrient

in a reference product. These statements shall be known as ''relative claims'' and include ''light,'' ''reduced,'' ''less'' (or ''fewer''), and ''more'' claims.

(1) To bear a relative claim about the level of a nutrient, the amount of that nutrient in the product must be compared to an amount of nutrient in an appropriate reference product as specified in this paragraph (j).

(i)(A) For ''less'' (or ''fewer'') and ''more'' claims, the reference product may be a dissimilar product within a product category that can generally be substituted for one another in the diet or a similar product.

(B) For ''light,'' ''reduced,'' and ''added'' claims, the reference product shall be a similar product, and

(ii)(A) For ''light'' claims, the reference product shall be representative of the type of product that includes the product that bears the claim. The nutrient value for the reference product shall be representative of a broad base of products of that type; e.g., a value in a representative, valid data base; an average value determined from the top three national (or regional) brands, a market basket norm; or, where its nutrient value is representative of the product type, a market leader. Firms using such a reference nutrient value as a basis for a claim, are required to provide specific information upon which the nutrient value was derived, on request, to consumers and appropriate regulatory officials.

(B) For relative claims other than ''light,'' including ''less'' and ''more'' claims, the reference product may be the same as that provided for ''light'' in paragraph (j)(1)(ii)(A) of this section or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name, provided the name of the competitor is not used on the labeling of the product. The nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting labeling is internally consistent (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause consumer confusion when compared), and that the actual modification is at least equal to the percentage specified in the definition of the claim.

(2) For products bearing relative claims:

(i) The label or labeling must state the identity of the reference product and the percent (or fraction) of the amount of the nutrient in the reference product by which the nutrient has been modified, (e.g., ''50 percent less fat than 'reference product' '' or ''⅓ fewer calories than 'reference product' ''); and

(ii) This information shall be immediately adjacent to the most prominent claim in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, that is no less than that required by § 381.121(c) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim, but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(iii) The determination of which use of the claim is in the most prominent location on the label or labeling will be made based on the following factors, considered in order:

(A) A claim on the principal display panel adjacent to the statement of identity;

(B) A claim elsewhere on the principal display panel;

(C) A claim on the information panel; or

(D) A claim elsewhere on the label or labeling.

(iv) The label or labeling must also bear:

(A) Clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving size with that in the reference product; and

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

(3) A relative claim for decreased levels of a nutrient may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the requirement for a ''low'' claim for that nutrient.

(k) The term ''modified'' may be used in the statement of identity of a product that bears a relative claim that complies with the requirements of this part, followed immediately by the name of the nutrient whose content has been altered (e.g., ''modified fat 'product' ''). This statement of identity must be immediately followed by the comparative statement such as ''contains 35 percent less fat than 'reference product'.'' The label or labeling must also bear the information required by paragraph (j)(2) of this section in the manner prescribed.

* * * * *

(p)(1) Unless otherwise specified, the reference amount customarily consumed set forth in § 381.412(b) through (e) shall be used in determining whether a product meets the criteria for a nutrient content claim. If the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the descriptor for that nutrient, the claim shall be followed by the criteria for the claim as required by § 381.412(f) (e.g., ''very low sodium, 35 mg or less per 55 grams'').

(2) The criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size that is no less than that required by § 381.121(c) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the criteria statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(q) * * *

(4) The requirements of this section do not apply to infant formulas and medical foods, as described in 21 CFR 101.13(q)(4).

* * * * *

22. Section 381.445 is amended by revising the section reference in paragraph (c) from ''§ 381.409(g)'' to ''§ 381.409(f)'' and by revising paragraph (a)(2) introductory text, (a)(2)(ii) and (a)(2)(iii) to read as follows: *§ 381.445 Guidelines for voluntary nutrition labeling of single-ingredient, raw products.*

(a) * * *

(2) A retailer may choose to provide nutrition information at the point-of-purchase, such as by posting a sign, or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials all of the requirements of the mandatory nutrition labeling program apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials:

(i) * * *

(ii) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 381.409(c)(8)) and footnote required by § 381.409(d)(9) may be omitted; and

(iii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

23. Section 381.454 is revised to read as follows:

§ 381.454 Nutrient content claims for ''good source,'' ''high,'' and ''more.''

(a) *General requirements.* Except as provided in paragraph (e) of this section, a claim about the level of a nutrient in a product in relation to the Reference Daily Intake (RDI) or Daily Reference Value (DRV), established for that nutrient (excluding total carbohydrate) in § 381.409(c), may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *''High'' claims.* (1) The terms ''high,'' ''rich in,'' or ''excellent source of'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that the product contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (b)(1) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains a food that meets the definition of ''high'' in paragraph (b)(1) of this section; and

(ii) The label or labeling clearly identifies the food that is the subject of the claim (e.g., ''the serving of broccoli in this meal is high in vitamin C'').

(c) *''Good Source'' claims.* (1) The terms ''good source,'' ''contains,'' or ''provides'' may be used on the label or in labeling of products, except meal-type products as described in § 381.413(l), provided that the product contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (c)(1) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains a food that meets the definition of ''good source'' in paragraph (c)(1) of this section; and

(ii) The label or labeling clearly identifies the food that is the subject of the claim (e.g., ''the serving of sweet potatoes in this meal is a good source of fiber'').

(d) *Fiber claims.* (1) If a nutrient content claim is made with respect to the level of dietary fiber, i.e., that the product is high in fiber, a good source of fiber, or that the product contains ''more'' fiber, and the product is not ''low'' in total fat as defined in § 381.462(b)(2) or, in the case of a meal-type product, is not ''low'' in total fat as defined in § 381.462(b)(3), then the labeling shall disclose the level of total fat per labeled serving size (e.g., ''contains 12 grams (g) of fat per serving''); and

(2) The disclosure shall appear in immediate proximity to such claim and be in a type size no less than one-half the size of the claim.

(e) *''More'' claims.* (1) A relative claim using the terms ''more'' and ''added'' may be used on the label or in labeling to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in a product, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 10 percent more of the RDI or the DRV for protein, vitamins, minerals, dietary fiber, or potassium (expressed as a percent of the Daily Value) per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the nutrient is greater relative to the RDI or DRV are declared in immediate proximity to the most prominent such claim (e.g., ''contains 10 percent more of the Daily Value for fiber than 'reference product' ''); and

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fiber content of 'reference product' is 1 g per serving; 'this product' contains 4 g per serving'').

(2) A relative claim using the terms ''more'' and ''added'' may be used on the label or in labeling to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 10 percent more of the RDI or the DRV for protein, vitamins, minerals, dietary fiber, or potassium (expressed as a percent of the Daily Value) per 100 g of product than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the nutrient is greater relative to the RDI or DRV are declared in immediate proximity to the most prominent such claim (e.g., ''contains 10 percent more of the Daily Value for fiber per 3 ounces (oz) than does 'reference product' ''), and

(B) Quantitative information comparing the level of the nutrient in the meal-type product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fiber content of 'reference product' is 2 g per 3 oz; 'this product' contains 5 g per 3 oz'').

24. Section 381.456 is revised to read as follows:

§ 381.456 Nutrient content claims for ''light'' or ''lite.''

(a) *General requirements.* A claim using the terms ''light'' or ''lite'' to describe a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *''Light'' claims.* The terms ''light'' or ''lite'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), without further qualification, provided that:

(1) If the product derives 50 percent or more of its calories from fat, its fat content is reduced by 50 percent or more per reference amount customarily consumed compared to an appropriate reference product as described in § 381.413(j)(1); or

(2) If the product derives less than 50 percent of its calories from fat:

(i) The number of calories is reduced by at least one-third (33⅓ percent) per reference amount customarily consumed compared to an appropriate reference product as described in § 381.413(j)(1); or

(ii) Its fat content is reduced by 50 percent or more per reference amount customarily consumed compared to the appropriate reference product as described in § 381.413(j)(1); and

(3) As required in § 381.413(j)(2) for relative claims:

(i) The identity of the reference product and the percent (or fraction) that the calories and the fat were reduced are declared in immediate proximity to the most prominent such claim (e.g., ''⅓ fewer calories and 50 percent less fat than the market leader''); and

(ii) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''lite 'this product'—200 calories, 4 grams (g) fat; regular 'reference product'—300 calories, 8 g fat per serving''); and

(iii) If the labeled product contains less than 40 calories or less than 3 g fat per reference amount customarily consumed, the percentage reduction for that nutrient need not be declared.

(4) A ''light'' claim may not be made on a product for which the reference product meets the definition of ''low fat'' and ''low calorie.''

(c)(1)(i) A product for which the reference product contains 40 calories or less and 3 g fat or less per reference amount customarily consumed may use the terms ''light'' or ''lite'' without further qualification if it is reduced by 50 percent or more in sodium content compared to the reference product; and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''50 percent less sodium than the market leader''); and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''lite 'this product'—500 milligrams (mg) sodium per serving; regular 'reference product'—1,000 mg sodium per serving'').

(2)(i) A product for which the reference product contains more than 40 calories or more than 3 g fat per reference amount customarily consumed may use the terms ''light in sodium'' or ''lite in sodium'' if it is reduced by 50 percent or more in sodium content compared to the reference product, provided that ''light'' or ''lite'' is presented in immediate proximity with ''in sodium'' and the entire term is presented in uniform type size, style, color, and prominence; and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''50 percent less sodium than the market leader''); and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., or ''lite 'this product'—170 mg sodium per serving; regular 'reference product'—350 mg per serving'').

(3) Except for meal-type products as defined in § 381.413(l), a ''light in sodium'' claim may not be made on a product for which the reference product meets the definition of ''low in sodium.''

(d)(1) The terms ''light'' or ''lite'' may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product meets the definition of:

(A) ''Low in calories'' as defined in § 381.460(b)(3); or

(B) ''Low in fat'' as defined in § 381.462(b)(3); and

(ii)(A) A statement appears on the principal display panel that explains whether ''light'' is used to mean ''low fat,'' ''low calories,'' or both (e.g., ''Light Delight, a low fat meal''); and

(B) The accompanying statement is no less than one-half the type size of the ''light'' or ''lite'' claim.

(2)(i) The terms ''light in sodium'' or ''lite in sodium'' may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that the product meets the definition of ''low in sodium'' as defined in § 381.461(b)(5)(i); and

(ii) ''Light'' or ''lite'' and ''in sodium'' are presented in uniform type size, style, color, and prominence.

(3) The terms ''light'' or ''lite'' may be used in the brand name of a product to describe the sodium content, provided that:

(i) The product is reduced by 50 percent or more in sodium content compared to the reference product;

(ii) A statement specifically stating that the product is ''light in sodium'' or ''lite in sodium'' appears:

(A) Contiguous to the brand name; and

(B) In uniform type size, style, color, and prominence as the product name; and

(iii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium was reduced are declared in immediate proximity to the most prominent such claim; and

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference product it replaces is declared adjacent to the most prominent claim or to the nutrition information.

(e) Except as provided in paragraphs (b) through (d) of this section, the terms ''light'' or ''lite'' may not be used to refer to a product that is not reduced in fat by 50 percent, or, if applicable, in calories by ⅓ or, when properly qualified, in sodium by 50 percent unless:

(1) It describes some physical or organoleptic attribute of the product such as texture or color and the information (e.g., ''light in color'' or ''light in texture'') so stated, clearly conveys the nature of the product; and

(2) The attribute (e.g., ''color'' or ''texture'') is in the same style, color, and at least one-half the type size as the word ''light'' and in immediate proximity thereto.

(f) If a manufacturer can demonstrate that the word ''light'' has been associated, through common use, with a particular product to reflect a physical or organoleptic attribute to the point where it has become part of the statement of identity, such use of the term ''light'' shall not be considered a nutrient content claim subject to the requirements in this part.

(g) The term ''lightly salted'' may be used on a product to which has been added 50 percent less sodium than is normally added to the reference product as described in § 381.413(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not ''low in sodium'' as defined in § 381.461(b)(4), the statement ''not a low sodium food,'' shall appear adjacent to the nutrition information and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 381.413(j)(2).

25. Section 381.460 is revised to read as follows:

§ 381.460 Nutrient content claims for calorie content.

(a) *General requirements.* A claim about the calorie or sugar content of a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *Calorie content claims.* (1) The terms ''calorie free,'' ''free of calories,'' ''no calories,'' ''zero calories,'' ''without calories,'' ''trivial source of calories,'' ''negligible source of calories,'' or ''dietarily insignificant source of calories'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 5 calories per reference amount customarily consumed and per labeled serving size; and

(ii) If the product meets this condition without the benefit of special processing, alteration, formulation, or reformulation to lower the caloric content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''low calorie,'' ''few calories,'' ''contains a small amount of calories,'' ''low source of calories,'' or ''low in calories'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons (tbsp) and does not provide more than 40 calories per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and does not provide more than 40 calories per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 381.409(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form).

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the caloric content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (b)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains 120 calories or less per 100 g of product; and

(ii) If the product meets this condition without the benefit of special processing, alteration, formulation, or reformulation to lower the calorie content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which it attaches.

(4) The terms ''reduced calorie,'' ''reduced in calories,'' ''calorie reduced,'' ''fewer calories,'' ''lower calorie,'' or ''lower in calories'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent fewer calories per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the calories differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., lower calorie 'product'—''33 ⅓ percent fewer calories than our regular 'product' ''); and

(B) Quantitative information comparing the level of calories in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''calorie content has been reduced from 150 to 100 calories per serving'').

(iii) Claims described in paragraph (b)(4) of this section may not be made on the label or in labeling of products if the reference product meets the definition for ''low calorie.''

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent fewer calories per 100 g of product than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the calories differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''calorie reduced 'product', 25% less calories per ounce (oz) (or 3 oz) than our regular 'product' ''); and

(B) Quantitative information comparing the level of calories in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''calorie content has been reduced from 110 calories per 3 oz to 80 calories per 3 oz'').

(iii) Claims described in paragraph (b)(5) of this section may not be made on the label or in labeling of products if the reference product meets the definition for ''low calorie.''

(c) *Sugar content claims.* (1) Terms such as ''sugar free,'' ''free of sugar,'' ''no sugar,'' ''zero sugar,'' ''without sugar,'' ''sugarless,'' ''trivial source of sugar,'' ''negligible source of sugar,'' or ''dietarily insignificant source of sugar'' may reasonably be expected to be regarded by consumers as terms that represent that the product contains no sugars or sweeteners, e.g., ''sugar free,'' or ''no sugar,'' as indicating a product which is low in calories or significantly reduced in calories. Consequently, except as provided in paragraph (c)(2) of this section, a product may not be labeled with such terms unless:

(i) The product contains less than 0.5 g of sugars, as defined in § 381.409(c)(6)(ii), per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of sugars per labeled serving size;

(ii) The product contains no ingredient that is a sugar or that is generally understood by consumers to contain sugars unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of sugar,'' ''adds a negligible amount of sugar,'' or ''adds a dietarily insignificant amount of sugar;'' and

(iii)(A) It is labeled ''low calorie'' or ''reduced calorie'' or bears a relative claim of special dietary usefulness labeled in compliance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of this section; or

(B) Such term is immediately accompanied, each time it is used, by either the statement ''not a reduced calorie product,'' ''not a low calorie product,'' or ''not for weight control.''

(2) The terms ''no added sugar,'' ''without added sugar,'' or ''no sugar added'' may be used only if:

(i) No amount of sugars, as defined in § 381.409(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging;

(ii) The product does not contain an ingredient containing added sugars such as jam, jelly, or concentrated fruit juice;

(iii) The sugars content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, except where the intended functional effect of the process is not to increase the sugars content of a product, and a functionally insignificant increase in sugars results;

(iv) The product that it resembles and for which it substitutes normally contains added sugars; and

(v) The product bears a statement that the product is not ''low calorie'' or ''calorie reduced'' (unless the product meets the requirements for a ''low'' or ''reduced calorie'' product) and that directs consumers' attention to the nutrition panel for further information on sugar and calorie content.

(3) Paragraph (c)(1) of this section shall not apply to a factual statement that a product, including products intended specifically for infants and children less than 2 years of age, is unsweetened or contains no added sweeteners in the case of a product that contains apparent substantial inherent sugar content, e.g., juices.

(4) The terms ''reduced sugar,'' ''reduced in sugar,'' ''sugar reduced,'' ''less sugar,'' ''lower sugar,'' or ''lower in sugar'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less sugars per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sugars differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''this product contains 25 percent less sugar than our regular product''); and

(B) Quantitative information comparing the level of the sugar in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sugar content has been lowered from 8 g to 6 g per serving'').

(5) The terms defined in paragraph (c)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less sugars per 100 g of product than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sugars differ between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sugar 'product'—25% less sugar than our regular 'product' ''); and

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz'').

26. Section 381.461 is revised to read as follows:

§ 381.461 Nutrient content claims for the sodium content.

(a) *General requirements.* A claim about the level of sodium in a product may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *Sodium content claims.* (1) The terms ''sodium free,'' ''free of sodium,'' ''no sodium,'' ''zero sodium,'' ''without sodium,'' ''trivial source of sodium,'' ''negligible source of sodium,'' or ''dietarily insignificant source of sodium'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 5 milligrams (mg) of sodium per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 5 mg of sodium per labeled serving size;

(ii) The product contains no ingredient that is sodium chloride or is generally understood by consumers to contain sodium unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of sodium,'' ''adds a negligible amount of sodium'' or ''adds a dietarily insignificant amount of sodium;'' and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''very low sodium'' or ''very low in sodium'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons (tbsp) and contains 35 mg or less sodium per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and contains 35 mg or less sodium per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 381.409(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form); and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains 140 mg or less sodium per 100 g of product; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the sodium content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(6) The terms ''reduced sodium,'' ''reduced in sodium,'' ''sodium reduced,'' ''less sodium,'' ''lower sodium,'' or ''lower in sodium'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less sodium per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(l); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction)

that the sodium differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sodium 'product', 50 percent less sodium than regular 'product' ''); and

(B) Quantitative information comparing the level of sodium in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sodium content has been lowered from 300 to 150 mg per serving'').

(iii) Claims described in paragraph (b)(6) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low sodium.''

(7) The terms defined in paragraph (b)(6) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less sodium per 100 g of product than an appropriate reference product as described in § 381.413(j)(l); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the sodium differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced sodium 'product'—30% less sodium per 3 oz than our 'regular product' ''); and

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''sodium content has been reduced from 220 mg per 3 oz to 150 mg per 3 oz'').

(iii) Claims described in paragraph (b)(7) of this section may not be made on the label or in labeling of products if the nutrient content of the reference product meets the definition for ''low sodium.''

(c) The term ''salt'' is not synonymous with ''sodium.'' Salt refers to sodium chloride. However, references to salt content such as ''unsalted,'' ''no salt,'' ''no salt added'' are potentially misleading.

(1) The term ''salt free'' may be used on the label or in labeling of products only if the product is ''sodium free'' as defined in paragraph (b)(1) of this section.

(2) The terms ''unsalted,'' ''without added salt,'' and ''no salt added'' may be used on the label or in labeling of products only if:

(i) No salt is added during processing;

(ii) The product that it resembles and for which it substitutes is normally processed with salt; and

(iii) If the product is not sodium free, the statement ''not a sodium free product'' or ''not for control of sodium in the diet'' appears adjacent to the nutrition information of the product bearing the claim.

(3) Paragraph (c)(2) of this section shall not apply to a factual statement that a product intended specifically for infants and children less than 2 years of age is unsalted, provided such statement refers to the taste of the product and is not false or otherwise misleading.

27. Section 381.462 is revised to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content.

(a) *General requirements.* A claim about the level of fat, fatty acid, and cholesterol in a product may only be made on the label or in labeling of products if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *Fat content claims.* (1) The terms ''fat free,'' ''free of fat,'' ''no fat,'' ''zero fat,'' ''without fat,'' ''nonfat,'' ''trivial source of fat,'' ''negligible source of fat,'' or ''dietarily insignificant source of fat'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 0.5 gram (g) of fat per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of fat per labeled serving size;

(ii) The product contains no added ingredient that is a fat or is generally understood by consumers to contain fat unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of fat,'' ''adds a negligible amount of fat,'' or ''adds a dietarily insignificant amount of fat''; and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''low fat,'' ''low in fat,'' ''contains a small amount of fat,'' ''low source of fat,'' or ''little fat'' may be used on the label and in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i)(A) The product has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons (tbsp) and contains 3 g or less of fat per reference amount customarily consumed; or

(B) The product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less and contains 3 g or less of fat per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 381.409(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form).

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (b)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains 3 g or less of total fat per 100 g of product and not more than 30 percent of calories from fat; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower the fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced fat,'' ''reduced in fat,'' ''fat reduced,'' ''less fat,'' ''lower fat,'' or ''lower in fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less fat per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the fat differs between the two

products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced fat—50 percent less fat than our regular 'product' ''); and

(B) Quantitative information comparing the level of fat in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''fat content has been reduced from 8 g to 4 g per serving'').

