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Monday
August 5, 1996

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

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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

5 CFR Chapter LXVI

RIN 3095–AA60, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the National Archives and Records Administration

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for NARA employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch, as issued by OGE, with a requirement to obtain prior approval for outside employment.

EFFECTIVE DATE: These regulations are effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Runkel or Amy Krupsky at NARA, telephone 202–501–5535.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, 5 CFR 2635.105 authorizes agencies to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. NARA, with OGE's concurrence, has determined that the following supplemental rules being codified in a new chapter LXVI, part 7601 of 5 CFR are necessary to the success of its ethics program.

II. Analysis of the Regulations

Section 7601.101 General

Section 7601.101 explains that these regulations apply to all NARA employees and supplement the executive branch-wide standards of ethical conduct.

Section 7601.102 Prior Approval of Outside Employment

The standards, at 5 CFR 2635.803, specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees to obtain approval before engaging in outside employment or activities. NARA standards of conduct have long required employees to obtain written permission prior to engaging in outside employment. NARA has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, NARA has determined that it is necessary to the administration of its ethics program to continue to require such prior approval. This final rule, for codification at 5 CFR 7601.102, will require employees of NARA, other than special Government employees, who desire to engage in outside employment to obtain prior approval of such employment. The rule directs employees to the NARA Administrative Procedures Manual, ADMIN. 201, for information about the procedures to be followed in seeking approval of outside employment.

III. Matters of Regulatory Procedure

Administrative Procedure Act

NARA has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving as unnecessary, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules. The supplemental regulations are essentially a restatement of rules previously contained in the NARA standards of conduct contained in the NARA Administrative Procedures Manual, and NARA believes that it is important to a smooth transition from NARA's standards of conduct to the executive branch standards that these rules become effective as soon as possible. In addition, NARA believes that this rule is exempt as a procedural rule under 5 U.S.C. 553(b)(3)(A) of the Administrative Procedures Act.

Regulatory Flexibility Act

NARA has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only NARA employees.

Paperwork Reduction Act

NARA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Order 12866

This regulation is not a significant regulatory action under E.O. 12866, and is not required to be submitted to the Office of Management and Budget for review.

List of Subjects in 5 CFR Part 7601

Conflict of interests, Government employees.

Dated: July 22, 1996.

John W. Carlin,

Archivist of the United States.

Approved: July 26, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Archives and Records Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXVI, consisting of part 7601 to read as follows:

CHAPTER LXVI—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

PART 7601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.
7601.101 General.
7601.102 Prior approval of outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O.

12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by, E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 7601.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Archives and Records Administration (NARA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees of NARA are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 7601.102 Prior approval of outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, must obtain written approval before engaging in any outside employment, whether or not for compensation. Requests for approval shall be submitted in accordance with procedures set forth in the NARA Administrative Procedures Manual, ADMIN. 201, copies of which can be obtained from the NARA designated agency ethics official.

(b) *Standard of approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) *Scope of approval.* Approval will be for a period not to exceed three years, after which renewed approval must be sought in accordance with this section. Upon a significant change in the nature or scope of the outside employment or in the employee's NARA position, the employee shall submit a revised request for approval.

(d) *Definition of employment.* For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

[FR Doc. 96–19742 Filed 8–2–96; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV96–920–1 IFR]

Kiwifruit Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by September 4, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (209) 487–5901, FAX (209) 487–5906, or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the 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 entity orientation and compatibility.

There are approximately 500 producers of kiwifruit in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of kiwifruit producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 12, 1996, and unanimously recommended 1996–97 expenditures of $178,598 and an assessment rate of $0.0175 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $172,683. The assessment rate of $0.0175 per tray or tray equivalent is $0.0025 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $108,500 for administrative staff and field salaries, $19,748 for travel, food and lodging and $13,000 for insurance/health and accident. Budgeted expenses for these items in 1995–96 were $102,850 for administrative staff and field salaries, $19,798 for travel, food and lodging and $13,050 for insurance/health and accident.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 10.5 million trays or tray equivalents of kiwifruit which should provide $183,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all 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 AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 920.213 is added to read as follows:

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

§ 920.213 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.0175 per tray or tray equivalent is established for California kiwifruit.

Dated: July 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19853 Filed 8–2–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket No. FV96–932–3IFR]

Olives Grown in California and Imported Olives; Establishment of Limited-Use Style Olive Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the use of smaller olives in the production of limited-use styles for California olives. This rule is intended to help the California olive industry meet the increasing market needs for limited-use style olives by allowing more olives into market channels. It is expected that such increased use of olives will increase returns to growers.

As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this rule also changes the import regulation so that it conforms with the requirements established under the California olive marketing order.