(iii) Claims described in paragraph (b)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low fat.''

(5) The terms defined in paragraph (b)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less fat per 100 g of product than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced fat 'product', 33 percent less fat per 3 oz than our regular 'product' ''); and

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent such claim or to the nutrition information (e.g., ''fat content has been reduced from 8 g per 3 oz to 5 g per 3 oz'').

(iii) Claims described in paragraph (b)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low fat.''

(6) The term ''_____ percent fat free'' may be used on the label or in labeling of products, provided that:

(i) The product meets the criteria for ''low fat'' in paragraph (b)(2) or (b)(3) of this section;

(ii) The percent declared and the words ''fat free'' are in uniform type size; and

(iii) A ''100 percent fat free'' claim may be made only on products that meet the criteria for ''fat free'' in paragraph (b)(1) of this section, that contain less than 0.5 g of fat per 100 g, and that contain no added fat.

(iv) A synonym for ''_____ percent fat free'' is ''_____ percent lean.''

(c) *Fatty acid content claims.* (1) The terms ''saturated fat free,'' ''free of saturated fat,'' ''no saturated fat,'' ''zero saturated fat,'' ''without saturated fat,'' ''trivial source of saturated fat,'' ''negligible source of saturated fat,'' or ''dietarily insignificant source of saturated fat'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acids per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product, less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acids per labeled serving size;

(ii) The product contains no ingredient that is generally understood by consumers to contain saturated fat unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of saturated fat,'' ''adds a negligible amount of saturated fat,'' or ''adds a dietarily insignificant amount of saturated fat;'' and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower saturated fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(2) The terms ''low in saturated fat,'' ''low saturated fat,'' ''contains a small amount of saturated fat,'' ''low source of saturated fat,'' or ''a little saturated fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains 1 g or less of saturated fat per reference amount customarily consumed and not more than 15 percent of calories from saturated fat; and

(ii) If the product meets these conditions without benefit of special processing, alteration, formulation, or reformulation to lower saturated fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(3) The terms defined in paragraph (c)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains 1 g or less of saturated fat per 100 g and less than 10 percent calories from saturated fat; and

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower saturated fat content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced saturated fat,'' ''reduced in saturated fat,'' ''saturated fat reduced,'' ''less saturated fat,'' ''lower saturated fat,'' or ''lower in saturated fat'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less saturated fat per reference amount customarily consumed than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the saturated fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced saturated fat 'product', contains 50 percent less saturated fat than the national average for 'product' ''); and

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''saturated fat reduced from 3 g to 1.5 g per serving'').

(iii) Claims described in paragraph (c)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low saturated fat.''

(5) The terms defined in paragraph (c)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains at least 25 percent less saturated fat per 100 g of product than an appropriate reference product as described in § 381.413(j)(1); and

(ii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the saturated fat differs between the two products are declared in immediate proximity to the most prominent such claim (e.g., ''reduced saturated fat 'product', 50 percent less saturated fat than our regular 'product' ''); and

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''saturated fat content

has been reduced from 2.5 g per 3 oz to 1.5 g per 3 oz'').

(iii) Claims described in paragraph (c)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low saturated fat.''

(d) *Cholesterol content claims.* (1) The terms ''cholesterol free,'' ''free of cholesterol,'' ''zero cholesterol,'' ''without cholesterol,'' ''no cholesterol,'' ''trivial source of cholesterol,'' ''negligible source of cholesterol,'' or ''dietarily insignificant source of cholesterol'' may be used on the label or in labeling of products, provided that:

(i) The product contains less than 2 milligrams (mg) of cholesterol per reference amount customarily consumed and per labeled serving size or, in the case of a meal-type product as defined in § 381.413(l), less than 2 mg of cholesterol per labeled serving size;

(ii) The product contains no ingredient that is generally understood by consumers to contain cholesterol, unless the listing of the ingredient in the ingredients statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: ''Adds a trivial amount of cholesterol,'' ''adds a negligible amount of cholesterol,'' or ''adds a dietarily insignificant amount of cholesterol'';

(iii) The product contains 2 g or less of saturated fat per reference amount customarily consumed or, in the case of a meal-type product as defined in § 381.413(l), 2 g or less of saturated fat per labeled serving size; and

(iv) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which it attaches; or

(v) If the product meets these conditions only as a result of special processing, alteration, formulation, or reformulation, the amount of cholesterol is reduced by 25 percent or more from the reference product it replaces as described in § 381.413(j)(1) and for which it substitutes as described in § 381.413(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share. As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol was reduced are declared in immediate proximity to the most prominent such claim (e.g., ''cholesterol free 'product', contains 100 percent less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''contains no cholesterol compared with 30 mg in one serving of 'reference product' '').

(2) The terms ''low in cholesterol,'' ''low cholesterol,'' ''contains a small amount of cholesterol,'' ''low source of cholesterol,'' or ''little cholesterol'' may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(l), provided that:

(i)(A) If the product has a reference amount customarily consumed greater than 30 g or greater than 2 tbsp:

(*1*) The product contains 20 mg or less of cholesterol per reference amount customarily consumed; and

(*2*) The product contains 2 g or less of saturated fat per reference amount customarily consumed; or

(B) If the product has a reference amount customarily consumed of 30 g or less or 2 tbsp or less:

(*1*) The product contains 20 mg or less of cholesterol per reference amount customarily consumed and per 50 g (for dehydrated products that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 381.409(f)(1), of all nutrients per reference amount customarily consumed, the per-50-g criterion refers to the ''as prepared'' form); and

(*2*) The product contains 2 g or less of saturated fat per reference amount customarily consumed.

(ii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches; or

(iii) If the product contains 20 mg or less of cholesterol only as a result of special processing, alteration, formulation, or reformulation, the amount of cholesterol is reduced by 25 percent or more from the reference product it replaces as described in § 381.413(j)(1) and for which it substitutes as described in § 381.413(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share. As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced are declared in immediate proximity to the most prominent such claim (e.g., ''low cholesterol 'product', contains 85 percent less cholesterol than our regular 'product'''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol lowered from 30 mg to 5 mg per serving'').

(3) The terms defined in paragraph (d)(2) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product contains 20 mg or less of cholesterol per 100 g of product;

(ii) The product contains 2 g or less of saturated fat per 100 g of product; and

(iii) If the product meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, it is labeled to clearly refer to all products of its type and not merely to the particular brand to which the label attaches.

(4) The terms ''reduced cholesterol,'' ''reduced in cholesterol,'' ''cholesterol reduced,'' ''less cholesterol,'' ''lower cholesterol,'' or ''lower in cholesterol'' may be used on the label or in labeling of products or products that substitute for those products as specified in § 381.413(d), excluding meal-type products as defined in § 381.413(l), provided that:

(i) The product has been specifically formulated, altered, or processed to reduce its cholesterol by 25 percent or more from the reference product it replaces as described in § 381.413(j)(1) and for which it substitutes as described in § 381.413(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share;

(ii) The product contains 2 g or less of saturated fat per reference amount customarily consumed; and

(iii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced are declared in immediate proximity to the most prominent such claim (e.g., ''25 percent less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per labeled serving size with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol lowered from 55 mg to 30 mg per serving'').

(iv) Claims described in paragraph (d)(4) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low cholesterol.''

(5) The terms defined in paragraph (d)(4) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(l), provided that:

(i) The product has been specifically formulated, altered, or processed to reduce its cholesterol by 25 percent or more from the reference product it replaces as described in § 381.413(j)(1) and for which it substitutes as described in § 381.413(d) that has a significant (e.g., 5 percent or more of a national or regional market) market share;

(ii) The product contains 2 g or less of saturated fat per 100 g of product; and

(iii) As required in § 381.413(j)(2) for relative claims:

(A) The identity of the reference product and the percent (or fraction) that the cholesterol has been reduced are declared in immediate proximity to the most prominent such claim (e.g., ''25% less cholesterol than 'reference product' ''); and

(B) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference product that it replaces is declared adjacent to the most prominent claim or to the nutrition information (e.g., ''cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz).

(iv) Claims described in paragraph (d)(5) of this section may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the definition for ''low cholesterol.''

(e) *''Lean'' and ''Extra Lean'' claims.* (1) The term ''lean'' may be used on the label or in labeling of a product, provided that the product contains less than 10 g of fat, 4.5 g or less of saturated fat, and less than 95 mg of cholesterol per 100 g of product and per reference amount customarily consumed for individual foods, and per 100 g of product and per labeled serving size for meal-type products as defined in § 381.413(l).

(2) The term ''extra lean'' may be used on the label or in labeling of a product, provided that the product contains less than 5 g of fat, less than 2 g of saturated fat, and less than 95 mg of cholesterol per 100 g of product and per reference amount customarily consumed for individual foods, and per 100 g of product and per labeled serving size for meal-type products as defined in § 381.413(l).

28. Section 381.463 is amended by revising the section reference in paragraphs (b)(2) and (b)(3) from ''§ 381.409(g)(1)'' to ''§ 381.409(f)(1).''

29. Section 381.469 is amended by removing the word ''rule'' from the third sentence of paragraph (m)(5).

30. Section 381.480 is amended by revising paragraphs (e) and (f) to read as follows:

§ 381.480 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *''Label terms suggesting usefulness as low calorie or reduced calorie foods''.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, a product may be labeled with terms such as ''diet,'' ''dietetic,'' ''artificially sweetened,'' or ''sweetened with nonnutritive sweetener'' only if the claim is not false or misleading, and the product is labeled ''low calorie'' or ''reduced calorie'' or bears another comparative calorie claim in compliance with the applicable provisions in this subpart.

(2) Paragraph (e)(1) of this section shall not apply to any use of such terms that is specifically authorized by regulation governing a particular food, or, unless otherwise restricted by regulation, to any use of the term ''diet'' that clearly shows that the product is offered solely for a dietary use other than regulating body weight, e.g., ''for low sodium diets.''

(3) Paragraph (e)(1) of this section shall not apply to any use of such terms on a formulated meal replacement or other product that is represented to be of special dietary use as a whole meal, pending the issuance of a regulation governing the use of such terms on foods.

(f) ''Sugar free'' and ''no added sugar''. Criteria for the use of the terms ''sugar free'' and ''no added sugar'' are provided for in § 381.460(c).

31. Section 381.500 is amended by removing the word ''food'' after the word ''poultry'' in paragraph (a) introductory text; by revising the words ''Products produced'' in paragraph (a)(1) introductory text to the words ''Food products produced''; by revising the section reference in paragraph (c)(2)(iii) from ''§ 381.409(e)'' to ''§ 381.409(d)(6)''; and by revising the words ''at 21 CFR 101.9(d)(9)'' in paragraph (c)(2)(v) to the words ''in § 381.409(d)(9)''.

Done at Washington, DC, on December 22, 1994.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

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Part III

Federal Reserve System
12 CFR Part 103

Department of the Treasury
31 CFR Part 103

Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions; Final Rules

FEDERAL RESERVE SYSTEM

[Docket No. R–0807]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA37

Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions

AGENCY: Department of the Treasury; Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly have adopted a final rule that requires enhanced recordkeeping related to certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. The final rule takes into consideration the public comments received on the notice of proposed rulemaking. Each domestic financial institution involved in a wire transfer must collect and retain certain information, depending upon the type of financial institution, its role in the particular wire transfer, the amount of the wire transfer, and the relationship of the parties to the transaction with the financial institution.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Treasury: A. Carlos Correa, Assistant Director, Rules and Regulations Section, (202) 622–0400; or Roger Weiner, Deputy Director, (202) 622–0400; or Peter Djinis, Director, (202) 622–0400, Office of Financial Enforcement; Stephen R. Kroll, Legal Counsel, (703) 905–3534; or Nina A. Nichols, Attorney-Advisor, (703) 905–3598, FinCEN.

Board: Louise L. Roseman, Associate Director, (202) 452–2789; Gayle Brett, Manager, Fedwire, (202) 452–2934; or Darrell Mak, Financial Services Analyst, (202) 452–3223, Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, (202) 452–3625; or Elaine Boutilier, Senior Counsel, (202) 452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN. The Bank Secrecy Act was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550), which authorizes the Treasury and the Board to prescribe regulations to require maintenance of records regarding domestic and international funds transfers. The Treasury and the Board are required to promulgate jointly, after consultation with state banking supervisors, recordkeeping and reporting requirements for international wire transfers by depository institutions and certain nonbank financial institutions. In issuing this final rule, the Treasury and the Board have considered its usefulness in criminal, tax, or regulatory investigations or proceedings and its effect on the cost and efficiency of the payments system. The Treasury and the Board are authorized to promulgate regulations for domestic transfers by depository institutions. The Treasury, but not the Board, is authorized to promulgate recordkeeping and reporting requirements for domestic wire transfers by nonbank financial institutions.

In August 1993, the Treasury and the Board jointly issued for public comment a proposal to enhance the recordkeeping requirements relating to certain wire transfers by financial institutions (58 FR 46014, August 31, 1993). The proposal was distributed to state banking supervisors. Comments were requested on all aspects of the proposal, including the usefulness of the records covered by the proposed rule for law enforcement purposes and the effects the proposal might have on the cost and efficiency of the payments system.

At the same time, the Treasury issued a companion Notice of Proposed Rulemaking, which would require financial institutions to include in transmittal orders certain information that must be retained under this rule (58 FR 46021, August 31, 1993). While many commenters responded to both proposals via the same correspondence, comments related to the companion proposal are not included in this summary.

The following table identifies the number of commenters by type of organization:

Commercial banking organizations	48
Trade associations	20
Credit unions	12
Broker/dealers	4
Federal Reserve Banks	4
Regulatory agencies	5
Money transmitting providers	4
Savings institutions	2
Clearing house associations	2
Others	7
Total public comments	108

A. Overview

The proposed rule would require each domestic financial institution (as defined in the Bank Secrecy Act regulations) involved in a wire transfer to collect and retain certain information for five years. The amount and type of information would depend upon the type of financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution.

Many commenters expressed general support for the rule and its objective to combat money laundering. A few commenters, primarily smaller financial institutions with low wire transfer volume, indicated that they were already complying with the requirements. The Department of the Justice, the Internal Revenue Service, and the Office of the Chief Postal Inspector supported the proposal, commenting that the availability of greater user information will be a tremendous asset to law enforcement's ability to counteract money laundering activities. These law enforcement agencies suggested that the regulation be strengthened further to assist them in identifying illegal activity. Broker/dealer commenters also expressed general support for the proposed rule. One broker/dealer commented that the proposed regulation was a reasonable and highly effective response to law enforcement needs. Another broker/dealer commented that the rule generally would not be burdensome to its operations.

Some commenters, however, expressed doubts that the proposed rule would deter money laundering. A small number of commenters objected to the proposal altogether, indicating that the rule was overly burdensome, while additional commenters doubted that the benefits of the rule would outweigh the costs. Two commenters believed that law enforcement agencies already were being inundated with enough anti-money laundering information, such as currency transaction reports, and they did not believe the additional information required by the rule would provide sufficient benefit to warrant

collection. A few commenters suggested that money launderers simply would find alternative methods to circumvent the recordkeeping requirements, diluting the rule's effectiveness.

Three of the four nonbank providers of money transmitting services that commented strongly opposed the proposed requirements. One commenter stated that the Treasury and the Board must consider the fundamentally different nature of nonbank financial institution operations before adopting a final rule. These commenters indicated that the burden on nonbank financial institutions would clearly and substantially outweigh the reasonably anticipated benefit to law enforcement.

Other commenters indicated that it was difficult to assess the burden of the proposal because certain requirements, such as retrievability, were not clearly defined. Many commenters suggested that more types of transactions be exempted from the rule.

Based on the comments received, the Treasury and the Board have modified the proposed rule to reduce the burden associated with the rule, while maintaining the usefulness of the rule to law enforcement agencies. The final rule exempts wire transfers below $3,000, thereby reducing the burden of collecting, maintaining, and retrieving wire transfer records. This exemption should particularly benefit nonbank providers of money transmitting services, which typically handle smaller-value transfers. Other modifications to the rule limit instances where verification is required. In addition, the final rule clarifies the verification and retrievability requirements. As a result of these changes, the Treasury and the Board believe that the benefit of having the information available to law enforcement agencies outweighs the burden associated with the final rule. Although the final rule cannot prevent money launderers from using wire transfers for illegal purposes, the Treasury and the Board believe that the rule will help trace the proceeds of illegal activity and identify the participants in money laundering schemes.

The Treasury and the Board will monitor experience under this final rule to assess its usefulness to law enforcement and its effect on the cost and efficiency on the payments system. Within 36 months of the effective date, the Treasury and the Board will review the effectiveness of this final rule and will consider making any appropriate modifications.

B. Section-by-Section Analysis

Section 103.11 Meaning of Terms

The proposed rule added new definitions to the existing definitions in the Treasury rules. A number of these new definitions applicable to banks were identical to the terms used in Uniform Commercial Code Article 4A (UCC 4A) (*e.g.*, originator, originator's bank, payment order, and others). In addition, the proposed rule added a number of new definitions applicable to transactions by nonbank financial institutions. These definitions were intended to parallel the equivalent definitions in UCC 4A (*e.g.*, transmittor, transmittor's financial institution, transmittal order, and others). In order to preserve as much uniformity as possible, some changes have been made to certain proposed definitions to conform them more closely to the UCC 4A definitions. Several definitions (*e.g.* accept, execution date, payment date) are defined so as to make their usage also appropriate for transactions involving nonbank financial institutions; otherwise, they are similar, but not always equivalent in practice, to the UCC 4A definitions. For example, under the final rule's definition of accept, when a beneficiary's bank receives a transmittal order for a recipient that is the customer of a nonbank financial institution holding an account at the beneficiary's bank, the beneficiary's bank would accept the transmittal order by executing a corresponding transmittal order to the nonbank financial institution, rather than by crediting the account of the nonbank financial institution, which would constitute acceptance under UCC 4A. The definition of intermediary financial institution was revised to include an intermediary bank. The definitions of transmittor, transmittor's financial institution, recipient, and recipient's financial institution also were revised to clarify the scope of these definitions for transmittals of funds involving both a bank and nonbank financial institution.

The Official Comment to UCC 4A is helpful in understanding many of the definitions adopted in the final rule. Terms used in this rule that are not defined have the meaning given them in the UCC, unless otherwise indicated.

One bank asked whether the term payment order includes drawdowns. Under the UCC 4A–104 Official Comment, this determination depends generally on whether the drawdown is a credit transfer.[1]

Another commenter asked whether a payment order includes a transaction where Bank A instructs its correspondent, Bank B, to debit Bank A's account with Bank B and pay a beneficiary that holds an account with Bank B. This instruction meets the definition of payment order in § 103.11(y) and under UCC 4A–103. In this funds transfer, Bank B is the beneficiary's bank and Bank A is either an intermediary bank or an originator's bank, depending on the circumstances, and must keep the appropriate records of the payment order.

Another commenter described a situation where a depositor orders his account closed by telephone and instructs the bank to remit the balance with a cashier's check mailed to the depositor; the commenter asked whether this transaction is a funds transfer under the regulation. This transaction is not a funds transfer because it is not a series of transactions under UCC 4A–104(a); rather, it is one transaction, a withdrawal of funds from the bank by a cashier's check.

Several credit union commenters objected to the inclusion of credit unions in the definition of bank and stated that credit unions should be considered nonbank financial institutions. The longstanding definition of bank in the Treasury's existing Bank Secrecy Act regulations (31 CFR 103.11(b))[2] includes credit unions. The definition of bank has not been changed in the final rule.

Several commenters requested clarification of the meaning of the terms originator and beneficiary. In particular, these commenters asked who the originator and beneficiary would be in instances where either a corporation or a bank's trust department sends or receives a funds transfer. When an employee sends a payment order to the originator's bank as agent for a corporation, the corporation, and not the employee, is the originator. When a

[1] Under the Official Comment, a drawdown transfer is a funds transfer if the person transferring the funds either instructs Bank A to transfer funds from its account at Bank A to its account at Bank B or if Bank A has an agreement with the person whereby Bank A is authorized to follow instructions of Bank B, as agent of the person, to transfer funds from the person's account at Bank A to Bank B. In both instances, the transfer is a *credit* transfer because the instruction goes from the person (although in one case via Bank B as agent) to Bank A to send the funds to Bank B. A funds transfer under UCC 4A must be a credit transfer. If there is no agreement between the person and Bank A that Bank B act as agent for the person, then a request or instruction from Bank B to Bank A to transfer funds from the person's account at Bank A to Bank B would be a *debit* transfer and would not be a funds transfer under UCC 4A or the final regulation.

[2] The citation for the definition of bank will become 31 CFR 103.11(c) when this rule becomes effective.

bank's trust department makes a funds transfer as trustee for one or more trust accounts, the bank is the originator. If, however, the bank's trust department makes the funds transfer on the specific instructions of a trust account holder, then the account holder is the originator because it is the sender of the first payment order to the bank. In both cases, the bank is the originator's bank.

Two commenters requested that a definition be added for the term executing, which is used in the definition of the term accept. Both commenters suggested adoption of the UCC 4A–301 definition of executed. Certain definitions from UCC 4A are included in the regulation for reference. Other terms, such as execute, that are not defined specifically in the regulation, but are defined in relevant provisions of the UCC, will have the meaning given them in the UCC, unless otherwise indicated.

One commenter requested that the term domestic bank be defined. The terms domestic and bank are defined in § 103.11. Under these definitions, a domestic bank is one that is located within the United States and would include branches and agencies of foreign banks located and conducting business within the United States.[3] A domestic financial institution is one that is located in the United States. No separate definition of domestic bank has been added to the regulation.

As proposed in § 103.33(f), nonbank financial institutions must collect, verify and retain a record of the originator's identity, because these institutions likely would send or receive transmittals of funds for persons with no account relationship, and therefore, no existing records. Many commenters, both banks and nonbank financial institutions, noted that there are several types of ongoing customer relationships, other than those persons that have a deposit account or loan with a bank, or have an account with a financial institution that is a broker or dealer in securities, that would result in the financial institution having the desired information about the customer in its customer record files. By acknowledging these relationships, the requirements to verify information on noncustomers could be minimized.

[3] 31 CFR § 103.11(s), which will become 31 CFR § 103.11(nn) when this rule becomes effective, defines United States to include the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States.

The final rule limits the verification requirements to originators/transmittors and beneficiaries/recipients that are not established customers. An established customer is defined as a person with an account with a financial institution or a person with respect to which the financial institution has obtained and maintains on file the name and address, as well as the customer's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information. Such relationships with banks may include, but are not limited to, deposit accounts, loan agreements, trust accounts, custody accounts, and mutual fund accounts. Such relationships with nonbank financial institutions may include, but are not limited to, accounts with broker/dealers and ongoing contractual relationships between providers of money transmitting services and business customers.

Two commenters requested that a definition of copy be included in the rule to clarify that new electronic technology, such as optical disk storage, is allowed. The rule has been modified to explicitly allow retention of an electronic record, which would include electronic data storage methods.

Two commenters requested that all automated teller machine (ATM) and point-of-sale (POS) transactions be exempted from the rule. One bank noted that ATMs are used increasingly for legitimate business transactions that are not governed by the Electronic Fund Transfer Act. Unless a financial institution could exclude all ATM transactions from the recordkeeping requirements, it would be necessary for the institution to develop new systems and procedures to ensure compliance. The final rule excludes from the definitions of funds transfer and transmittal of funds all transfers governed by the Electronic Fund Transfer Act, as well as any other funds transfers that are made through an automated clearinghouse, ATM, or POS system. The question of the treatment, under the Bank Secrecy Act, of transfers governed by the Electronic Fund Transfer Act will be studied by the Treasury.

Section 103.33. Records to be made and retained by financial institutions.

The proposed recordkeeping requirements varied depending on the type of financial institution, its role in the particular funds transfer, and the relationship of the parties to the transaction with the financial institution. As proposed, the rule was structured into three separate sections to apply to banks, nonbank financial institutions, and broker/dealers. The proposed rule assumed that nonbank financial institutions other than broker/dealers would not have customers with account relationships and thus required these institutions to verify and retain a record of the identity of all their customers. Many commenters, however, indicated that nonbank financial institutions do have established customers for which identification information is maintained on file; thus, there is no need to reverify the information. The final rule recognizes that many nonbank financial institutions have established customers; therefore, the recordkeeping requirements for nonbank financial institutions and broker/dealers, contained in proposed sections (f) and (g), have been combined in the final rule.

The requirements imposed by § 103.33(e) for banks and § 103.33(f) for nonbank financial institutions in the final rule are similar. The section-by-section analysis in this notice, which uses the terminology associated with funds transfers through banks, also is applicable to transmittals of funds through nonbank financial institutions, except where specifically noted.

Section 103.33(e)(1) and Section 103.33(f)(1).

Recordkeeping Requirements—The proposed rule required that originator's banks retain, for each payment order accepted, the originator's name and address, the amount, date, payment instructions received with the payment order, beneficiary bank identification, and, if received with the payment order, the beneficiary's name and address or the beneficiary's account number. Intermediary banks and beneficiary's banks would be required to retain a copy of each payment order they accept.

Dollar Threshold—Many commenters recommended that a threshold be established to exclude funds transfers under a certain dollar amount from the requirements. Commenters noted that a dollar threshold would greatly reduce the burden of complying with the regulation by decreasing the number of records retained, thereby minimizing the storage and retrievability burden, and by decreasing the number of funds transfers where identification must be verified. Many commenters recommended a $10,000 threshold, which is the threshold for Currency Transaction Reports. The next most-frequently suggested threshold was $3,000, which is the threshold for

recording purchases with currency of certain monetary instruments, such as bank drafts and cashier's checks. A few commenters recommended a $1,000 threshold. One bank noted that a small-dollar exemption would particularly benefit its noncustomer beneficiaries, who typically are tourists whose wallets and identification documents have been either lost or stolen, and who arrange to have a few hundred dollars wired to them from relatives or friends.

One nonbank provider of money transmitting services, noting that a small-dollar threshold would reduce the burden and cost to comply with the regulation, estimates that 99.96 percent of its transactions are for amounts below $10,000, while 98.0 percent of its transactions are for less than $3,000, and 95.0 percent are for less than $1,000. The Federal Reserve Banks recently conducted a one-day survey of Fedwire funds transfers and found that 22 percent of transactions for that sample day were for amounts less than $3,000, while 36 percent of the transactions were for amounts less than $10,000.

To reduce the burden of the proposal, the final rule does not apply to funds transfers of less than $3,000. This exemption will reduce the burden of retaining records for small-dollar transactions and of verifying the identity of noncustomer originators and beneficiaries, reducing the costs to comply with the final rule.

The Department of Justice commented that no threshold, or a threshold lower than $3,000, should be imposed. It believes that a dollar threshold would provide persons wishing to circumvent the rule the opportunity to do so by sending multiple small-dollar funds transfers. The Treasury and the Board believe that it is desirable to have a logical relationship between the threshold for the funds transfer recordkeeping requirements and the other thresholds established in the Bank Secrecy Act regulations. In situations where a person sends multiple small-dollar funds transfers to avoid the rule, it is expected that the bank would notify law enforcement appropriately.

The Treasury intends to issue for comment proposed regulations that would require banks to establish anti-money laundering measures, including reporting of suspicious transactions and ''know your customer'' policies and programs. In light of these anticipated amendments to the Bank Secrecy Act regulations, the Treasury and the Board believe that a $3,000 threshold will not hinder the usefulness of the rule to law enforcement. The Treasury and the Board will monitor the experience of the industry and law enforcement with the $3,000 threshold, and will consider modifying this threshold in the future if it is determined that transactions are being structured in order to evade the recordkeeping requirements. As part of its analysis of the continued appropriateness of this final rule, the Treasury also will monitor the effectiveness of banks' ''know your customer'' and suspicious transaction reporting programs as applied to funds transfers, once these rules take effect.

Beneficiary Information—The Department of Justice, Office of Chief Postal Inspector, and Internal Revenue Service expressed concern that the proposed rule did not require beneficiary information to be collected and retained by the originator's bank if the information is not received with the payment order. They indicated that the absence of beneficiary information at this stage of the funds transfer process would limit significantly the utility of the funds transfer records to law enforcement.

In virtually all cases, the originator provides, as part of the payment order it sends to the originator's bank, the identity of the beneficiary. Typically, the originator provides the beneficiary's name and address, or the beneficiary's account number, or some other specific identifier of the beneficiary. Examples of a specific identifier include the beneficiary's Clearing House Interbank Payments System (CHIPS) universal identifier, its Dun and Bradstreet D-U-N-S identifier, its stock exchange identifier, or, in some instances where the beneficiary's address is not known, the beneficiary's name. The originator provides this information with the payment order to ensure that the beneficiary receives the proceeds of the funds transfer on a timely basis. Given that the identification of the beneficiary may be provided by means other than name and address or account number, the Treasury and the Board have modified the proposed recordkeeping requirement to allow for identification by other specific identifier of the beneficiary.

Although some identification of the beneficiary is included in virtually all payment orders, the Treasury and the Board have retained the requirement that the originator's bank retain such items of identification of the beneficiary as are received with the payment order. In cases where the originator provides the payment order to the originator's bank through an electronic connection, the originator's bank generally cannot ensure that the originator has provided, as part of its payment order, the beneficiary information specified in the rule. In these situations, the originator's bank generally does not manually review the payment order prior to execution of the order. The originator's bank is encouraged not only to require its customers to provide beneficiary information but also to perform an edit to ensure that information is contained in the beneficiary's field. It cannot determine in an automated manner, however, whether the information contained provides a meaningful identification of the beneficiary. In addition, there may be limited cases (*e.g.*, transfers in response to drawdown requests) where the originator may not provide beneficiary information as part of its payment order to the originator's bank.

The Treasury and the Board believe that some originator's banks would have to make substantial operating changes to ensure compliance with the rule if they were required to collect and retain information on the beneficiary for all payment orders they accept. Moreover, the Treasury and the Board believe that requiring originator's banks to retain beneficiary information as is received with the payment order will not unduly impede law enforcement efforts. Beneficiary information generally will be provided by the originator with the payment order and therefore retained by the originator's bank. In those very few cases where this information is not provided by the originator, it generally can be obtained from the records of the beneficiary bank.

The final rule requires that the originator's bank retain as many of the means of identification of the beneficiary (*e.g.*, name and address, account number, other specific identifier) as are received with the payment order. Originator's banks are encouraged to request that originators provide complete beneficiary information when possible.[4] The Treasury and the Board understand that some banks, particularly those that send payment orders electronically, may rely on the records of the payment orders they execute, supplemented by the originator name and address information in their customer information file, to meet the recordkeeping requirements of this rule for established customers. Because the current Fedwire funds transfer format may not have sufficient space to include all means provided by the originator of

[4] The Federal Financial Institutions Examination Council adopted a policy encouraging all financial institutions to include, to the extent practical, the name, address, and account number of the originator and beneficiary in the payment order text, including payment orders sent through Fedwire, CHIPS, and S.W.I.F.T.

identifying the beneficiary, the final rule provides an exception to the requirement that the bank retain as many means of identifying the beneficiary as provided by the originator, until completion of the bank's conversion to the expanded Fedwire format. For nonbank financial institutions, this temporary exception is limited to domestic brokers and dealers in securities, because the Treasury and the Board believe that only this category of nonbank financial institution is likely to send electronically transmittals of funds that ultimately are effected through Fedwire. (See elsewhere in today's **Federal Register** for the Board's notice of its adoption of an expanded Fedwire funds transfer format.)

As noted earlier, the Treasury and the Board will monitor experience of law enforcement and the industry under this rule. If the Treasury and the Board determine that law enforcement efforts are hindered materially due to lack of beneficiary information in the records retained under this rule, the Treasury and the Board will consider mandating that beneficiary information be retained for all payment orders. In addition, the suspicious transaction reporting and anti-money laundering policy and program rules due to be issued for comment by the Treasury in 1995 should reduce materially any wrongdoing stemming from the fact that an originator's bank is not explicitly required by this rule to obtain beneficiary information.

Other Questions—Another commenter asked whether the payment amount to be retained in a bank's records under this rule must be denominated in U.S. dollars or whether it could be denominated in a foreign currency. The payment amount retained under the rule should be the amount as denominated in the payment order. The recordkeeping rule applies to transfers in foreign denominations above the equivalent of $3,000. Banks should determine the U.S. dollar equivalent of the transfer based on the spot exchange rate at the time of the transfer to determine whether a foreign-denominated transfer exceeds the $3,000 threshold.

One commenter requested an explanation of payment instructions that are required to be retained by the originator's bank. This commenter questioned whether payment instructions included instructions received orally (in person or over the telephone), or by letter, facsimile, or electronic terminal. Any payment instructions given by the originator, either oral or written, must be retained if received with the payment order. The originator's bank may retain either written documentation or an audio recording of the originator's oral instructions. Such payment instructions may include the purpose of the funds transfer, directions to the beneficiary's bank regarding how to notify the beneficiary of the receipt of funds (*e.g.*, advise by phone), or other information.

Section 103.33(e)(2), (e)(3), and (e)(5) and Section 103.33(f)(2), (f)(3), and (f)(5)

Additional Requirements for Persons Other Than Established Customers—The proposed rule required banks to verify the name and address of the originator, if the originator does not have a deposit or loan account, and to retain a record of the verified information, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as a record of the originator's social security number, alien identification number, or employer identification number. Some commenters, primarily nonbank financial institutions acting for non-account holders, argued that the proposed verification requirement would be very burdensome to their operations. Many commenters expressed concern with the requirement to verify the name and address, and to record the identification number of an originator or beneficiary that is not an account holder. A few commenters noted that they may be forced to refrain from doing business with non-account holders, due to the burden of the rule's verification requirements. A few commenters asked whether the verification requirement relates to the person placing the order or the originator.

By limiting the verification requirement to originators and beneficiaries that are not established customers and by excluding funds transfers under $3,000 from the rule, the number of instances where verification is required has been reduced substantially, with a commensurate reduction in compliance burden. The final rule requires that if a payment order is from an originator other than an established customer and is made in person, the originator's bank shall verify the identity of the person placing the payment order. If the person does not identify another party on whose behalf the funds transfer is being made, then the person is considered the originator.

If it accepts the payment order, the originator's bank shall obtain and retain a record of the person's name and address, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as the taxpayer identification number or, if none, alien identification number or passport number and country of issuance. If the originator's bank knows that the person placing the payment order is not the originator, it shall obtain and retain a record of the originator's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order. In cases where an agent or representative of the originator places the payment order and does not know the originator's identification number or in cases where the originator or the person placing the payment order does not have such a number, the originator's bank must note in the record the lack thereof.

Two commenters questioned whether the rule requires an originator's bank to obtain and verify the originator's identity if the originator's payment order is made via phone, fax, electronic link, or mail. In situations where the originator is not present to provide the required information, there is no opportunity to verify it. Under the final rule, if the payment order is not made in person, the originator's bank is not required to verify the identity of the person or to retain information pertaining to an identification document used for verification, but is required to retain a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the funds transfer.

For payment of the proceeds of a funds transfer in person by a beneficiary's bank to a beneficiary that does not have a deposit or loan account, the proposal required that a beneficiary's bank obtain and retain a record of the beneficiary's name and address, and social security number, alien identification number, or employer identification number, or note in the record the lack of such number. Several commenters, however, noted that if the proceeds of a funds transfer are mailed to the beneficiary, there is no opportunity to obtain the beneficiary's identification number.

In the final rule, if the proceeds are delivered in person to a beneficiary other than an established customer or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain information similar to that required to be retained by originator's banks for originators that are not established customers. If the proceeds are delivered to the beneficiary other than in person, the final rule requires the beneficiary's bank to retain a copy of the check or other instrument

used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

The proposed rule required that an originator's bank verify the name and address of originators and beneficiaries that are not account holders by examination of a document that contained such information. A few commenters questioned whether they had a duty to determine the authenticity of the identification document provided by the person and used for verification. One commenter questioned what constituted adequate verification. Another commenter questioned what it should do if a non-account holder provides identification that appears to be falsified. Several commenters recommended that passports be allowed as acceptable identification, even though they do not include addresses.

The final rule has been clarified to require that the identity of an originator or beneficiary that is not an established customer be verified by examination of a document, preferably one that contains the person's name, address, and photograph. For aliens and nonresidents, the final rule has been amended to allow banks to rely on a passport or other official document evidencing nationality or residence. Banks should exercise care in accordance with applicable law and regulations to ensure that the identification presented is not falsified.

Section 103.33(e)(4) and Section 103.33(f)(4)

Retrievability Requirements—The proposal stated that banks must be able to access funds transfer records readily by name or account number of the originator or beneficiary, as the case may be, and may do so through reference to some other record maintained by the bank. Many commenters requested clarification of the term ''readily retrievable'' and asked how much time would be allowed to provide funds transfer records.

The Treasury and the Board acknowledge that the term ''readily'' is ambiguous and have eliminated it from the regulation. The existing standards set forth in 31 CFR 103.38(d) will be used to assess whether a bank has complied with the rule with respect to reporting records of funds transfers in response to a request by a law enforcement agency. Under this standard, the expected timeliness of retrievability will vary by request. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the record, the amount and type of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. Usually, law enforcement agents will provide the approximate transaction dates of the funds transfer records requested. In some situations, law enforcement agencies may prefer to receive the requested information as it becomes available, rather than wait until the entire search is completed. Law enforcement agencies should provide banks with the agencies' desired method of providing the information.

The final rule does not require that funds transfer records be retained at the location where the payment order is accepted or at another particular location of the bank subject to the recordkeeping requirements. Funds transfer records may be retained, for example, at the bank's processing location for funds transfers. A bank should ensure that its funds transfer records are retained at a location that enables them to be accessible within a reasonable period of time.

Several commenters questioned whether the retrievability standard would apply to funds transfers executed prior to the rule's effective date. The retrievability standard would apply only to funds transfers made on or after the effective date. The Treasury and the Board note, however, that establishing a specific retrievability standard under this rule does not preclude banks' responsibilities to comply with a properly executed subpoena or search warrant, regardless of whether the transfer was executed before or after the effective date of the rule. Banks must provide information with respect to funds transfers made before the final rule's effective date in accordance with the Right to Financial Privacy Act (12 USC 3401, et seq.) and the Electronic Communications Privacy Act (18 USC 2701, et seq.).

Many commenters believed that the proposed rule would require an automated retrieval system to comply with the retrievability requirement. Although an automated retrieval system is not required by the rule, a bank may wish to consider implementing an automated system, depending on the demand for funds transfer records and its current means of keeping the records (several commenters indicated that funds transfer records are sorted by date and, in some cases, by bank branch). Based on the volume of law enforcement requests, a bank should weigh the costs of implementing an automated system versus the costs of searching manual records.

A bank may access funds transfer records through reference to some other existing record. If a law enforcement agency provides an account number, the bank could reference its statement file for that account number to determine funds transfer transaction reference numbers and dates. Using this information, the bank could then retrieve the funds transfer records by either manual or automated retrieval. If a law enforcement agency provided a bank with a customer name, the bank could reference its customer information file to determine the customer's account number prior to accessing its statement file.

Some commenters indicated that they should be allowed to choose whether their records would be retrievable by name, account number, or both. These commenters requested that the regulation be clarified to state that the bank has the flexibility to establish the specific retrievability method. As noted, banks have the flexibility to maintain their funds transfer records to be retrievable by name, account number, reference number, or other data element, so long as they have the capability to retrieve the transfer records if the law enforcement agency does not provide that particular data element in its request. Despite the establishment of a retrievability standard under the rule, banks still would be obligated to comply with any properly executed subpoena or search warrant. Because law enforcement agencies may have access to only one identifier (*e.g.*, name or account number) during the course of an investigation, banks are likely to receive requests containing either piece of information, regardless of how the bank has chosen to maintain its records. Thus, no changes have been made to the final rule to allow banks to specify the method of retrievability.

A few commenters noted that account numbers tend to change due to mergers and questioned whether they would be required to retrieve information based on the old or new account number. Commenters also said that they retain, as part of their funds transfer records, the account number at the time of the transaction, which may not be the current account number. The funds transfer records should be retrievable using the account number at the time of the transaction, as it is likely that law enforcement agency requests may come from tracing a transfer containing that account number. In situations where an established customer's address has changed, the institution may provide either the customer's current address or

the address at the time of the transaction. For example, if the bank retains the address information as part of its funds transfer records, it would retain the address at the time the funds transfer was processed. If the bank retains this information as part of its customer information file, it would retain the current address. For originators and beneficiaries other than established customers, however, the bank would retain the person's address at the time of the transaction, which is the only address that has been documented.

Several commenters, including commercial banks and credit unions, also mentioned that retrieving information by a secondary account holder's name would be more difficult than retrieving by a primary account holder's name in the case of a joint account. Customer information files typically are indexed on the primary account holder's name only. Commenters indicated that a search by a secondary account holder's name probably would require a manual search of the records. In order to comply with subpoenas and search warrants submitted by law enforcement agencies that request information by name, banks should have the capability to retrieve payment order records by secondary account holder name as well as by the name of the primary account holder. Banks that find it difficult to search by secondary account holder name for joint accounts may wish to consider the volume of law enforcement requests when making decisions about whether to make automation changes to facilitate searches by secondary account holder name or to rely on manual searches to satisfy these requests.