DATES: Effective August 8, 1996; comments received by September 4, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, CA 93721, telephone (209) 487–5901; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone (202) 720–5127. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, 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.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives who are subject to regulation under the order during the current season, and there are about 1,200 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (913 CFR § 121.601) as those whose annual receipts are less than $500,000; and small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

This rule provides that smaller olives may be used in the production of limited-use styles (sliced, wedged, halved, or chopped) and will assist the California olive industry as well as importers meet increasing market needs for such olives. Annual domestic shipment data for olives indicates that for the last 5 seasons (1991 to 1995), limited use style shipments ranged from 35 percent to 41 percent of total annual domestic shipments. Absent this rule, many smaller California olives would have to be disposed of in less profitable, non-canning uses, and the smaller olives from other countries could not be imported into the United States. Both the California olive industry and olive importers should, thus, benefit from the issuance of this rule.

Based on these considerations, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Nearly all of the olives grown in the United States are produced in California. California olives are used for canned black ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or sliced, wedged, halved, or chopped styles used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 163,023 tons during the 1992–93 crop year. The California Olive Committee (committee), responsible for local administration of the order, indicated that total production for the 1995–96 crop year was 73,648 tons. While there is no estimate yet available for the 1996–97 crop, it is expected to be larger than the 1995–96 crop. Olive trees are subject to alternate bearing characteristics. This may result in high production one year and low the next, which can cause the total crop to vary greatly from year to year.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited-use styles, if

recommended by the committee and approved by the Secretary. The minimum sizes which can be authorized for limited uses were established in a 1971 amendment to the marketing order. The use of smaller olives for limited-use styles has been authorized in all but two crop years since the order was amended in 1971.

Under the marketing order, olives smaller than the prescribed minimum sizes which are authorized for limited uses must be disposed of in less-profitable, non-canning uses such as in frozen or acidified forms, or crushed for oil. Returns to producers are lower on fruit used for such purposes.

On June 13, 1996, the committee recommended, by a unanimous vote, establishment of quality and size regulations for limited-use size olives on a continuing basis pursuant to paragraph (a)(3) of § 932.52 of the order. This rule authorizes the use of additional olives for limited-use styles by relaxing the minimum sizes and making more olives available to handlers for limited-use styles.

The minimum sizes authorized for limited-use styles by this rule are smaller than those in effect last year, but are the same as those in effect for the 1991–92, 1992–93, and 1993–94 crop years.

The minimum sizes were reduced for the 1991–92 season after handler tests during the 1990–91 crop year confirmed the feasibility of using such fruit in limited-use styles. However, the minimum sizes for limited-use styles were increased slightly for the 1994–95 season to their previous levels. At that time, the handlers reported that the use of certain smaller olives in limited-use styles resulted in greater percentages of broken slices, wedges, and halves. The inconsistencies of the product, especially sliced olives, were not favored by the handlers' customers, and the committee recommended that use of these smaller olives for limited-use styles be discontinued. At its recent meeting, the committee recommended that limited-use sizes include the sizes authorized prior to the 1994–95 season.

There have been substantial changes to olive pitting and slicing equipment since the 1993–94 season. New machinery yields a greater percentage of unbroken slices, wedges, and halves by making such slices, wedges, and halves thicker and less likely to break. The new equipment also eliminates the problem of double-feeding, in which the pitter's feed wheel sends not one, but two, olives into the same pitting chamber, leaving one of the two olives unpitted. Because of these advances in the pitting and slicing equipment, the committee believes that undersized olives may again be utilized in limited-use styles effectively and to the satisfaction of the handlers' customers.

This rule will help growers and handlers meet the increasing market demand for limited-use style olives based upon current conditions. This demand can be illustrated in the increasing shipments of sliced olives in the previous three years. Shipments of sliced olives increased by 17.11 percent from the 1991–92 season to the 1992–93 season and by an additional 14.5 percent from the 1992–93 season to the 1993–94 season. According to handlers, such shipments continue to increase. The limited-use size requirements allow the use of sizes which would otherwise have to be disposed of for less-profitable, non-canning uses. Permitting the use of such smaller olives for limited-use styles would, therefore, improve grower returns and help handlers meet the increasing demand for limited-use style olives.

The authority for limited-use size olives has been subject to an annual reconsideration by the committee since first authorized in 1971. The committee now believes that making the authority for limited-use sizes continuous rather than annual will provide handlers an opportunity to plan for and develop new markets, thereby increasing the market share of domestically-produced olives. Such increased production of limited-use styles is expected to increase returns to growers.

Based on past production and marketing experience, the committee believes that handlers will need smaller olives to meet market demand for limited-use styles of canned olives. The committee also believes that handlers will need the smaller olives on a continuing basis to meet market demand for limited-use styles of canned olives.