Many commenters noted that retrieving transactions by the name of an originator or beneficiary other than an account holder would be impractical, since a manual search of the bank's records would be required. One bank estimated that a search by a non-account holder's name would require three full days of manual searching for each day of funds transfer activity, and that the results of manual searches might not be very reliable. Banks may wish to consider implementing a separate recordkeeping system—either manual files or an automated database—containing only information related to payment orders for originators or beneficiaries that are not established customers, in order to search more easily for these transactions. If a bank has more than one customer with the same name, the bank may request more specific information from the law enforcement agency to determine the exact individual desired. In situations where a law enforcement agency provides a bank with a customer's account number only, then the bank may search based on the account number only.

Section 103.33(e)(6) and Section 103.33(f)(6)

Exceptions—The proposed recordkeeping requirements exempted certain transfers based on the parties to the transfer. Several commenters requested that more transfers be exempted. Two commenters recommended that transfers involving public utilities, corporations listed on major stock exchanges, and businesses exempted from Currency Transaction Reporting be exempted under the rule. The Treasury and the Board believe that excluding such a broad category of entities would diminish the usefulness of the regulation; therefore, these entities are not exempted in the final rule.

To eliminate the redundancy in the proposed list of exemptions and to provide consistent treatment for wholly-owned domestic subsidiaries of domestic banks and domestic brokers or dealers in securities, the final rule has been revised to exempt transfers where the originator and beneficiary are any of the following: (1) A domestic bank; (2) a wholly-owned domestic subsidiary of a domestic bank; (3) a domestic broker or dealer in securities; (4) a wholly-owned domestic subsidiary of a domestic broker or dealer in securities; (5) the United States; (6) a state or local government; (7) a federal, state or local government agency or instrumentality. Funds transfers where both the originator and beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank, as well as transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker or dealer in securities, also are exempted. These revisions expand the proposed exemptions to include transfers between a wholly-owned subsidiary of any domestic bank or broker or dealer in securities and any other exempted entity.

C. Other Issues

Compliance Costs—Many commenters provided estimates on the cost to implement the requirements of the proposed rule as well as an estimate on the annual ongoing costs to collect the required information. The cost estimates varied widely. A few smaller credit unions indicated that they already were complying with the proposed requirements and therefore expected no additional implementation or maintenance costs as a result of the proposal. Larger commercial banks and credit unions, however, estimated their implementation costs at $15,000 to $879,000, and their maintenance costs as high as $350,000 per year. Two nonbank providers of money transmitting services expected that compliance would be very costly. One money transmittor estimated $946,000 of implementation costs and $2 million of annual maintenance costs. Another provider of money transmitting services estimated $3.3 million of implementation costs, which includes increased transaction time, additional hardware/software, and training costs. The same provider of money transmitting services, however, estimated that with a $3,000 exemption threshold, its implementation cost would fall to $710,000.

Implementing a $3,000 threshold and limiting the verification requirements and supplemental recordkeeping requirements to transfers involving originators or beneficiaries that are not established customers will significantly reduce the burden and cost for banks to comply with the rule. The burden for nonbank financial institutions, particularly providers of money transmitting services, decreases dramatically under the final rule, as the majority of transmittals of funds they accept are for amounts of less than $3,000.

Retention Period—Records required under the Bank Secrecy Act, including funds transfer records, must be retained for five years. A securities industry association, however, commented that Securities and Exchange Commission (SEC) retention regulations, which apply to broker/dealers, may differ from the five-year period depending upon the specific document containing the required information. The association recommended that the rule be amended to allow broker/dealers to comply with existing SEC rules, which would eliminate the need to modify existing retention practices and the administrative difficulties of maintaining inconsistent retention schedules. The Internal Revenue Service recommended that records be maintained for ten years, to ensure information related to audits would be available for its use.

SEC regulations require registered broker/dealers subject to Treasury's Bank Secrecy Act requirements to preserve their records according to 31 CFR Part 103, if such retention periods

are longer than those required by the SEC (17 CFR 240.17a–8). Therefore, the retention period remains unchanged for broker/dealers. Under this final rule, the five-year retention period applies only to records of funds transfers made on or after the rule's effective date.

The Treasury and the Board believe that a uniform retention period should apply to all records that must be retained under the Bank Secrecy Act regulations, and therefore, a longer retention period should not be required for funds transfer records than for records of other financial transactions. The Treasury and the Board are concerned that expansion of the Bank Secrecy Act record retention requirement from five to ten years may increase materially the cost of compliance for financial institutions, but will monitor the adequacy of the record retention requirement.

Effective Date—Many commenters expressed concern regarding the effective date, particularly given the need for banks to make operational and procedural changes to comply with the rule's retrievability and verification requirements. These commenters indicated that the proposed December 31, 1993 effective date was unrealistic given that the final rule had yet to be published with only weeks remaining until the deadline. They indicated that changes to existing manual and automated procedures to comply with the rule would require a significant preparation time.

Most commenters requested that the effective date be six to 12 months after publication of the final rule. Several commenters suggested that the implementation date be delayed to coincide with the effective date of the Treasury's companion Travel Rule. These commenters indicated that a single implementation date for both rules would prevent having to make changes twice to internal procedures and computer systems.

A few commenters recommended that the effective date be delayed until the new Fedwire format is adopted. As noted above, recognizing that originator's banks may strive to satisfy the recordkeeping requirements of this rule primarily through retention of records of the payment orders they execute, and that the current Fedwire format may not have sufficient space to include all means provided by the originator of identifying the beneficiary, the final rule provides an exception to the requirement that the bank retain as many means of identifying the beneficiary as provided by the originator for Fedwire transfers, until the bank's conversion to the expanded Fedwire format is complete. With this limited exception, the expanded format is not necessary to comply with this rule, and delaying implementation of the recordkeeping rule until after a new format is implemented would delay realizing the benefits of this rule.

In response to the concerns raised by commenters, on December 22, 1993, the Treasury announced a delay in the adoption of the final rule to permit the Treasury to consider the rule as part of its ongoing comprehensive review of the Treasury's anti-money laundering enforcement policies, programs, and regulations. The Treasury and the Board recognize that adequate lead time is necessary to allow banks time to change procedures and/or install systems to comply with the final rule. Therefore, the rule will become effective on January 1, 1996, at which time the Treasury's companion Travel Rule also will become effective. [See the Treasury's notice elsewhere in today's **Federal Register** adopting the final Travel Rule.]

D. Paperwork Reduction Act

The collection of information required by the final rule has been submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505–0063.

The collection of information in this regulation is authorized by 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5328. The likely recordkeepers are financial institutions that perform transmittals of funds.

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 1 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 16.3 hours.

Estimated annual frequency of responses: Upon request.

The estimated average annual burden hours have decreased significantly from those included in the August 1993 proposal. The decrease is due to the significant reduction in the number of transmittals of funds subject to the recordkeeping requirements as a result of the establishment of the $3,000 threshold, and due to the reduction of circumstances in which additional recordkeeping and verification requirements for noncustomers would apply.

E. Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) A succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The requirements in this rule will apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. An exemption for small entities would not be appropriate because it would permit money laundering operations to evade the recordkeeping process by using small financial institutions. This would diminish significantly the usefulness of these records for criminal, tax, or regulatory investigations.

The small entities that will be affected by this rule include small banks and nonbank money transmitting businesses. In order to minimize the economic impact on small entities, the rule allows financial institutions that send or receive transmittal orders for established customers to use existing records to satisfy some of the recordkeeping requirements. The rule also exempts transmittals of funds below $3,000, which should particularly benefit nonbank providers of money transmitting services that handle smaller-value transfers. The Treasury and the Board do not believe that the final rule would impose reporting or recordkeeping burdens on small entities that require specialized professional skills not available to them.

F. Conclusion

The Treasury and the Board have adopted a revised version of its proposed rule.

G. Executive Order 12866

The Treasury finds that this final rule is not a ''significant'' rule for purposes of Executive Order 12866. The rule is not anticipated to have an annual effect on the economy of $100 million or more. It will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It creates no inconsistencies with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis therefore is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5329.

2. Section 103.11 is amended as follows:

a. By redesignating paragraphs (a), (b), (c) through (h), (i) through (k), (l), (m), (n), (o), (p) through (r), and (s) through (u) as paragraphs (b), (c), (f) through (k), (n) through (p), (t), (u), (z), (ee), (gg) through (ii), and (nn) through (pp), respectively;

b. By removing the words ''For purposes of § 103.29 of this part, deposit'' and adding in their place, ''Deposit'' in newly designated paragraph (j); and

c. By adding new paragraphs (a), (d), (e), (l), (m), (q), (r), (s), (v), (w), (x), (y), (aa), (bb), (cc), (dd), (ff), (jj), (kk), (ll), and (mm).

The additions read as follows:

§ 103.11 Meaning of terms.

* * * * *

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

* * * * *

(d) *Beneficiary.* The person to be paid by the beneficiary's bank.

(e) *Beneficiary's bank.* The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

* * * * *

(l) *Established customer.* A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

* * * * *

(q) *Funds transfer.* The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(s) *Intermediary financial institution.* A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

* * * * *

(v) *Originator.* The sender of the first payment order in a funds transfer.

(w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.

(x) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

* * * * *

(aa) *Receiving bank.* The bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution.* The financial institution to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(cc) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(dd) *Recipient's financial institution.* The financial institution identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

* * * * *

(ff) *Sender.* The person giving the instruction to the receiving financial institution.

* * * * *

(jj) *Transmittal of funds.* A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the

transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or to cause another financial institution to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution other than a bank.

(mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution, or the transmittor if the transmittor is a financial institution. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank.

* * * * *

3. Paragraph (b)(2) of § 103.25 is revised to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

* * * * *

(b) * * *

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to § 103.33.

* * * * *

4. Section 103.33 is amended by adding new paragraphs (e) and (f), to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) *Banks.* With respect to a funds transfer in the amount of $3,000 or more by a bank:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, the bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order: [1]

(*1*) The name and address of the beneficiary;

(*2*) The account number of the beneficiary; and

(*3*) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, the bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, the bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Beneficiaries other than established customers.* For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer

[1] For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability*. The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) *Verification*. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions*. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A domestic bank;

(B) A wholly-owned domestic subsidiary of a domestic bank;

(C) A domestic broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a domestic broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank.

(f) *Nonbank financial institutions*. With respect to a transmittal of funds in the amount of $3,000 or more by a financial institution other than a bank:

(1) *Recordkeeping requirements*. (i) For each transmittal order that it accepts as a transmittor's financial institution, the financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order: [2]

(*1*) The name and address of the recipient;

(*2*) The account number of the recipient; and

(*3*) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, the financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, the financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order, as well as any form completed or signed by the person receiving the proceeds of the transmittal of funds.

(2) *Transmittors other than established customers*. In the case of a transmittal order from a transmittor that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(ii) If the transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or

[2] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

credit card transaction) for the transmittal of funds. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmittor's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification.* Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor and the recipient are any of the following:

(A) A domestic bank;

(B) A wholly-owned domestic subsidiary of a domestic bank;

(C) A domestic broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a domestic broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker or dealer in securities.

In concurrence:

By the Board of Governors of the Federal Reserve System, December 21, 1994.

William W. Wiles,

Secretary of the Board.

By the Department of the Treasury, December 19, 1994.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has finalized the enhanced recordkeeping requirements relating to certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. The final rule takes into consideration the public comments received on the initial notice of proposed rulemaking. These recordkeeping requirements are being promulgated jointly by the Board and the Department of Treasury (Treasury). A companion notice published elsewhere in today's **Federal Register** by the Treasury and the Board (Joint Notice) sets forth the substantive provisions of the recordkeeping requirements and provides an analysis of comments received on the proposal. This notice sets forth the regulation for codification at 12 CFR Part 219, subpart B, which cross-references the substantive provisions set forth in the Joint Notice. Under the Joint Notice, each domestic financial institution involved in either a domestic or international wire transfer must collect and retain certain information. The amount and type of information collected and retained will depend upon the nature of the financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Associate Director, (202) 452–2789; Gayle Brett, Manager,

Fedwire, (202) 452–2934, Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, (202) 452–3625, or Elaine M. Boutilier, Senior Counsel, (202) 452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The primary purpose of the Bank Secrecy Act is to identify the source, volume, and movement of funds into and out of the country and through domestic financial institutions. The Bank Secrecy Act was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550 (referred to hereafter as the 1992 Amendment) to specifically authorize the Treasury and the Board jointly to prescribe regulations to require maintenance of records regarding domestic and international funds transfers.

The 1992 Amendment authorizes the Board and the Treasury to promulgate recordkeeping requirements for domestic wire transfers by insured depository institutions whenever the agencies determine that such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. In addition, the 1992 Amendment requires the Treasury and the Board to issue final regulations with regard to international transactions. The recordkeeping requirements for international transactions will apply to financial institutions as defined in 31 CFR 103.11(i),[1] which include insured depository institutions, brokers and dealers in securities, as well as other businesses that provide money transmitting services. In prescribing these required regulations, the Board and the Treasury considered the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect on the cost and efficiency of the payment system. The Board and the Treasury decided that it would be simpler to issue regulations for both domestic and international funds transfers simultaneously, because the recordkeeping requirements will be substantially the same.

The number of wire transfers completed is substantial. For example, more than 71 million funds transfers with an aggregate dollar value of approximately $208 trillion were made over Fedwire in 1993. More than 42 million funds transfers with a value of approximately $266 trillion were made over the Clearing House Interbank Payments System (CHIPS). Nonbank providers of money transmitting services make an estimated 12.7 million transmittals annually.

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world, and Federal law enforcement agencies believe that a significant amount of the money laundered involves wire transfers. Proceeds from illegal activities may be processed through money laundering schemes involving domestic and/or international payments by wire transfers. Such activity has been documented in several recent investigations conducted by the Treasury and other Federal law enforcement agencies.

In August 1993, the Treasury and the Board jointly issued for public comment a proposal to enhance the recordkeeping requirements relating to certain wire transfers by financial institutions (58 FR 46014, August 31, 1993). Based on the comments received, the Treasury and the Board have modified the proposed rule to reduce the burden associated with the rule, while maintaining the usefulness of the rule to law enforcement agencies. The Board and the Treasury believe that maintenance of these records will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Further, the Board and the Treasury believe that these recordkeeping requirements will not have a significant adverse effect on the cost or the efficiency of the payments system.

Codification of the Rule

To minimize potential confusion by affected entities regarding the scope of this joint rule and its interaction with other anti-money laundering regulations, the substantive requirements of the rule will be codified with other Bank Secrecy Act regulations, as part of the Treasury's regulations in 31 CFR Part 103. Because the Board is required to prescribe these regulations jointly with the Treasury, the Board is adding a new subpart B to 12 CFR Part 219, which will cross-reference the jointly prescribed requirements in 31 CFR Part 103. The current text of 12 CFR Part 219, concerning reimbursement to financial institutions for assembling and providing financial records pursuant to the Right to Financial Privacy Act, will become subpart A of 12 CFR Part 219.

Summary Description of the Rule

The Joint Notice, published elsewhere in today's **Federal Register**, provides an extensive description of the substantive requirements of the rule. While the Board is authorized to promulgate jointly with the Treasury recordkeeping and reporting requirements with regard to domestic wire transfers by insured depository institutions, the Board specifically is required to promulgate jointly with the Treasury recordkeeping and reporting requirements for international wire transfers by both insured depository institutions and nonbank financial institutions. The Board is not authorized to promulgate recordkeeping and reporting requirements for domestic wire transfers by nonbank financial institutions. (The Treasury has this authority under other statutory provisions.) This limitation is reflected in the Board's subpart B of 12 CFR Part 219. The Board's recordkeeping and reporting requirements for international wire transfers by nonbank financial institutions, however, are identical to those adopted by the Treasury for domestic and international wire transfers by nonbank financial institutions. Therefore, compliance by nonbank financial institutions with the requirements will not be affected by this limitation in the Board's regulatory authority.

Regulatory Flexibility Analysis

Three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule, (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, and (3) a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected, are discussed in the Joint Notice.

Competitive Impact Analysis

In considering an operational or legal change that would affect a Federal Reserve Bank priced service, the Board

[1] When this rule becomes effective, the citation for the definition of financial institution will be 31 CFR 103.11(n).

determines whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services, due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

Unlike other providers of wire transfer services, the Federal Reserve Banks are not subject to the wire transfer recordkeeping rules, because they are not considered by the Treasury to be financial institutions, as defined in 31 CFR 103.11(i).[2] The Board believes, however, that the exclusion of the Federal Reserve Banks from the scope of this rule will not adversely affect the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The Federal Reserve Banks will continue to maintain records of the payment orders that they accept, similar to the records required by the rule to be kept by intermediary banks.

For funds transfers effected over the Federal Reserve's Fedwire funds transfer system, banks and domestic brokers or dealers in securities would not have to retain as many of the elements of beneficiary identification as provided by the originator, because the current Fedwire format may not have sufficient space to include such information. The Board, however, does not believe that this temporary exception would make use of the Fedwire system more desirable than other funds transfer systems. A financial institution will be required to comply fully with the requirement to retain full beneficiary information at such time that it completes its conversion to the expanded Fedwire message format.

Paperwork Reduction Act

The collection of information required by the final rule has been submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505–0063.

The collection of information in this regulation is authorized by 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5328. The likely recordkeepers are financial institutions that perform transmittals of funds.

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 1 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 16.3 hours.

Estimated annual frequency of responses: Upon request.

The estimated average annual burden hours have decreased significantly from those included in the August 1993 proposal. The decrease is due to the significant reduction in the number of transmittals of funds subject to the recordkeeping requirements as a result of the establishment of the $3,000 threshold, and due to the reduction of circumstances in which additional recordkeeping and verification requirements for noncustomers would apply.

List of Subjects in 12 CFR Part 219

Banks, Banking, Currency, Reporting and recordkeeping requirements, Foreign banking.

For the reasons set out in the preamble, 12 CFR Part 219 is amended as set forth below.

PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

1. The title of part 219 is revised to read as set forth above.

Subpart A—Reimbursement to Financial Institutions for Providing Financial Records

§§ 219.1 through 219.7 [Designated as Subpart A]

2. Sections 219.1 through 219.7 are designated as Subpart A, and a new Subpart A heading is added to read as set forth above.

3. The authority citation for Part 219 is designated as the authority for Subpart A and continues to read as follows:

Authority: 12 U.S.C. 3415.

4. Subpart A is amended by revising § 219.1 to read as follows:

§ 219.1 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219, subpart A) is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the Act) (12 U.S.C. 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the Act.

5. Section 219.2 is amended by revising the introductory text to read as follows:

§ 219.2 Definitions.

For the purposes of this subpart, the following definitions shall apply:

* * * * *

6. Subpart B is added to Part 219 to read as follows:

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Sec.
219.21 Authority, purpose and scope.
219.22 Definitions.
219.23 Recordkeeping and reporting requirements.
219.24 Retention period.

Subpart B—Recordkeeping and Reporting Requirements for Funds Transfers and Transmittals of Funds

Authority: 12 U.S.C. 1829b(2) and (3).

§ 219.21 Authority, purpose and scope.

This subpart of Regulation S (12 CFR part 219, subpart B) is issued by the Board under the authority of section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b), as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550, Title XV; 106 Stat. 3672, 4044), which authorizes the Board and the Secretary of the Treasury jointly to prescribe recordkeeping and reporting requirements for domestic wire transfers by insured depository institutions; and which also requires the Board and the Treasury jointly to prescribe recordkeeping and reporting requirements for international wire transfers by insured depository institutions and by nonbank financial institutions. The definitions and recordkeeping and reporting requirements referenced in this subpart are promulgated and administered jointly by the Board and the Treasury and are codified in 31 CFR 103.11 and 103.33(e) and (f). Such recordkeeping and reporting requirements will assist in the prosecution of money laundering activities and are determined to have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings.

§ 219.22 Definitions.

The following terms are defined in 31 CFR 103.11 under the joint authority of the Board and the Treasury:

Accept.
Beneficiary.
Beneficiary's bank.
Established customer.
Execution date.
Funds transfer.

[2] Ibid.

Intermediary bank.
Intermediary financial institution.
Originator.
Originator's bank.
Payment date.
Payment order.
Receiving bank.
Receiving financial institution.
Recipient.
Recipient's financial institution.
Sender.
Transmittal of funds.
Transmittal order.
Transmittor.
Transmittor's financial institution.

§ 219.23 Recordkeeping and reporting requirements.

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are authorized to promulgate jointly recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regulations are codified at 31 CFR 103.33(e). For the purposes of this subpart, the provisions of 31 CFR 103.33(e) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are required to promulgate jointly reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities and businesses that provide money transmitting services. In prescribing these requirements, the Board and the Treasury take into account the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 103.33(f). For the purposes of this subpart, the provisions of 31 CFR 103.33(f) apply only to international transmittals of funds.

§ 219.24 Retention period.

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record and the amount of time that has expired since the record was made. Any records required to be retained by this subpart shall be made available to the Board upon request.

By order of the Board of Governors of the Federal Reserve System, December 21, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–31978 Filed 12–30–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA46

Amendment to the Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: This final rule requires banks and nonbank financial institutions that act as transmittors' financial institutions and intermediary financial institutions in transmittals of funds to include certain information in transmittal orders sent to receiving financial institutions. A companion final rule (the final recordkeeping rule), published elsewhere in today's **Federal Register**, requires financial institutions to collect and retain the information that, under this final rule, must be included with transmittal orders.

The final recordkeeping rule sets forth collection of information and recordkeeping requirements with respect to certain transmittals of funds by financial institutions. The amount and type of information required to be collected and retained depends upon the type of financial institution, its role in a particular transaction, the amount of the transaction and whether the parties to the transaction are established customers of the financial institution. To ensure a full understanding of this final rule, the reader is encouraged to review its provisions together with those of the final recordkeeping rule.

This final rule is promulgated by Treasury under the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Annunzio-Wylie), which is part of the statute generally referred to as the Bank Secrecy Act. Annunzio-Wylie authorizes the Secretary of the Treasury to require financial institutions to maintain appropriate procedures to comply with the Bank Secrecy Act and guard against money laundering, and to carry out anti-money laundering programs. The final recordkeeping rule is promulgated jointly by the Board of Governors of the Federal Reserve System (Federal Reserve Board) and by Treasury pursuant to a special statutory requirement under Annunzio-Wylie. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN).

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: FinCEN, Office of Financial Enforcement ((202) 622–0400): A. Carlos Correa, Assistant Director for Rules and Regulations; Roger Weiner, Deputy Director; Peter Djinis, Director; FinCEN, Office of Legal Counsel: Stephen R. Kroll, Legal Counsel (703) 905–3534; Nina A. Nichols, Attorney-Advisor, (703) 905–3598.

SUPPLEMENTARY INFORMATION:

Background

This final rule is promulgated by Treasury under 31 U.S.C. 5318 (a)(2) and (h), which are part of the statute generally referred to as the Bank Secrecy Act (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329), and which were added to the Bank Secrecy Act by Annunzio-Wylie. 31 U.S.C. 5318 (a)(2) and (h) authorize the Secretary of the Treasury to require financial institutions to maintain appropriate procedures to comply with the Bank Secrecy Act and guard against money laundering, and to carry out anti-money laundering programs. The final recordkeeping rule is promulgated jointly by the Federal Reserve Board and by Treasury pursuant to a special statutory requirement for such joint issuance contained in 12 U.S.C. 1829b(b), added to the Bank Secrecy Act by section 1515 of Annunzio-Wylie. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

On August 31, 1993, Treasury and the Federal Reserve Board jointly issued a proposed recordkeeping rule (58 FR 46014) requiring financial institutions to obtain and retain information relating to certain transmittals of funds. Treasury also issued a companion proposed travel rule (58 FR 46021, August 31, 1993), which was subsequently modified (58 FR 51269, October 1, 1993), proposing to require any transmittor's financial institution involved in a transmittal of funds to include in its corresponding transmittal order:

(1) The name and address of the transmittor and the transmittor's deposit account number, if the payment were ordered from a deposit account;

(2) The amount of the transmittal of funds;

(3) The execution date of the transmittal order;

(4) The identity of the recipient's financial institution; and,

(5) Either the name and address or the account number of the recipient, if received with the transmittal order.

The proposed travel rule would have required any receiving financial institution acting as an intermediary financial institution to include in its corresponding transmittal order the following information, if received from the sender:

(1) The name and address of the transmittor and the deposit account number of the transmittor;

(2) The amount of the transmittal of funds;

(3) The execution date of the transmittal order;

(4) The identity of the recipient's financial institution;

(5) Either the name and address or the account number of the recipient, if received with the transmittal order; and,

(6) Either the name and address or the numerical identifier of the transmittor's financial institution.

Overview

This final rule will assist law enforcement investigations of money laundering involving transmittals of funds by requiring users of transmittals of funds to provide additional identifying information. Together with the final recordkeeping rule, this final rule will help remedy the difficulties presently encountered by law enforcement in cases involving transmittals of funds in which the transmittal orders do not include the transmittors' and recipients' names or other identifying information, and cases involving transmittals of funds in which such identifying information is not conveyed to intermediary financial institutions. The requirement that transmittal orders include complete transmittor information, as well as recipient information received by the financial institution with the transmittal order, may discourage money launderers from attempting to abuse the payment and message systems and should complicate their ability to do so.

Treasury will monitor experience under this final rule to assess its usefulness to law enforcement and its effect on the cost and efficiency of the payments system. Within 36 months of the effective date, Treasury will review the effectiveness of this final rule and will consider making any appropriate modifications.

Comments

One hundred thirteen (113) comments were received in response to the proposed recordkeeping rule and the proposed travel rule. Treasury has carefully considered each comment in drafting this final rule.

Effect of Proposed Changes to Fedwire System

The proposed travel rule provided for a thirty (30) day comment period concluding on October 4, 1993. Many of the commenters noted that they could neither comment nor initiate changes to their internal wire transfer systems until the Federal Reserve Board announced its proposed changes in the Fedwire format. Treasury believes that the comments it received relating to Fedwire were helpful, and these comments have been taken into account in framing this final rule.

Commenters on the proposed travel rule were particularly concerned with the difficulty of including the required information on Fedwire, which, unlike the Clearing House Interbank Payments System (CHIPS) (operated by the New York Clearing House) and the Society for Worldwide Interbank Financial Telecommunications (S.W.I.F.T.) system, does not have sufficient space in the fields in which to include complete originator and beneficiary information. Commenters also noted that it would be difficult to map information to Fedwire from S.W.I.F.T., CHIPS and other proprietary systems, and to comply with the proposed travel rule's requirements by the proposed effective date.

One commenter suggested that the proposed travel rule be withdrawn. This commenter characterized the proposed travel rule as unworkable and premature because the Fedwire format had to be expanded, and conventions and protocols coordinated before the proposed travel rule could issue. Other commenters raised similar concerns.

As more fully discussed below, this final rule recognizes the difficulty that financial institutions will have in including all of the required information within the Fedwire format, and makes appropriate allowances. In light of these allowances, and because the Federal Reserve Board has adopted an expanded Fedwire format (published elsewhere in today's **Federal Register**), this final rule is promulgated at the appropriate time.

Effective Date

The proposed travel rule provided for an effective date twelve months following publication of a final rule. Many commenters believed that the proposed effective date twelve months after publication of a final rule was too soon; they suggested that no effective date be announced until the Federal Reserve Board had published proposed changes to Fedwire, and that any proposed effective date take into account those proposed changes. Alternatively, commenters suggested that the effective date be delayed until twelve months following implementation of Fedwire format changes. Finally, one bank suggested that the effective date of the proposed rule coincide with the effective date of changes to the Fedwire format.

The effective date of this final rule and of the recordkeeping rule is January 1, 1996. As noted, this final rule allows for the fact that a financial institution will not be able to include all otherwise required information in Fedwire transfers until the format changes have been implemented by that institution.

Mapping Issues

The proposed travel rule would have required that certain information be included, at the time of transmittal, in a transmittal order transmitted to a financial institution by any means, including any funds transfer system (*e.g.*, Fedwire, S.W.I.F.T. and CHIPS) or other system for transmittals of funds. This would have meant, for example, that a bank receiving a S.W.I.F.T. message would have been obligated to include all required information, if received, in its corresponding Fedwire transmittal order, and that any originator's bank issuing a Fedwire transmittal order would have had to include all of the required information in that order.

Currently, the Fedwire fields designated for originator and beneficiary information do not contain sufficient space to include all of the information required by this final rule. However, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision have issued a policy encouraging banks to use optional fields where possible to include complete originator and beneficiary information in Fedwire payment orders. A similar statement was issued by the Federal Financial Institutions Examination Council (FFIEC). (See, FFIEC Statement dated March 11, 1993, 58 FR 14400, March 17, 1993.)

While many commenters acknowledged that complete originator and beneficiary information could be included in S.W.I.F.T. and CHIPS payment orders, they objected to the use

of optional Fedwire fields to include such information. The commenters observed that the proposed travel rule failed to designate which optional fields should contain which items of information and failed to assign priority to such items in the event that available optional fields could not accommodate all required information. Commenters believed that the lack of industry standards prescribing placement of originator and beneficiary data in optional fields would result in confusion and inefficiency, producing erroneous entries, advices and misapplication of funds. Commenters also noted that the use of optional fields would require excessive manual intervention in what is largely an automated system, causing costly inefficiencies by delaying pass-through payments, which, according to one commenter, make up 85% of all transfers.

Many commenters suggested the formation of a joint task force including representatives of the financial community, Treasury and the Federal Reserve Board to establish industry standards for the use of optional fields in Fedwire and a timetable for implementation.

The Federal Reserve Board published its Proposed Expansion of the Fedwire Funds Transfer Format on December 1, 1993 (58 FR 63366), and a finalized expanded Fedwire format is published elsewhere in today's **Federal Register**. Implementation is to be completed by year-end 1997. Once implemented by financial institutions, the modified Fedwire format will permit inclusion of complete originator and beneficiary information. Under this final rule a financial institution will not be required to include all available information identifying transmittors and recipients in Fedwire payment orders until the financial institution has implemented the new Fedwire format. However, Treasury joins the FFIEC in encouraging financial institutions to include complete transmittor and recipient information in Fedwire payment orders using optional fields.

Threshold

Many nonbank financial institutions commented that the proposed recordkeeping rule's lack of a threshold exempting smaller value transfers would make implementation inordinately costly. One commenter noted that 95% of the two million transmittals it conducted annually involved less than $1,000; 98% fell below $3,000; and, 99.96% fell below $10,000. Commenters complained that the enormous expense they would incur in obtaining, maintaining and transmitting data for smaller value transmittals could not be justified by any benefit to law enforcement. Other commenters argued that the absence of any threshold would make it impossible to conduct transmittals in emergencies and in situations in which a transmittor phones, faxes or writes in funds transmittal instructions (for example, in the case of a transmittal of funds to someone whose identification documents have been stolen).

Treasury and the Federal Reserve Board have considered these comments and have established a threshold of $3,000 for the final recordkeeping rule. Treasury has determined that the same threshold should apply to this final rule. Therefore, financial institutions will not be required to include the specified information in transmittal orders involving less than $3,000 or the foreign equivalent. (Financial institutions should determine the U.S. dollar equivalents of transfers in foreign funds based on the spot exchange rate at the time of a transfer to determine whether a foreign-denominated transfer exceeds the $3,000 threshold.)

Treasury presently encourages financial institutions to report to the appropriate federal law enforcement agency or agencies transmittals of funds that are structured in amounts of less than $3,000 to evade the requirements of this final rule and the final recordkeeping rule. Treasury intends to issue for comment proposed regulations that would require financial institutions to report suspicious transactions and to establish anti-money laundering measures, including ''know your customer'' policies and programs. Treasury will monitor the effectiveness of such policies and programs, as applied to transmittals of funds, and will consider future modification of the $3,000 threshold or other provisions of this final rule, if appropriate and necessary to counter the evasion of requirements through structuring.

Contents of Payment Orders

If a transmittal order is funded from an account, the proposed travel rule would have required the transmittor's financial institution to include in the transmittal order the following: the name and address of the transmittor; the transmittor's account number; the amount and execution date of the transmittal; the identity of the recipient's financial institution; and either the name and address or the account number of the recipient (if received with the transmittal order). The proposed travel rule also would have required any receiving financial institution acting either as an intermediary bank or an intermediary financial institution to include in its transmittal order the same information, if received from the sender.

Several commenters objected to the proposed requirement that the transmittor's account number be included in the transmittal order. Commenters noted that such information is relevant only to the transmittor's financial institution, is regarded by many as confidential, and increases the risk of fraud if included in a transmittal order. Commenters questioned law enforcement's need to have account information on transmittal orders because such information is easily retrievable through records using the account holder's name. The inclusion of this information, commenters argued, would clutter transmittal orders.

Treasury has concluded that the transmittor's account number must be included in transmittal orders, but only where an account is debited to fund all or part of the transmittal. This information will be particularly useful to law enforcement in cases in which delay occasioned by a search for account information would hinder the success of an investigation. Inclusion of the information is feasible in both S.W.I.F.T. and CHIPS messages, and (until proposed Fedwire format changes are implemented) information can be included in optional Fedwire fields if there is not sufficient space in the originator field.

Treasury has determined that the inclusion of account numbers in transmittal orders will present only a minor increase in the risk of fraudulent transfers. Banks generally have security procedures that include passwords, codewords and, in the case of electronic transmissions, confirmation to ensure that only authorized parties issue payment orders. These and other protective measures greatly reduce the potential for fraud, to a level at which that risk does not outweigh the immediate and tangible benefit to law enforcement derived from the inclusion of account information in transmittal orders.

With regard to arguments based on the confidentiality of account numbers, Treasury notes that account numbers are routinely included (and are certainly not treated as confidential) in cases in which an account is the recipient of a transmittal of funds. Furthermore, account numbers are routinely carried on the face of checks and other payment documents that are widely circulated through and outside of banks. Finally, Treasury believes that the fact that a

transmittor's account number is available through customer account records does not render the inclusion of information in a transmittal order superfluous.

Commenters requested clarification whether to record the amounts of transmittals involving foreign funds in the foreign exchange or its U.S. dollar equivalent. Treasury does not intend to change industry practice; therefore, in recording the amount transmitted, a financial institution may record either the amount of foreign funds or the U.S. dollar equivalent, in accordance with the financial institution's standard practice.

Bifurcated Transmittal Orders

In some instances, to effect payment across multiple time zones, a bank may have to bifurcate a transmittal order into a cover payment order and an underlying direct payment order. One commenter noted that inclusion of a recipient's name and address in both the transmittal order and the related cover order of the recipient might create a risk of duplicate payment.

It appears to Treasury that bifurcated transmittal orders are comprised of two separate transmittals of funds. Generally, the direct payment order is a transmittal from the originator to the recipient, and the cover payment order is a bank to bank transmittal, which may be effected through intermediary banks. In this analysis, the transmittal order for the cover payment order would not have to identify the recipient of the direct payment order, only the recipient bank. If appropriate, Treasury will consider issuing guidance on this question in the future.

Closed Systems

The proposed travel rule would have required any receiving intermediary financial institution accepting a transmittal order to include in a corresponding transmittal order either the name and address or the numerical identifier of the transmittor's financial institution. The proposed travel rule also would have required that any transmittor's financial institution, as well as any receiving intermediary financial institution, accepting a transmittal order to include in a corresponding transmittal order the identity of the recipient's financial institution.

Many commenters noted the difficulty of identifying the transmittor's financial institution and the recipient's financial institution in transmittals through closed systems. A closed system is a transmittal of funds service that permits a recipient to pick up transmitted funds at any location within the closed system. Such a service can be either entirely domestic or international and does not rely on banks or other outside financial institutions to effect payment to the intended recipient; transmittals of funds are handled entirely by the service's own agents. Finally, and most important, complete records relating to any closed system transmittal of funds are maintained in one central location.

Commenters also noted that the requirement to identify the transmittor's financial institution might increase the risk of fraud and abuse. For example, the closed system agent serving as the recipient's financial institution could identify and contact the closed system agent that served as the transmittor's financial institution, and establish a funds transmittal service that would neither be conducted by the closed system nor be subject to its control. Commenters also noted that identification of the recipient's financial institution is difficult or impossible in most cases, because the transmittor may not know where the recipient will pick up the transmitted funds.

Treasury believes that the potential for fraud as described by the commenters may be best addressed by the closed systems and their agents themselves. This final rule requires that the transmittor's financial institution be identified in the transmittal order in all cases. However, in cases involving closed systems as described above, the requirement to identify the recipient's financial institution may be satisfied by including the closed system's name in the transmittal order. Although such information will not identify the specific closed system office that served as the recipient's financial institution, law enforcement's needs will be adequately met by records that are maintained and made available to law enforcement as required by regulation.

Executive Order 12866

Treasury finds that this final rule is not a significant rule for purposes of Executive Order 12866. This final rule is not anticipated to have an annual effect on the economy of $100 million or more. It will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It creates no inconsistencies with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis is therefore not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

The small entities that will be affected by this final rule include small banks and nonbank money transmitting businesses. This final rule exempts transmittals of funds in amounts of less than $3,000; this exemption should particularly benefit nonbank providers of money transmitting services that handle smaller value transfers. Treasury does not believe that compliance with this final rule will require small entities to have specialized professional skills that are not generally available to them.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information and the burden estimate should be directed to FinCEN, Office of Legal Counsel, 2070 Chain Bridge Road, Vienna, VA 22182, or to the Office of Management and Budget, Paperwork Reduction Project (1505–0063), Washington, D.C. 20503.

Drafting Information

The principal author of this document is FinCEN. Technical assistance was also provided by the Federal Reserve Board and the Department of Justice.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5329.

2. Section 103.33 is amended by adding new paragraph (g) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(g) With respect to a transmittal of funds in the amount of $3,000 or more by a financial institution:

(1) The transmittor's financial institution shall include in the transmittal order, at the time it is sent to the receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[3]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[4]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

Dated: December 19, 1994.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 94–31982 Filed 12–30–94; 8:45 am]

BILLING CODE 4810–25–P

[3] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

[4] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

federal register

Tuesday
January 3, 1995

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 540 and 545

Telephone Regulations and Inmate Financial Responsibility; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540 and 545

[BOP–1004–F]

RIN 1120–AA06

Telephone Regulations and Inmate Financial Responsibility

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule; delay of effective date.

SUMMARY: In this document, the Bureau of Prisons is further postponing the effective date for provisions in its regulations relating to limitations on telephone privileges for inmates who have refused participation in the inmate financial responsibility program. This action is necessary because of ongoing litigation.

EFFECTIVE DATE: Effective December 28, 1994, the effective date of §§ 540.105(c) and 545.11(d)(10) is delayed until January 4, 1996, and the amendments in this document are effective January 4, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (''Bureau'') is further delaying the effective date for certain provisions in its rules on telephone regulations and on the inmate financial responsibility program which were published in the **Federal Register** on April 4, 1994 (59 FR 15812).

In revising its rules on telephone regulations and on the inmate financial responsibility program, the Bureau delayed the effective date for provisions in §§ 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates who had refused participation in the inmate financial responsibility program. These provisions were to become effective January 3, 1995. Due to ongoing litigation, the Bureau is further delaying the effective date until January 4, 1996. This date has been selected in order to allow staff to plan for an orderly implementation. If this date needs to be further adjusted because of the ongoing litigation, the Bureau shall publish such notice in a future issue of the **Federal Register**.

As published on April 4, 1994, §§ 540.105(c) and 545.11(d)(10) included parenthetical references to the delayed effective dates of those provisions. Emphasizing the delayed effectiveness of these specific provisions within the regulatory text served a useful purpose at that time, given the size and complexity of the published final rule. Because this information is noted editorially in the annually revised Code of Federal Regulations, the Bureau believes that such emphasis no longer serves a useful purpose and is therefore removing this redundant material.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 540 and 545

Prisoners.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and 545 in subchapter C of 28 CFR, chapter V are amended as set forth below.

Subchapter C—Institutional Management

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 540.105 [Amended]

2. In § 540.105, paragraph (c) is amended by removing the concluding parenthetical sentence.

3. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 545.11 [Amended]

4. In § 545.11, paragraph (d)(10) is amended by removing the final parenthetical sentence.

[FR Doc. 94–32239 Filed 12–28–94; 10:55 am]

BILLING CODE 4410–05–P

federal register

Tuesday
January 3, 1995

Part V

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–5129–2]

Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: On September 19, 1994, EPA published regulations promulgating congressionally-mandated prohibitions on land disposal of certain hazardous wastes. This notice corrects errors and clarifies the language in the preamble and regulation of the September 19, 1994 final rule.

EFFECTIVE DATE: This rule is effective on December 19, 1994.