To effectuate this change, § 932.153 of the order's rules and regulations is being revised. The committee recommended that these new minimum sizes become effective August 1, 1996, the beginning of the new crop year.

Limited-use size olives are too small to meet the minimum size requirements established for whole and whole pitted canned ripe olives. However, they are large enough to be suitable for processing into limited-use styles. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as in frozen or acidified forms, and crushed for oil.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for use in the production of limited-use styles at this time. As in past years, permitting the use of smaller olives in the production of limited-use styles will allow handlers to take advantage of the strong market for sliced, wedged, halved, and chopped olives. By permitting the use of such olives, handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements, thus increasing returns to growers.

Although these limited-use sizes are effective for an indefinite period, the committee will continue to meet prior to or during each crop year to consider recommendations for modification of these limited-use sizes. The dates and times of committee meetings are available from the committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate the Committee's recommendations and other available information to determine whether modification of the limited-use sizes is needed. Further rulemaking will be undertaken as necessary.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule allows smaller olives to be used in the production of limited-use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum quality and size requirements specified in *Olive Regulation 1* (7 CFR § 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Customs Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. ''Canned ripe olives'' means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, ''ripe'' and ''green-ripe'', as defined in the U.S. Standards for Grades of Canned Ripe Olives. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the

disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these quality and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited-use styles. Such authority would be on a continuing basis, rather than on an annual basis, as has been done in previous years.

This interim final rule also modifies paragraphs (b)(12)(i) through (b)(12)(v) by relaxing the minimum sizes of olive permitted to be imported for limited use.

Permitting the use of smaller olives in the production of limited-use styles will allow importers to better take advantage of the strong market for sliced, wedged, halved, and chopped style olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements.

The two largest exporters of ripe and bulk olives to the United States are Spain and Mexico, respectively. Imports comprise approximately 50 percent of total annual U.S. consumption.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The 1996–97 crop year begins on August 1, 1996, and this rule needs to become effective as soon as possible to cover as much of the crop as possible; (2) this rule relaxes minimum size requirements; (3) California olive handlers are aware of this rule as it was discussed and recommended at a public meeting; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed olives for limited uses.

(a) *Grade.* On and after August 1, 1996, any handler may use processed olives of the respective variety group in the production of limited-use styles of canned ripe olives if such olives were processed after July 31, 1996, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1996, any handler may use processed olives in the production of limited-use styles of canned ripe olives if such olives were harvested after August 1, 1996, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1996.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/105 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/105 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/180 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/205 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/205 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/180 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported after August 1, 1996, for limited-use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/105 pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as to variety or variety group of a size that not more than 35 percent of olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

* * * * *

Dated: July 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19855 Filed 8–2–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–87–AD; Amendment 39–9706; AD 96–16–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes, and Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, and Model F28 Mark 0100 series airplanes, that requires repetitive pre-load adjustments of the main landing gear (MLG) downlock-actuator. This AD also provides optional terminating action for the repetitive adjustments. This amendment is prompted by a report that, upon landing, the MLG of an airplane collapsed as a result of the lock toggle-links being pulled out of the over-center position by the downlock-actuator, which was due to the relative movement of the upper and lower side-stay members. The actions specified by this AD are intended to prevent collapse of the MLG, which could adversely affect the controllability of the airplane during landing.

DATES: Effective September 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, and Model F28 Mark 0100 series airplanes was published in the Federal Register on October 16, 1996 (60 FR 53552). That action proposed to require repetitive pre-load adjustments of the main landing gear (MLG) downlock-actuator.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter concurs with the proposed rule.

Request to Clarify the Description of Cause of the Unsafe Condition

One commenter, the airframe manufacturer, requests that the description of the unsafe condition be clarified. This commenter states that collapse of the MLG has only occurred under extreme inward side-load conditions, which are beyond the design ultimate load for landing conditions. The commenter asserts that the proposed wording of the unsafe condition suggests that the downlock-actuator itself removed the over- center position. The commenter further states that the investigation of the collapse of the MLG showed that the bottomed downlock-actuator was only an intermediate which transferred the relative movement between the upper and lower side stay to the lock toggle links. The commenter suggests that the wording of the unsafe condition [that appears prior to paragraph (a) of the AD] be revised as follows: To prevent the collapse of the main landing gear (MLG) under extreme inward side-load conditions (such as touching down at large ''crab'' angles), due to a lock toggle-link being pulled out of its over-center position by a bottomed MLG downlock-actuator, as a result of the relative movement of the upper and lower side stay members * * *.''

The FAA concurs that clarification is necessary and has revised the final rule accordingly.