ADDRESSES: Copies of the rule can be obtained from the RCRA Docket (5305), U.S. Environmental Protection Agency, Room 2616, 401 M Street, S.W., Washington, D.C. 20460. The RCRA Docket is open from 9:00 am to 4:00 pm Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 920–9810 in the Washington, DC metropolitan area. For technical information contact Doug Heimlich (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, (703) 308–8489.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Amendment
II. Amendments to the Phase II Final Rule
A. Section 268.2
B. Section 268.7
C. Section 268.9
D. Section 268.40
E. Section 268.42
F. Section 268.48
G. Appendix X to Part 268
III. Clarification of Issues
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I. Reasons and Basis for Today's Amendment

The Agency has received comments from the regulated community and State agencies requesting clarification on certain aspects of the September 19, 1994 Phase II final rule (59 FR 47982). Today's amendment responds to these comments.

II. Amendments to the Phase II Final Rule

A. Section 268.2

Like zinc, vanadium is not considered to be an ''underlying hazardous constituent'' in characteristic wastes. In the definition of underlying hazardous constituent at 268.2(i), vanadium was inadvertently left out as an exception to the definition. It is being placed as an exception in the definition at 268.2(i) in today's amendment.

B. Section 268.7

In the preamble of the Phase II final rule, EPA stated that, as a simplifying measure, it was amending the LDR notification requirements to minimize the amount of information that must be placed on the LDR notification in certain circumstances (see 59 FR 48004). Prior to promulgation of the Phase II rule, the hazardous constituents in F001–F005 spent solvents, F039, wastes subject to the California list provisions of § 268.32 or RCRA section 3004(d), and underlying hazardous constituents in certain characteristic wastes had to be listed on the LDR notification. In Phase II, this language was changed so that if the generator/treater monitors for all the hazardous constituents in F001–F005 spent solvents, F039, and underlying hazardous constituents in certain characteristic wastes, then there would be no need to list any of the constituents on the LDR notification. If, however, the generator/treater is monitoring for a subset of these constituents, the subset of constituents in the waste (or, in the case of underlying hazardous constituents in certain characteristic wastes, the ones reasonably expected to be present at point of generation) would be required to be listed on the LDR notification. In making this change, EPA inadvertently left out language in §§ 268.7(a)(1)(ii), 268.7(a)(2)(i)(B), and 268.7(b)(4)(ii) applying this provision to California list wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). A reference to these California list wastes is therefore being added to the sections mentioned above in today's amendment.

An error was also found in § 268.7(a)(1). In this section, EPA explained that before the Phase II final rule a generator managing a restricted waste that did not meet the applicable treatment standards set forth in Subpart D of Part 268, or exceeds the prohibition levels set forth in § 268.32 or RCRA section 3004(d), was required, with each shipment of waste, to notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d).

As explained on page 48004 of the Phase II preamble, EPA dropped the requirement to include the treatment standard or the reference to the treatment standard on the LDR notification. EPA overlooked the regulatory language above (in italics) when modifications were made in the Phase II rule. Thus it is being removed in this technical amendment. The statement is changed to read, ''* * * notify the treatment or storage facility in writing.''

Another error was made in § 268.7(a)(1). Paragraph (v) should have been redesignated as paragraph (vi), and a new paragraph (v) added. Although paragraph (v) was revised with the new language, the existing language that should have been included in paragraph (vi) was inadvertently deleted. Paragraph (vi), with the language that appeared as paragraph (v) before the Phase II rule, is being added in today's amendments. Also, in order for the new paragraph to read properly, paragraph (iv) was changed to delete the final word ''and,'' and paragraph (v) was changed to add the word ''and'' at the end.

The same error described in the previous paragraph was also made in § 268.7(a)(3): paragraph (vi) should have been redesignated as paragraph (vii), and a new paragraph (vi) added. Paragraph (vii), with the language that appeared as paragraph (vi) before the Phase II rule, is being reinserted today. Also, paragraph (a)(3)(vi) is being revised today because it had been merely reproduced (incorrectly) from paragraph (a)(1)(v).

In addition, in § 268.7(a)(8), EPA modified the alternative treatment standards for lab packs from identifying the wastes that can be included in lab packs to specifying those wastes that are prohibited from being placed in lab packs. EPA made this change in order to simplify and clarify this provision. The certification language required under this section is being changed in this technical amendment to say that the lab pack ''contains only wastes which have not been excluded under appendix IV to 40 CFR part 268.'' The certification language that reads ''or solid wastes not

subject to regulation under 40 CFR part 261'' is being removed and is no longer considered necessary, because the regulated community has in appendix IV a list of wastes that are prohibited from placement in a lab pack. The Agency believes that deleting this statement is not a substantive change, but rather alleviates unnecessary language.

Finally, in the introductory paragraph of § 268.7(d) and in § 268.7(d)(1), generators or treaters who claim an exemption for hazardous debris from the definition of hazardous waste under § 261.3(e) are subject to notification and certification requirements that, previously, were to be submitted to the ''Director or authorized State.'' EPA recognizes that this designation is vague, and is specifying in today's amendment that the notification and certification requirements of § 268.7(d) be submitted to the Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements, and in § 268.7(d)(1) to be submitted to the EPA Regional hazardous waste management division director (or his designated representative) or State authorized to implement part 268 requirements.

C. Section 268.9

A typesetting error was made in § 268.9(a), which repeated language that already was in the paragraph. The paragraph is located in the middle column of 59 FR 48045, starting with, If the generator determines that his waste displays the characteristic of ignitability * * * and finishes with, as specified in paragraph (b) of this section. This redundant portion of the paragraph is deleted in today's amendment. Additionally, in section 268.9(d)(2)(i), it states that in treating wastes that exhibit a characteristic, the underlying hazardous constituents must also be treated, and if not, the certification in § 268.7(b)(5)(v) applies. There is no section 268.7(b)(5)(v), and instead the intent was to reference the certification under section 268.7(b)(5)(iv). The erroneous reference is changed in today's amendment.

D. Section 268.40

EPA established that for certain characteristic wastes managed in non-Clean Water Act (CWA) wastewater treatment systems, non-CWA-equivalent systems, or non-Class I injection wells, the underlying hazardous constituents reasonably expected to be present in the waste at point of generation should be treated as well as the hazardous characteristic. For D018–D043, characteristic wastes, this applies to both wastewaters and nonwastewaters. While in the consolidated treatment table in § 268.40 it is noted that the D018–D043 nonwastewaters need to meet § 268.48 standards, this is not indicated for the wastewaters. The corrected table will include the requirements for wastewaters that are managed in non-CWA wastewater treatment systems, non-CWA-equivalent systems, or non-Class I deep injection wells.

An improvement in the Phase II final rule was the simplification of two equivalent technology-specific combustion standards in: Table 1—Technology Codes and Description of Technology-Based Standards in 40 CFR 268.42. The Agency consolidated the descriptions of INCIN (incineration) and FSUBS (fuel substitution), by combining them into one term, CMBST (combustion). In prior rulemakings, the treatment standard for both wastewaters and nonwastewaters of Acetaldehyde (U001) was listed as ''FSUBS or INCIN;'' In the Phase II final rule, a typographical error left out ''FSUBS'' and only listed the treatment standard, ''INCIN.'' The treatment standard for U001 is thus changed from ''FSUBS or INCIN'' to ''CMBST.''

The following changes are also made:

- For Ethyl acetate, under F001, F002, F003, F004, and F005, the CAS number is corrected to read, ''141–78–6;''
- For Tetrachloroethylene under K043, the CAS number is corrected to read, ''127–18–4;''
- For Diphenylamine under K022 and K083, the CAS number is corrected to read, ''122–39–4;''
- For bis(2–Chloroisopropyl)ether under U027, the CAS number is corrected to read, ''39638–32–9.''
- For Phthalic anhydride under K023, K024, K093, K094, and U190, it is clarified that Phthalic anhydride is measured as ''Terephthalic acid,'' or ''Phthalic acid,'' which are synonymous terms for the same substance.

These changes are all made in the consolidated treatment table in section 268.40 in today's amendment.

E. Section 268.42

The definition of combustion (CMBST), as stated in § 268.42 Table 1, is: ''combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264 subpart O, and part 266, subpart H.'' The definition inadvertently deleted the management of hazardous waste during the period of interim status, covered in part 265, subpart O. At 59 FR 48003, EPA affirmed that combining INCIN (incineration) and FSUBS (fuel substitution) into one term, CMBST (combustion) made no substantive change to the promulgated standards, and, therefore, did not require notice and comment. The Agency's leaving out part 265, subpart O in the definition of CMBST (combustion), therefore, was an oversight that is being corrected in today's amendment. Furthermore, the parenthetical statement on page 48002 about part 265 interim status standards was not intended to be in the preamble, and should be disregarded.

F. Section 268.48

In the table of Universal Treatment Standards, it was footnoted that zinc was not considered an ''underlying hazardous constituent'' in characteristic wastes, according to the definition at 268.2(i). Vanadium also is not considered an underlying hazardous constituent in characteristic wastes, and thus, is appropriately footnoted in this table in today's amendment.

G. Appendix X to Part 268

As was mentioned in the amendment for 268.7(a)(8), EPA modified the alternative treatment standards for lab packs from identifying the wastes that can be included in lab packs to specifying those wastes that are prohibited from being placed in lab packs. As explained earlier in this rule, the language of the § 268.7(a)(8) certification is being changed in today's rule. Appendix X is also being changed to include the revised certification language for the convenience of the reader.

III. Clarifications

A. Clarification of State Authority Policy for UTS

The Universal Treatment Standards (UTS) were promulgated in the Phase II final rule pursuant to HSWA authority. In most cases UTS are the same levels as the previous LDR treatment standards, while about forty percent of the levels went up or down. In most of these cases, the change in the limits actually reflect adjustments in the limits of analytical detection, thus actual treatment will likely continue to destroy or remove organics to nondetectable levels. Even in those cases where the level has changed, the technology basis of the treatment standard has not. Therefore the changes to the treatment standards should not be viewed as more or less stringent.

Concern has been raised regarding how the UTS should apply in States authorized for the LDRs; specifically, what treatment standards must be met

by a facility located in a LDR-authorized State: the Phase II UTS levels, or the treatment standards in a State's authorized RCRA program? An additional concern is whether the authorized States would lose their ability to implement their LDR treatment standards if they were superseded by the UTS.

A memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Waste Management Division Directors, announced that the new UTS are neither more nor less stringent than the previous standards. Therefore, the new standards do not supersede existing standards in States authorized. States authorized for the LDRs for some or all waste streams would continue to implement the treatment standards for the streams for which they are authorized. The new UTS do not apply, for those waste streams, until the State has incorporated them into State law. EPA strongly urges States to implement the new UTS standards as soon as possible, both for simplicity of implementation and national consistency. In any case, State law (as interpreted by the State) would determine which standards applied. This approach would avoid the dual regulatory problem which would occur during the time before new HSWA requirements are adopted and authorized in the State.

EPA has a strong interest in uniformity and consistency of regulations and believes that the improvements in the UTS meet these objectives. Thus, States are encouraged to adopt and apply for authorization of the Phase II LDR rule. States that are currently authorized for portions of the LDRs may submit an abbreviated authorization revision application for the UTS. Details about what would be required for this abbreviated authorization are in the memorandum, which can be obtained by calling the RCRA docket.

It should be noted that the Agency, generally, is not relinquishing its statutory responsibility to implement significant new HSWA rules in States as soon as the rules become effective. The new approach set out in the memorandum is reserved only for areas of the hazardous waste program already authorized and regulated by the States, not new areas of the HSWA regulations. For example, the Phase II rule established treatment standards for several newly listed wastes; these new requirements are immediately effective in the States and will be enforced by EPA.

B. Flowchart Clarification

EPA is clarifying in today's amendment the Phase II flowchart entitled, ''Implementation of Key Phase II LDRs,'' at 59 FR 48018. The second block from the bottom left poses the question, ''Is the waste a mixture of a newly identified TC organic waste (D012–43) with a prohibited listed waste . . .'' This language is not correct and should read in full: ''Is the waste a prohibited listed waste, or one of the newly listed Phase II wastes, that also exhibits an organic toxicity characteristic?''

Another clarification is being made on page 48021, in the first diamond. Questions have been raised as to whether the ''constituents'' mentioned there include underlying hazardous constituents. No, ''constituents'' does not include UHCs. The wording inside the diamond should say ''Does the treatment standard for the listed waste include the treatment standard for the constituent that causes the waste to exhibit the characteristic?''

C. Telephone Number Correction

At 59 FR 47983, Richard Kinch's name appeared as an EPA contact for ''other information'' about the Phase II final rule. The phone number provided in the Phase II rule, (703) 308–8414, is incorrect; Mr. Kinch's telephone number is (703) 308–8434.

IV. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies requirements already in effect by correcting a number of errors in the September 19, 1994 final rule (59 FR 47982). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective. Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

V. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is ''significant'' and, therefore, subject to review under the Executive Order. Due to the nature of this regulation (technical correction), it is not ''significant''; therefore, no Executive Order 12866 review is required.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Peter Roberts,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended to read as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. In § 268.2, paragraph (i) is revised to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(i) *Underlying hazardous constituent* means any constituent listed in § 268.48, Table UTS—Universal Treatment Standards, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standards.

3. Section 268.7 is amended by revising the introductory text of paragraphs (a)(1) and (d); revising paragraphs (a)(1)(ii); (a)(1)(iv), (a)(1)(v), (a)(2)(i)(B); (a)(3)(vi); (a)(8); (b)(4)(ii); and (d)(1); and by adding paragraphs (a)(1)(vi) and (a)(3)(vii) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in subpart D of this part or it exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing. The notice must include the following information:

* * * * *

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents,

for wastes F001–F005, F039, D001, D002, D012–D043 and in § 268.32 or RCRA section 3004(d). Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as ''D003 reactive cyanide''), if applicable;

* * * * *

(iv) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: ''This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45;''

(v) The waste analysis data, where available; and,

(vi) The date the waste is subject to the prohibitions.

(2) * * *

(i) * * *

(B) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, D012–D043 and § 268.32 or RCRA section 3004(d). Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as ''D003 reactive cyanide''), if applicable;

* * * * *

(3) * * *

(vi) For hazardous debris when using the treatment standards for the contaminating waste(s) in § 268.40: the requirements described in paragraphs (a)(3) (i), (ii), (iii), (iv), and (vii) of this section; and,

(vii) The date the waste is subject to the prohibitions.

* * * * *

(8) If a generator is managing a lab pack that contains none of the wastes specified in appendix IV of part 268, and wishes to use the alternative treatment standard under § 268.42(c), with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section, except that underlying hazardous constituents need not be determined. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack does not contain any wastes identified at Appendix IV to part 268. I am aware that there are significant penalties for submitting a false certification including possibility of fine or imprisonment.

* * * * *

(b) * * *

(4) * * *

(ii) The waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, D012–D043 and in § 268.32 or RCRA section 3004(d). Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f), and indicate the subcategory of the waste (such as D003 reactive cyanide), if applicable.

* * * * *

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

(1) A one-time notification, including the following information, must be submitted to the EPA Regional hazardous waste management division director (or his designated representative) or State authorized to implement part 268 requirements, or State authorized to implement part 268 requirements:

* * * * *

4. Section 268.9 is amended by revising paragraph (a) and paragraph (d)(2)(i) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste listed in part 261, subpart D operates in lieu of the treatment standard for the waste under part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the characteristic of corrosivity (D002), and is prohibited under § 268.37; or that his waste displays the characteristic of toxicity (D012–D043), and is prohibited under § 268.38, the generator must determine the underlying hazardous constituents (as defined in § 268.2), in the D001, D002, or D012–D043 wastes.

* * * * *

(d) * * *

(2) * * *

(i) If treatment removes the characteristic but does not treat underlying hazardous constituents, then the certification found in § 268.7(b)(5)(iv) applies.

* * * * *

Subpart D—Treatment Standards

5. Section 268.40 is amended by revising the table ''Treatment Standards for Hazardous Wastes'' to read as follows:

§ 268.40 Applicability of Treatment Standards.

* * * * *

BILLING CODE 6560–50–P

Treatment Standards for Hazardous Wastes

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D001	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory, that are managed in non-CWA/ non-CWA-equivalent/non-Class I SDWA systems.	NA	NA	DEACT and meet §268.48 standards; or RORGS; or CMBST	DEACT and meet §268.48 standards; or RORGS; or CMBST
	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory, that are managed in CWA/CWA-equivalent/Class I SDWA systems.	NA	NA	DEACT	DEACT
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1) - Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; or CMBST
D002	Corrosive Characteristic Wastes that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	NA	NA	DEACT and meet §268.48 standards	DEACT and meet §268.48 standards
	Corrosive Characteristic Wastes that are managed in CWA, CWA-equivalent, or Class I SDWA systems.	NA	NA	DEACT	DEACT
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-97-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
D003	Reactive Sulfides Subcategory based on 261.23(a)(5).	NA	NA	DEACT	DEACT
	Explosives Subcategory based on 261.23(a)(6), (7), and (8).	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on 261.23(a)(1).	NA	NA	DEACT	DEACT

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
	Water Reactive Subcategory based on 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT
	Reactive Cyanides Subcategory based on 261.23(a)(5).	Cyanides (Total)[7]	57-12-5	Reserved	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440-38-2	5.0	5.0 mg/l EP
		Arsenic; alternate[6] standard for nonwastewaters only.	7440-38-2	NA	5.0 mg/l TCLP
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440-39-3	100	100 mg/l TCLP
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440-43-9	1.0	1.0 mg/l TCLP
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440-47-3	5.0	5.0 mg/l TCLP
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439-92-1	5.0	5.0 mg/l EP
		Lead; alternate[6] standard for nonwastewaters only	7439-92-1	NA	5.0 mg/l TCLP
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).). (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash.). (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	IMERC; OR RMERC

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	All D009 wastewaters.	Mercury	7439-97-6	0.20	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782-49-2	1.0	5.7 mg/l TCLP
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440-22-4	5.0	5.0 mg/l TCLP
D012	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or INCIN	0.13 and meet §268.48 standards
		Endrin aldehyde	7421-93-4	BIODG; or INCIN	0.13 and meet §268.48 standards
D013	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN; or INCIN	0.066 and meet §268.48 standards
		beta-BHC	319-85-7	CARBN; or INCIN	0.066 and meet §268.48 standards
		delta-BHC	319-86-8	CARBN; or INCIN	0.066 and meet §268.48 standards
		gamma-BHC (Lindane)	58-89-9	CARBN; or INCIN	0.066 and meet §268.48 standards
D014	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or INCIN	0.18 and meet §268.48 standards
D015	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or INCIN	2.6 and meet §268.48 standards
D016	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or INCIN	10 and meet §268.48 standards
D017	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or INCIN	7.9 and meet §268.48 standards

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D018	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Benzene	71-43-2	0.14 and meet §268.48 standards	10 and meet §268.48 standards
D019	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Carbon tetrachloride	56-23-5	0.057 and meet §268.48 standards	6.0 and meet §268.48 standards
D020	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet §268.48 standards	0.26 and meet §268.48 standards)
D021	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlorobenzene	108-90-7	0.057 and meet §268.48 standards	6.0 and meet §268.48 standards
D022	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chloroform	67-66-3	0.046 and meet §268.48 standards	6.0 and meet §268.48 standards
D023	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	o-Cresol	95-48-7	0.11 and meet §268.48 standards	5.6 and meet §268.48 standards
D024	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet §268.48 standards	5.6 and meet §268.48 standards
D025	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet §268.48 standards	5.6 and meet §268.48 standards
D026	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet §268.48 standards	11.2 and meet §268.48 standards
D027	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet §268.48 standards	6.0 and meet §268.48 standards
D028	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,2-Dichloroethane	107-06-2	0.21 and meet §268.48 standards	6.0 and meet §268.48 standards
D029	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,1-Dichloroethylene	75-35-4	0.025 and meet §268.48 standards	6.0 and meet §268.48 standards
D030	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4-Dinitrotoluene	121-14-2	0.32 and meet §268.48 standards	140 and meet §268.48 standards
D031	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Heptachlor	76-44-8	0.0012 and meet §268.48 standards	0.066 and meet §268.48 standards

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Heptachlor epoxide	1024-57-3	0.016 and meet §268.48 standards	0.066 and meet §268.48 standards
D032	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobenzene	118-74-1	0.055 and meet §268.48 standards	10 and meet §268.48 standards
D033	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobutadiene	87-68-3	0.055 and meet §268.48 standards	5.6 and meet §268.48 standards
D034	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachloroethane	67-72-1	0.055 and meet §268.48 standards	30 and meet §268.48 standards
D035	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Methyl ethyl ketone	78-93-3	0.28 and meet §268.48 standards	36 and meet §268.48 standards
D036	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Nitrobenzene	98-95-3	0.068 and meet §268.48 standards	14 and meet §268.48 standards
D037	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pentachlorophenol	87-86-5	0.089 and meet §268.48 standards	7.4 and meet §268.48 standards
D038	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pyridine	110-86-1	0.014 and meet §268.48 standards	16 and meet §268.48 standards
D039	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Tetrachloroethylene	127-18-4	0.056 and meet §268.48 standards	6.0 and meet §268.48 standards
D040	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Trichloroethylene	79-01-6	0.054 and meet §268.48 standards	6.0 and meet §268.48 standards
D041	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet §268.48 standards	7.4 and meet §268.48 standards
D042	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet §268.48 standards	7.4 and meet §268.48 standards
D043	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Vinyl chloride	75-01-4	0.27 and meet §268.48 standards	6.0 and meet §268.48 standards

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F001, F002, F003, F004, & F005	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in § 261.31	Acetone	67-64-1	0.28	160
		Benzene	71-43-2	0.14	10
		n-Butyl alcohol	71-36-3	5.6	2.6
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Ethyl acetate	141-78-6	0.34	33
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		Isobutyl alcohol	78-83-1	5.6	170
		Methanol	67-56-1	5.6	NA
		Methylene chloride	75-9-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol. [formerly 268.41(c)]	Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
		Methanol	67-56-1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2-Nitropropane as the only listed F001-5 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	2-Ethoxyethanol	110-80-5	BIODG: or INCIN	INCIN
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022). Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §261.31 or §261.32.).	All F024 wastes	NA	INCIN	INCIN
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Methylene chloride	75-9-2	0.089	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	96-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		Aniline	62-53-3	0.81	14

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chloroform	67-66-3	0.046	6.0
		bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
		p-Chloro-m-cresol	59-50-7	0.018	14
		Chloromethane (Methyl chloride)	74-87-3	0.19	30
		2-Chloronaphthalene	91-58-7	0.055	5.6
		2-Chlorophenol	95-57-8	0.044	5.7
		3-Chloropropylene	107-05-1	0.036	30
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cyclohexanone	108-94-1	0.36	NA
		1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		Dibromomethane	74-95-3	0.11	15
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	NA	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1-31-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosafrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachloronitrobenzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		oluene	108-88-3	0.080	10
		Toxaphene	8001-35-2	0.0095	2.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Bromoform (Tribromomethane)	75-25-2	0.63	15
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		1,2,3-Trichloropropane	96-18-4	0.85	30
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
		Vinyl chloride	75-01-4	0.27	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Sulfide	8496-25-8	14	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		1,2,3-Trichloropropane	96-18-4	0.85	30
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75-00-3	0.27	6.0
		Chloromethane	74-87-3	0.19	NA
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	1,2-Dichloroethane	107-06-2	0.21	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Toluene	108-88-3	0.080	10
		Acetophenone	96-86-2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or INCIN	INCIN
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	INCIN	INCIN
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or INCIN	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4
		Anthracene	120-12-7	NA	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioc acid in the production of phorate.	NA	NA	CARBN; or INCIN	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	127-18-4	0.056	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water form TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K060	Ammonia still lime sludge from coking operations.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	2.1 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	7.6 mg/l TCLP
		Beryllium	7440-41-7	NA	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	NA	0.16 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Thallium	NA	NA	0.078 mg/l TCLP
		Zinc	7440-66-6	NA	5.3 mg/l TCLP
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
K069	Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters.	Mercury	7439-97-6	0.15	NA
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160
		Acetophenone	96-86-2	0.010	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K087	Decanter tank tar sludge from coking operations.	Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88-75-5	0.028	13
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BOIDG fb CARBN	INCIN
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR INCIN	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotolune.	NA	NA	CARBN; or INCIN	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		NA	NA	CARBN; or INCIN	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or INCIN	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-2-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)flouranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
P001	Warfarin, & salts, when present at concentrations greater than 0.3%	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440-39-3	NA	7.6 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P015	Beryllium dust	Beryllium	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542-88-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75-15-0	3.8	INCIN
		Carbon disulfide; alternate[6] standard for nonwastewaters only	75-15-0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P024	p-Chloroaniline	p-Chloroaniline	106-47-8	0.46	16
P026	1-(o-Chlorophenyl)thiourea	1-(o-Chlorophenyl)thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P027	3-Chloropropionitrile	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P028	Benzyl chloride	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P029	Copper cyanide	Cyanides (Total)[7]	57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P031	Cyanogen	Cyanogen	460-19-5	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
P033	Cyanogen chloride	Cyanogen chloride	506-77-4	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P036	Dichlorophenylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P037	Dieldrin	Dieldrin	60-57-1	0.017	0.13
P038	Diethylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298-04-4	0.017	6.2
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2	CARBN; or INCIN	CMBST
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or INCIN	CMBST
P042	Epinephrine	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55-91-4	CARBN; or INCIN	CMBST
P044	Dimethoate	Dimethoate	60-51-5	CARBN; or INCIN	CMBST
P045	Thiofanox	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P046	alpha, alpha-Dimethylphenethylamine	alpha, alpha-Dimethylphenethylamine	122-09-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	543-52-1	0.28	160
	4,6-Dinitro-o-cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28-5	0.12	160
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P050	Endosulfan	Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
P051	Endrin	Endrin	72-20-8	0.0028	0.13

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Endrin aldehyde	7421-93-4	0.025	0.13
P054	Aziridine	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P056	Fluorine	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P059	Heptachlor	Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
P060	Isodrin	Isodrin	465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757-58-4	CARBN; or INCIN	CMBST
P063	Hydrogen cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P065	P065 (mercury fulminate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC
	P065 (mercury fulminate) nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury	7339-97-6	NA	RMERC
	P065 (mercury fulminate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P065 (mercury fulminate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All P065 (mercury fulminate) wastewaters.	Mercury	7439-97-6	0.15	NA
P066	Methomyl	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P067	2-Methyl-aziridine	2-Methyl-aziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P069	2-Methyllactonitrile	2-Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P071	Methyl parathion	Methyl parathion	298-00-0	0.014	4.6
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or INCIN	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6
P092	P092 (phenyl mercuric acetate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P092 (phenyl mercuric acetate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
	All P092 (phenyl mercuric acetate) wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiourea	Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P104	Silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or INCIN	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.37 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or INCIN	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P121	Zinc cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	INCIN
		Acetonitrile; alternate[8] standard for nonwastewaters only	75-05-8	NA	1.8
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U012	Aniline	Aniline	62-53-3	0.81	14

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4
U023	Benzotrichloride	Benzotrichloride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494-03-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	39638-32-9	(WETOX or CHOXD) fb CARBN; or INCIN	7.2
U028	bis(2-Ethylhexyl) phthalate	bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-83-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	INCIN
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	INCIN
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
U052	Cresols (Cresylic acid)	o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate[6] standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN; or INCIN	CMBST
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o-p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; or INCIN	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U094	7,12-Dimethylbenz(a)anthracene	7,12-Dimethylbenz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
		1,4-Dioxane; alternate[6] standard for nonwastewaters only	123-91-1	NA	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
		1,2-Diphenylhydrazine; alternate[6] standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or INCIN	CHOXD; or INCIN
		Ethylene oxide; alternate[6] standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; DIODG; or INCIN	CHOXD; CHRED; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or INCIN	CHOXD; CHRED; or INCIN.
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U144	Lead acetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U151	U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
		Methanol; alternate[6] set of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro N-nitrosoguanidine	N-Methyl N'-nitro N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U167	1-Naphthylamine	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U168	2-Naphthylamine	2-Naphthylamine	91-59-8	0.52	INCIN
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	930-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
		Pentachloroethane; alternate[6] standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U190	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U202	Saccharin and salts	Saccharin	81-07-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U203	Safrole	Safrole	94-59-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U205	Selenium sulfide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or INCIN	CMBST
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U223	Toluene diisocyanate	Toluene diisocyanate	26471-62-5	CARBN; or INCIN	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)-phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-79-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U239	Xylenes	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid)	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
	2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters		NA	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U249	Zinc phosphide, Zn_3P_2, when present at concentrations of 10% or less	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U328	o-Toluidine	o-Toluidine	95-53-4	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN.	INCIN; or Thermal Destruction
U353	p-Toluidine	p-Toluidine	106-49-0	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	INCIN; or Thermal Destruction
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST

BILLING CODE 6560–50–C

Notes to Table

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR part 268.42, Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

Note: NA means not applicable.

* * * * *

6. Section 268.42 is amended by revising the entry, ''CMBST'' in Table 1 to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS

Technology code	Description of technology-based standards
*	* * * *
CMBST	Combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264, subpart O; 40 CFR part 265, subpart O; or 40 CFR part 266, subpart H.
*	* * * *

* * * * *

7. Section 268.48 is amended by adding footnote 5 to the entry for Vanadium and revising the footnote to read as follows:

§ 268.48 Universal Treatment Standards.

* * * * *

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

* * * * *

[5] Vanadium and zinc are not ''underlying hazardous constituents'' in characteristic wastes, according to the definition at 268.2(i).

Note: NA means not applicable.

8. Appendix X to part 268 is amended by revising Certification Statement B to read as follows:

Appendix X to Part 268—Recordkeeping, Notification, and/or Certification Requirements.

* * * * *

Certification Statements

* * * * *

B. I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack does not contain any wastes identified at Appendix IV to part 268. I am aware that there are significant penalties for submitting a false certification including possibility of fine or imprisonment.

* * * * *

[FR Doc. 94–32118 Filed 12–30–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
January 3, 1995

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Ch. IX

Vacancy Rule: Intent To Establish a Negotiated Rulemaking Advisory Committee; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Ch. IX

[Docket No. N–94–3858; FR–3647–N–01]

RIN 2577–AB44

Vacancy Rule: Notice of Intent To Establish a Negotiated Rulemaking Advisory Committee and Notice of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to establish committee and of first meeting.

SUMMARY: The Department is considering the establishment of a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act (FACA). The purpose of the Committee would be to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units. The Committee would consist of representatives with a definable interest in the outcome of a proposed rule. HUD has prepared a charter and has initiated the requisite consultation process pursuant to the FACA, Executive Order 12838, and the implementing regulations.

DATES: Comments must be received by February 2, 1995.

If the charter is approved and a final determination is made to form the Committee, the first meeting will take place March 7–9, 1995, at a location to be announced in Washington, D.C.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed Committee and membership to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. The docket will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

The exact location of the first meeting on March 7–9, 1995, in Washington, D.C., will be announced in a subsequent **Federal Register** notice. Interested persons may also contact John Comerford, at the telephone number listed below, for this information.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872, or (202) 708–0850 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

HUD uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs) and Indian housing authorities (IHAs). (NOTE: the term housing agency (HA) is used by HUD to mean both PHAs and IHAs.) A regulatory description of the PFS can be found at 24 CFR 990. Although somewhat oversimplified, the amount of subsidy received by a HA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. HAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy can represent a substantial amount of revenue to a HA. In 1994, HUD distributed over $2.6 billion in operating subsidies to HAs.

The amount of dwelling rental income expected to be received is an important element in estimating subsidy eligibility. If rental income increases, it can generally be expected that operating subsidy eligibility will decrease. Likewise, if rental income decreases, an HA may receive a greater amount of subsidy. With some exceptions, HUD expects that HAs will project an occupancy level of 97 percent. This standard of 97 percent has been part of the PFS since its implementation in 1975.

That part of the PFS that deals with the projection of occupancy levels is known as the vacancy rule. The vacancy rule was published as a final rule in 1986 (51 FR 16835, May 7, 1986) and was intended to create incentives to HAs to return vacant units to occupancy and to maintain an occupancy level of 97 percent or higher. The rule provided these incentives by defining the conditions under which HUD would approve the use of an occupancy level of less than 97 percent; by specifying that an HA need not use an occupancy level higher than 97 percent; and, in recognition that a low number of vacancies may make it difficult for a small HA to reach 97 percent, by finding it acceptable to use an occupancy percentage based on having five or fewer vacant units.

In September 1991, HUD published a proposed rule (56 FR 45814, September 6, 1991) that would have made significant changes to the way in which vacant units would be considered eligible for operating subsidy. These changes included:

1. Increasing the occupancy standard from 97 percent to 98 percent;
2. Eliminating HUD-approved Comprehensive Occupancy Plans (COPs) as a means to justify using less than the occupancy standard;
3. Limiting the amount of subsidy paid for vacant units greater than 2 percent of the total number of units available for occupancy; and
4. Instituting a year-end review to compare the actual occupancy achieved with the projected occupancy percentage.

HUD argued that the changes were needed in order to correct what it perceived to be a situation in which full operating subsidies (100 percent of the Allowable Expense Level) being paid for vacant units in modernization programs or in COPs were greater than the direct operating expenses incurred by the HA. With regard to COPs, HUD stated that HAs with the most extensive and difficult vacancy problems were expected to develop five year COPs in 1986 and that most of these would soon expire.

Before the comment period on the proposed rule expired, Congress inserted language in HUD's Appropriation Act for 1992 (105 Stat. 757) that prohibited HUD from using appropriated funds to implement the proposed rule. Later, Congress included a provision in the Housing and Community Development Act of 1992 (section 114(b), Pub. L. 102–550; approved October 28, 1992) to require that any changes to the PFS relating to the payment of operating subsidies to vacant public housing units be accomplished only through the use of negotiated rulemaking procedures.

Regulatory Negotiation

Negotiated rulemaking, or ''reg-neg'', is a relatively new process for the Federal government and this will be the first use of the process at HUD. The basic concept of reg-neg is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster

constructive, creative, and acceptable solutions to difficult problems.

In July 1994, HUD entered into an Interagency Agreement with the Federal Mediation and Conciliation Service (FMCS) for convening services that would assist HUD in assessing the feasibility of assembling a balanced committee willing and able to work towards the goal of consensus on a proposed rule that is within HUD's statutory authority and addresses the issues of the interested parties. If HUD proceeded with the formation of a negotiated rulemaking committee, the Interagency Agreement called for FMCS to provide facilitating services.

The final convening report was provided to HUD in September 1994 and concludes that ''there is sufficient support to re-examine the vacancy rule through a regulatory negotiations process.'' A copy of the report titled *Convening Report for Regulatory-Negotiations on HUD's Vacancy Rule* is available in the office of the Rules Docket Clerk at the above address.

Chartering of Reg-Neg Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of the Federal Advisory Committee Act (FACA) when it establishes or uses a group of non-Federal members as a source of advice. Under FACA, HUD must receive a charter for this reg-neg committee. HUD has prepared a charter and sent it to the Office of Management and Budget for approval. If the charter is approved and schedule changes are not necessary as a result of public comments, the Committee will be convened in accordance with this notice.

Substantive Issues for Negotiation

The convening report identified the following issues to be addressed by the Committee:

- What constitutes an acceptable level of vacancies for housing authorities of various size classifications?
- What criteria should be used for providing less than full subsidy?
- What criteria should be used for providing full subsidy despite less than full occupancy?

Committee Membership

The FMCS conveners consulted and interviewed over 30 officials of various organizations interested and affected by the vacancy rule. Three national HA associations—the Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Redevelopment Officials (NAHRO), and the Public Housing Authority Directors Association (PHADA)—worked together to suggest executive directors of HAs for committee membership that would reflect a balance among HAs in terms of size and number of vacant units. The national associations committed themselves to serving as staff support to the HAs selected for membership.

After reviewing the recommendations of the FMCS conveners, HUD has tentatively identified the following list of possible interests and parties:

Housing Agencies

- Housing Authority of the City Of Houston, TX
- Cuyahoga Metropolitan Housing Authority, Cleveland, OH
- New York City, NY Housing Authority
- Newark, NJ Housing Authority
- Reno, NV Housing Authority
- Littleton, CO Housing Authority
- Housing Authority of the City of South Bend, IN

Tenant Organizations and Public Interest Groups

- National Tenants Organization, Ft. Pierce, FL
- Bromley Heath Tenant Management Corporation, Jamaica Plains, MA
- New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ
- National Housing Law Project, Washington, DC
- Housing and Development Law Institute, Washington, DC
- Illinois Association of Housing Authorities

Federal Government

- U.S. Department of Housing and Urban Development

Comments and suggestions on this tentative list of committee members are invited. HUD does not believe that each potentially affected organization or individual must necessarily have its own representative. However, HUD must be satisfied that the group as a whole reflects a proper balance and mix of interests. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

Requests for Representation

If in response to this Notice, an additional individual or representative of an interest requests membership or representation on the committee, HUD, in consultation with the FMCS conveners, will determine whether that individual or representative will be added to the committee. Each additional nomination for membership on the committee must include the name of the nominee and a description of the interests the nominee would represent, evidence that the nominee is authorized to represent relevant parties, a written commitment that the nominee shall participate in good faith, and the reasons that the members proposed in this notice do not adequately represent the interests of the person submitting the nomination. HUD will make the decision on membership based on whether the individual or interest would be substantially affected by the proposed rule and whether the individual or interest is already adequately represented on the committee.

Final Notice Regarding Committee Establishment

After reviewing any comments on this Notice and any requests for representation, HUD will issue a final notice. That notice will announce the establishment of a Negotiated Rulemaking Advisory Committee, unless HUD's charter request is disapproved or HUD decides, based on comments and other relevant considerations, that such action is inappropriate.

Tentative Schedule

If the final determination is that the committee should be formed and negotiations started, HUD plans to hold the first meeting of the committee on March 7–9, 1995. On March 7, the meeting will start at 10:00 a.m. and run until completion; on March 8, the meeting will start at 9:00 a.m. and run until completion; and on March 9, the meeting will start at 9:00 a.m. and run until approximately 1:00 p.m. The exact location of the meeting in Washington, D.C., will be announced in a subsequent **Federal Register** notice. Interested persons may also contact John Comerford, at the telephone number listed above, for this information. The purpose of the meeting is to orient members to the reg-neg process, establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and begin to address the issues. This meeting is open to the public.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register** if time permits.

To prevent delays that might postpone timely issuance of a proposed rule, HUD intends to terminate the committee's activities if it does not reach consensus within 5 months of the first meeting. The process may end earlier if the FMCS conveners/facilitators believe that sufficient progress cannot be made or that an impasse has developed that cannot be resolved.

Authority: 42 U.S.C. 1437g, 3535(d).

Dated: December 20, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–32309 Filed 12–30–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
January 3, 1995

Part VII

The President

Executive Order 12944—Adjustments of Certain Rates of Pay and Allowances

Federal Register
Vol. 60, No. 1
Tuesday, January 3, 1995

Presidential Documents

Title 3—

The President

Executive Order 12944 of December 28, 1994

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101–194; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509; section 301(a) of Public Law 102–40; section 630(a) of Public Law 103–329; section 601 of Public Law 103–337; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5318, and 5382 of title 5, United States Code; section 3963 of title 22, United States Code; and section 461(a) of title 28, United States Code, it is hereby ordered as follows:

Section 1. *Statutory pay systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for senior executives in the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed services.* Pursuant to section 601 of Public Law 103–337, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)(1), as amended by section 601(c) of Public Law 103–337) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Interim geographic adjustments.* (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, employees under statutory pay systems covered under section 1 of this order and members of the United States Park Police who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which is attached hereto and made a part hereof.

(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General

Schedule employees, including the determination of what, if any, geographic adjustments shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

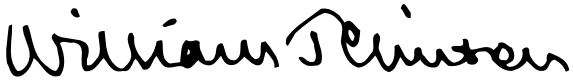
(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(4) The Secretary of the Interior shall prescribe regulations governing the application of interim geographic adjustments to members of the United States Park Police, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(c) The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 302(c)(1)(D) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, to extend the application of interim geographic adjustments shown on Schedule 9, upon the request of an agency head, to employees who would not otherwise be covered.

Sec. 6. *Effective dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1995. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1995.

Sec. 7. Executive Order No. 12826 of December 30, 1992, and Executive Order No. 12886 of December 23, 1993, are superseded.



THE WHITE HOUSE,
December 28, 1994.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

	1	2	3	4	5	6	7	8	9	10
GS-1	$12,141	$12,546	$12,949	$13,352	$13,757	$13,994	$14,391	$14,793	$14,811	$15,183
2	13,650	13,975	14,428	14,811	14,974	15,414	15,854	16,294	16,734	17,174
3	14,895	15,392	15,889	16,386	16,883	17,380	17,877	18,374	18,871	19,368
4	16,721	17,278	17,835	18,392	18,949	19,506	20,063	20,620	21,177	21,734
5	18,707	19,331	19,955	20,579	21,203	21,827	22,451	23,075	23,699	24,323
6	20,852	21,547	22,242	22,937	23,632	24,327	25,022	25,717	26,412	27,107
7	23,171	23,943	24,715	25,487	26,259	27,031	27,803	28,575	29,347	30,119
8	25,662	26,517	27,372	28,227	29,082	29,937	30,792	31,647	32,502	33,357
9	28,345	29,290	30,235	31,180	32,125	33,070	34,015	34,960	35,905	36,850
10	31,215	32,256	33,297	34,338	35,379	36,420	37,461	38,502	39,543	40,584
11	34,295	35,438	36,581	37,724	38,867	40,010	41,153	42,296	43,439	44,582
12	41,104	42,474	43,844	45,214	46,584	47,954	49,324	50,694	52,064	53,434
13	48,878	50,507	52,136	53,765	55,394	57,023	58,652	60,281	61,910	63,539
14	57,760	59,685	61,610	63,535	65,460	67,385	69,310	71,235	73,160	75,085
15	67,941	70,206	72,471	74,736	77,001	79,266	81,531	83,796	86,061	88,326

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$67,941	$55,053	$44,609	$36,147	$29,290	$26,184	$23,408	$20,926	$18,707
2	69,979	56,705	45,947	37,231	30,169	26,970	24,110	21,554	19,268
3	72,079	58,406	47,326	38,348	31,074	27,779	24,834	22,200	19,846
4	74,241	60,158	48,745	39,499	32,006	28,612	25,579	22,866	20,442
5	76,468	61,963	50,208	40,684	32,966	29,470	26,346	23,552	21,055
6	78,762	63,822	51,714	41,904	33,955	30,354	27,136	24,259	21,687
7	81,125	65,736	53,265	43,161	34,974	31,265	27,950	24,987	22,337
8	83,559	67,708	54,863	44,456	36,023	32,203	28,789	25,736	23,007
9	86,066	69,739	56,509	45,790	37,104	33,169	29,653	26,508	23,697
10	88,326	71,832	58,205	47,164	38,217	34,164	30,542	27,304	24,408
11	88,326	73,987	59,951	48,579	39,363	35,189	31,458	28,123	25,141
12	88,326	76,206	61,749	50,036	40,544	36,245	32,402	28,966	25,895
13	88,326	78,492	63,602	51,537	41,761	37,332	33,374	29,835	26,672
14	88,326	80,847	65,510	53,083	43,013	38,452	34,375	30,731	27,472

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$115,384
Associate Deputy Under Secretary for Health	110,516**
Assistant Under Secretaries for Health	107,259

	Minimum	Maximum
Medical Directors	$91,514	$103,718
Service Directors	79,684	98,960
Director, National Center for Preventive Health	67,941	98,960

Physician and Dentist Schedule

Director Grade	$79,684	$98,960
Executive Grade	73,579	93,774
Chief Grade	67,941	88,326
Senior Grade	57,760	75,085
Intermediate Grade	48,878	63,539
Full Grade	41,104	53,434
Associate Grade	34,295	44,582

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$67,941	$88,326
Senior Grade	57,760	75,085
Intermediate Grade	48,878	63,539
Full Grade	41,104	53,434
Associate Grade	34,295	44,582

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ***

Director Grade	$67,941	$88,326
Assistant Director Grade	57,760	75,085
Chief Grade	48,878	63,539
Senior Grade	41,104	53,434
Intermediate Grade	34,295	44,582
Full Grade	28,345	36,850
Associate Grade	24,392	31,709
Junior Grade	20,852	27,107

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Service. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level V of the Executive Schedule, which is $108,200.

*** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

ES-1	$ 92,900
ES-2	97,400
ES-3	101,800
ES-4	107,300
ES-5	111,800
ES-6	115,700

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

level I	$148,400
level II	133,600
level III	123,100
level IV	115,700
level V	108,200

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Vice President	$171,500
Senators	133,600
Members of the House of Representatives	133,600
Delegates to the House of Representatives	133,600
Resident Commissioner from Puerto Rico	133,600
President pro tempore of the Senate	148,400
Majority leader and minority leader of the Senate	148,400
Majority leader and minority leader of the House of Representatives	148,400
Speaker of the House of Representatives	171,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Chief Justice of the United States	$171,500
Associate Justices of the Supreme Court	164,100
Circuit Judges	141,700
District Judges	133,600
Judges of the Court of International Trade	133,600

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
(Effective on January 1, 1995)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10**	$6,978.30	$7,223.70	$7,223.70	$7,223.70	$7,223.70	$7,501.20	$7,501.20	$7,916.70	$7,916.70	$8,482.80	$8,482.80	$9,051.00*	$9,051.00*	$9,051.00*	$9,614.70*
O-9	6,184.50	6,346.50	6,481.80	6,481.80	6,481.80	6,646.50	6,646.50	6,923.10	6,923.10	7,501.20	7,501.20	7,916.70	7,916.70	7,916.70	8,482.80
O-8	5,601.60	5,769.60	5,906.40	5,906.40	5,906.40	6,346.50	6,346.50	6,646.50	6,646.50	6,923.10	7,223.70	7,501.20	7,686.00	7,686.00	7,686.00
O-7	4,654.50	4,971.00	4,971.00	4,971.00	5,193.90	5,193.90	5,494.80	5,494.80	5,769.60	6,346.50	6,783.00	6,783.00	6,783.00	6,783.00	6,783.00
O-6	3,449.70	3,790.20	4,038.60	4,038.60	4,038.60	4,038.60	4,038.60	4,038.60	4,176.00	4,836.30	5,082.90	5,193.90	5,494.80	5,680.80	5,959.50
O-5	2,759.10	3,239.70	3,463.80	3,463.80	3,463.80	3,463.80	3,568.50	3,760.80	4,012.80	4,313.10	4,560.00	4,698.60	4,862.70	4,862.70	4,862.70
O-4	2,325.60	2,832.00	3,021.00	3,021.00	3,077.10	3,212.70	3,432.00	3,624.90	3,790.20	3,956.70	4,065.60	4,065.60	4,065.60	4,065.60	4,065.60
O-3***	2,161.20	2,416.50	2,583.30	2,858.10	2,994.90	3,102.30	3,270.30	3,432.00	3,516.30	3,516.30	3,516.30	3,516.30	3,516.30	3,516.30	3,516.30
O-2***	1,884.60	2,058.00	2,472.90	2,556.00	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80
O-1***	1,636.20	1,703.10	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$2,858.10	$2,994.90	$3,102.30	$3,270.30	$3,432.00	$3,568.50	$3,568.50	$3,568.50	$3,568.50	$3,568.50	$3,568.50	$3,568.50
O-2E	-	-	-	2,556.00	2,608.80	2,691.60	2,832.00	2,940.60	3,021.00	3,021.00	3,021.00	3,021.00	3,021.00	3,021.00	3,021.00
O-1E	-	-	-	2,058.00	2,199.00	2,280.00	2,362.50	2,444.40	2,556.00	2,556.00	2,556.00	2,556.00	2,556.00	2,556.00	2,556.00

* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $10,608.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$3,757.80	$3,900.30	$4,013.10	$4,182.00
W-4	$2,202.00	$2,362.50	$2,362.50	$2,416.50	$2,526.30	$2,637.60	$2,748.30	$2,940.60	$3,077.10	$3,185.10	$3,270.30	3,375.90	3,489.00	3,597.60	3,760.80
W-3	2,001.30	2,170.80	2,170.80	2,199.00	2,224.50	2,387.40	2,526.30	2,608.80	2,691.60	2,772.00	2,858.10	2,969.70	3,077.10	3,077.10	3,185.10
W-2	1,752.90	1,896.30	1,896.30	1,951.50	2,058.00	2,170.80	2,253.30	2,335.80	2,416.50	2,501.40	2,583.30	2,664.60	2,772.00	2,772.00	2,772.00
W-1	1,460.10	1,674.30	1,674.30	1,814.10	1,896.30	1,977.60	2,058.00	2,143.20	2,224.50	2,307.30	2,387.40	2,472.90	2,472.90	2,472.90	2,472.90
ENLISTED MEMBERS															
E-9*	-	-	-	-	-	-	$2,561.70	$2,619.00	$2,678.40	$2,739.90	$2,801.40	$2,855.70	$3,005.40	$3,122.40	$3,297.90
E-8	-	-	-	-	-	$2,148.00	2,209.80	2,268.00	2,326.80	2,388.30	2,442.90	2,502.90	2,649.90	2,768.10	2,945.10
E-7	$1,499.70	$1,619.10	$1,678.80	$1,737.90	$1,797.00	1,854.30	1,913.70	1,973.40	2,062.50	2,121.00	2,179.80	2,208.30	2,356.50	2,473.80	2,649.90
E-6	1,290.30	1,406.40	1,464.90	1,527.30	1,584.60	1,641.60	1,701.90	1,789.50	1,845.60	1,905.30	1,934.10	1,934.10	1,934.10	1,934.10	1,934.10
E-5	1,132.20	1,232.40	1,292.40	1,348.50	1,437.30	1,495.80	1,554.90	1,612.20	1,641.60	1,641.60	1,641.60	1,641.60	1,641.60	1,641.60	1,641.60
E-4	1,056.00	1,115.40	1,181.10	1,272.00	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40
E-3	995.10	1,049.70	1,091.40	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60
E-2	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60	957.60
E-1**	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40	854.40
E-1***	790.20	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,008.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II--BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without dependents Full rate*	Partial rate**	With dependents
COMMISSIONED OFFICERS			
O-10	$749.40	$50.70	$922.50
O-9	749.40	50.70	922.50
O-8	749.40	50.70	922.50
O-7	749.40	50.70	922.50
O-6	687.60	39.60	830.70
O-5	662.10	33.00	800.70
O-4	613.80	26.70	705.90
O-3	492.00	22.20	584.10
O-2	390.00	17.70	498.90
O-1	328.50	13.20	445.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3E	$531.00	$22.20	$627.60
O-2E	451.50	17.70	568.40
O-1E	388.20	13.20	523.20
WARRANT OFFICERS			
W-5	$623.40	$25.20	$681.30
W-4	553.80	25.20	624.60
W-3	465.30	20.70	572.40
W-2	413.10	15.90	526.50
W-1	345.90	13.80	455.40
ENLISTED MEMBERS			
E-9	$454.80	$18.60	$599.40
E-8	417.60	15.30	552.60
E-7	356.40	12.00	513.00
E-6	322.80	9.90	474.30
E-5	297.60	8.70	426.30
E-4	258.90	8.10	370.80
E-3	254.10	7.80	345.00
E-2	206.40	7.20	328.50
E-1	183.90	6.90	328.50

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by section 403 of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under section 403(b) or (c) of title 37, United States Code, are not entitled to the full rate of basic allowance for quarters, is authorized by section 1009(c)(2) of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

Part III--BASIC ALLOWANCE FOR SUBSISTENCE

Officers (per month)	$146.16

Enlisted Members (per day):

	E-1 (less than 4 months of active duty)	All Other Enlisted
When on leave or authorized to mess separately	$6.44	$ 6.98
When rations in-kind are not available	7.26	7.87
When assigned to duty under emergency conditions where no messing facilities of the United States are available	9.63	10.42

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, as amended by section 601(c) of Public Law 103-337, is $558.04.

SCHEDULE 9--INTERIM GEOGRAPHIC ADJUSTMENTS FOR CERTAIN EMPLOYEES IN SPECIFIED AREAS

(Effective the first day of the first applicable pay period beginning on or after January 1, 1995)

AREA	ADJUSTMENT RATE
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA Consolidated Metropolitan Statistical Area	8%
Los Angeles-Riverside-Orange County, CA Consolidated Metropolitan Statistical Area	8%

[FR Doc. 94–32388
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Vol. 60, No. 1

Tuesday, January 3, 1995

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
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0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
220–299	(869–022–00037–3)	28.00	Jan. 1, 1994
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–9)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–022–00054–3)	20.00	Apr. 1, 1994
200–239	(869–022–00055–1)	23.00	Apr. 1, 1994
240–End	(869–022–00056–0)	30.00	Apr. 1, 1994
18 Parts:			
1–149	(869–022–00057–8)	16.00	Apr. 1, 1994
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
280–399	(869–022–00059–4)	13.00	Apr. 1, 1994
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–022–00061–6)	39.00	Apr. 1, 1994
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–022–00064–1)	34.00	Apr. 1, 1994
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–022–00066–7)	16.00	Apr. 1, 1994
100–169	(869–022–00067–5)	21.00	Apr. 1, 1994
170–199	(869–022–00068–3)	21.00	Apr. 1, 1994
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–022–00070–5)	36.00	Apr. 1, 1994
500–599	(869–022–00071–3)	16.00	Apr. 1, 1994
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–022–00077–2)	21.00	Apr. 1, 1994
24 Parts:			
0–199	(869–022–00078–1)	36.00	Apr. 1, 1994
200–499	(869–022–00079–9)	38.00	Apr. 1, 1994
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–022–00081–1)	39.00	Apr. 1, 1994
1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
25	(869–022–00083–7)	32.00	Apr. 1, 1994
26 Parts:			
§§ 1.0-1–1.60	(869–022–00084–5)	20.00	Apr. 1, 1994
§§ 1.61–1.169	(869–022–00085–3)	33.00	Apr. 1, 1994
§§ 1.170–1.300	(869–022–00086–1)	24.00	Apr. 1, 1994
§§ 1.301–1.400	(869–022–00087–0)	17.00	Apr. 1, 1994
§§ 1.401–1.440	(869–022–00088–8)	30.00	Apr. 1, 1994
§§ 1.441-1.500	(869-022-00089-6)	22.00	Apr. 1, 1994
§§ 1.501–1.640	(869–022–00090–0)	21.00	Apr. 1, 1994
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–022–00092–6)	26.00	Apr. 1, 1994
§§ 1.908–1.1000	(869–022–00093–4)	27.00	Apr. 1, 1994
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(869–022–00095–1)	32.00	Apr. 1, 1994
2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–022–00097–7)	18.00	Apr. 1, 1994
40–49	(869–022–00098–4)	14.00	Apr. 1, 1994
50–299	(869–022–00099–3)	14.00	Apr. 1, 1994
300–499	(869–022–00100–1)	24.00	Apr. 1, 1994
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–022–00102–7)	8.00	Apr. 1, 1994
27 Parts:			
1–199	(869–022–00103–5)	36.00	Apr. 1, 1994
200–End	(869–022–00104–3)	13.00	Apr. 1, 1994
28 Parts:			
1-42	(869–022–00105–1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
*1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–022–00124–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
*300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–022–00133–7)	12.00	July 1, 1994
36 Parts:			
1–199	(869–022–00134–5)	15.00	July 1, 1994
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–019–00140–9)	39.00	July 1, 1993
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–019–00144–1)	29.00	July 1, 1993
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–019–00146–8)	39.00	July 1, 1993
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–019–00153–1)	28.00	July 1, 1993
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–019–00160–3)	24.00	Oct. 1, 1993
400–429	(869–019–00161–1)	25.00	Oct. 1, 1993
430–End	(869–019–00162–0)	36.00	Oct. 1, 1993
43 Parts:			
1–999	(869–019–00163–8)	23.00	Oct. 1, 1993
1000–3999	(869–019–00164–6)	32.00	Oct. 1, 1993
4000–End	(869–019–00165–4)	14.00	Oct. 1, 1993
44	(869–019–00166–2)	27.00	Oct. 1, 1993
45 Parts:			
1–199	(869–019–00167–1)	22.00	Oct. 1, 1993
200–499	(869–019–00168–9)	15.00	Oct. 1, 1993
500–1199	(869–019–00169–7)	30.00	Oct. 1, 1993
1200–End	(869–019–00170–1)	22.00	Oct. 1, 1993
46 Parts:			
1–40	(869–019–00171–9)	18.00	Oct. 1, 1993
41–69	(869–019–00172–7)	16.00	Oct. 1, 1993
70–89	(869–019–00173–5)	8.50	Oct. 1, 1993
90–139	(869–019–00174–3)	15.00	Oct. 1, 1993
140–155	(869–019–00175–1)	12.00	Oct. 1, 1993
156–165	(869–019–00176–0)	17.00	Oct. 1, 1993
166–199	(869–019–00177–8)	17.00	Oct. 1, 1993
200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
500–End	(869–019–00179–4)	15.00	Oct. 1, 1993
47 Parts:			
0–19	(869–019–00180–8)	24.00	Oct. 1, 1993
20–39	(869–019–00181–6)	24.00	Oct. 1, 1993
40–69	(869–019–00182–4)	14.00	Oct. 1, 1993
70–79	(869–019–00183–2)	23.00	Oct. 1, 1993
80–End	(869–019–00184–1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1–51)	(869–019–00185–9)	36.00	Oct. 1, 1993
1 (Parts 52–99)	(869–019–00186–7)	23.00	Oct. 1, 1993
2 (Parts 201–251)	(869–019–00187–5)	16.00	Oct. 1, 1993
2 (Parts 252–299)	(869–019–00188–3)	12.00	Oct. 1, 1993
3–6	(869–019–00189–1)	23.00	Oct. 1, 1993
7–14	(869–019–00190–5)	31.00	Oct. 1, 1993
15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
29–End	(869–019–00192–1)	17.00	Oct. 1, 1993
49 Parts:			
1–99	(869–019–00193–0)	23.00	Oct. 1, 1993
100–177	(869–019–00194–8)	30.00	Oct. 1, 1993
178–199	(869–019–00195–6)	20.00	Oct. 1, 1993
200–399	(869–019–00196–4)	27.00	Oct. 1, 1993
400–999	(869–019–00197–2)	33.00	Oct. 1, 1993
1000–1199	(869–019–00198–1)	18.00	Oct. 1, 1993
1200–End	(869–019–00199–9)	22.00	Oct. 1, 1993
50 Parts:			
1–199	(869–019–00200–6)	20.00	Oct. 1, 1993
200–599	(869–019–00201–4)	21.00	Oct. 1, 1993
600–End	(869–019–00202–2)	22.00	Oct. 1, 1993
CFR Index and Findings Aids	(869–022–00053–5)	38.00	Jan. 1, 1994

Title	Stock Number	Price	Revision Date
Complete 1994 CFR set		883.00	1995
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994
Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

CFR ISSUANCES 1995
Complete Listing of 1994 Editions and Projected January, 1995 Editions

This list sets out the CFR issuances for the 1994 editions and projects the publication plans for the **January, 1995** quarter. A projected schedule that will include the **April, 1995** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1994–1995 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1994:

Title

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3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
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27–45
46–51 (Cover only)
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53–209
210–299
300–399
400–699
700–899
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1000–1059
1060–1119
1120–1199
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1940–1949
1950–1999
2000–End

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9 Parts:
1–199
200–End

10 Parts:
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51–199
200–399 (Cover only)
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
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15 Parts:
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300–799
800–End

16 Parts:
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150–999
1000–End

Titles revised as of April 1, 1994:

Title

17 Parts:
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240–End

18 Parts:
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150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
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100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
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300–End

23

24 Parts:
0–199
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500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
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600–End

27 Parts:
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Titles revised as of July 1, 1994:

Title

28 Parts:
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43–End

29 Parts:
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500–899
900–1899
1900–1910 (§§ 1901.1–1910.999)
1910 (§§ 1910.1000–End)
1911–1925
1926
1927–End

30 Parts:
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200–699
700–End

31 Parts:
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200–End

32 Parts:
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191–399
400–629
630–699 (Cover only)
700–799
800–End

33 Parts:
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125–199
200–End

34 Parts:
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300–399
400–End

35

36 Parts:
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200–End

37

38 Parts:
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41 Parts:

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Ch. 201–End

Titles revised as of October 1, 1994:

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4000–End

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1200–End

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80–End

48 Parts:
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Ch. 2 (201–251)
Ch. 2 (252–299)
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50 Parts:
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Projected January 1, 1995:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
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1200–End

6 [Reserved]

7 Parts:
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53–209
210–299
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1950–1999
2000–End

8

9 Parts:
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200–End

10 Parts:
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200–399 (Cover only)
400–499
500–End

11

12 Parts:
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200–219
220–299
300–499
500–599
600–End

13

14 Parts:
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60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1995

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 3	January 18	February 2	February 17	March 6	April 3
January 4	January 19	February 3	February 21	March 6	April 4
January 5	January 20	February 6	February 21	March 6	April 5
January 6	January 23	February 6	February 21	March 7	April 6
January 9	January 24	February 8	February 23	March 10	April 10
January 10	January 25	February 9	February 24	March 13	April 10
January 11	January 26	February 10	February 27	March 13	April 11
January 12	January 27	February 13	February 27	March 13	April 12
January 13	January 30	February 13	February 27	March 14	April 13
January 17	February 1	February 16	March 3	March 20	April 17
January 18	February 2	February 17	March 6	March 20	April 18
January 19	February 3	February 21	March 6	March 20	April 19
January 20	February 6	February 21	March 6	March 21	April 20
January 23	February 7	February 22	March 9	March 24	April 24
January 24	February 8	February 23	March 10	March 27	April 24
January 25	February 9	February 24	March 13	March 27	April 25
January 26	February 10	February 27	March 13	March 27	April 26
January 27	February 13	February 27	March 13	March 28	April 27
January 30	February 14	March 1	March 16	March 31	May 1
January 31	February 15	March 2	March 17	April 3	May 1