Request to Extend the Compliance Time

One commenter requests that the compliance time be extended to allow the inspection within 12 months after the effective date of the AD, rather than 8 months as proposed. This will allow the inspection to be accomplished during regularly scheduled maintenance. The commenter states that the adoption of the proposed compliance time of 8 months would require operators to schedule special times for the accomplishment of this inspection at considerable expense beyond what was estimated in the cost impact of the proposed rule.

The FAA does not concur. In establishing the compliance times, the FAA considered not only the degree of urgency associated with the unsafe condition, but the manufacturer's recommended compliance time specified in the applicable service bulletins, and the foreign airworthiness authority's recommended compliance time of 8 months. In light of these factors, the FAA finds that a compliance time of 8 months is appropriate and should fall during a time of scheduled maintenance for the majority of affected operators. Paragraph (c) of the final rule, however, does provide affected operators with the opportunity to apply for an adjustment of the compliance time if data are presented to the FAA to justify such an adjustment.

Request to Delete Requirements for Repetitive Adjustments

One commenter points out that, since paragraph (a) of the proposed rule does not allow for a terminating action, the proposed rule would require operators to continue to record accomplishment of the AD requirements each time the adjustment is performed. This commenter contends that repetitive requirements in the AD are not necessary, since operators will revise their maintenance programs to include these repetitive pre-load adjustment requirements.

The FAA does not concur that the repetitive adjustment requirements should be deleted from the AD. However, the FAA has determined that incorporation of the repetitive adjustments into the FAA-approved maintenance program is an acceptable alternative method of compliance with this requirement. This alternative procedure will allow operators the option to choose either to conduct the repetitive adjustments in accordance with the AD, or to incorporate the requirement for repetitive adjustments into the their FAA-approved maintenance programs. The FAA has added a new paragraph (b) to the final rule to provide for this alternative.

Request to Revise Wording of Requirement for Repetitive Adjustments

One commenter requests that the last sentence of paragraph (a) of the proposed rule be either clarified or

deleted. That sentence would require repetitive pre-load adjustment of the MLG downlock-actuator at each scheduled maintenance, installation, or replacement of the MLG downlock-actuator. The commenter states that the term ''scheduled maintenance'' could include maintenance (such as for lubrication only) when a pre-load adjustment is not required. Additionally, this commenter points out that use of the word ''scheduled'' in this context also is incorrect, since the adjustment procedure is necessary any time an actuator is installed, regardless of whether the action is scheduled or unscheduled.

The FAA concurs and has deleted the words ''scheduled maintenance'' from paragraph (a) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 162 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $77,760, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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. 106(g), 40113, 44701.

39.13 [Amended]

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

96–16–05 Fokker: Amendment 39–9706. Docket 95–NM–87–AD.

Applicability: Applies to the airplanes specified in Table 1 of this AD (equipped as specified), certificated in any category:

TABLE 1

Airplane model	Equipped with
F28 Mark 1000, 2000, 3000, and 4000 series airplanes.	Dowty Aerospace main landing gear (MLG) downlock-actuators, part number (P/N) 200497–004 or P/N 200498–004 (on which Dowty Service Bulletin 32–17 *has not* been accomplished) or Dowty Aerospace main landing gear (MLG) downlock-actuators, P/N 200497–005 or 200498–005 (on which Dowty Service Bulletin 32–17 *has been* accomplished);
F28 Mark 0100 series airplanes	Dowty Aerospace MLG downlock-actuators, P/N 201218–005, –006, –007, or –008.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the collapse of the main landing gear (MLG) under extreme inward side-load conditions (such as touching down at large ''crab'' angles) due to a lock toggle-link being pulled out of its over-center position by a bottomed MLG downlock-actuator (as a result of the relative movement of the upper and lower side stay members), accomplish the following:

(a) Within 8 months after the effective date of this AD, perform a pre-load adjustment of the MLG downlock-actuator, in accordance with Fokker Service Bulletin SBF100–32–094, dated November 10, 1994, or Revision 1, dated March 15, 1995 (for Model F28 Mark 0100 series airplanes); or Fokker Service Bulletin F28/32–153, dated November 10, 1994 (for Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes); as applicable. Except as provided by paragraph (b) of this AD, repeat the adjustment thereafter at each installation or replacement of the MLG downlock-actuator.

(b) As an alternative to the repetitive adjustment requirements of paragraph (a) of this AD: Following the accomplishment of the initial pre-load adjustment of the MLG downlock-actuator required by paragraph (a) of this AD, incorporate into the FAA-approved maintenance program provisions for pre-load adjustment procedures of the MLG downlock-actuator, as described in the F28 Airplane Maintenance Manual (AMM), Temporary Revision dated November 1994, or F100 AMM Revision, dated September 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

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.

(d) 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.

(e) The adjustment shall be done in accordance with Fokker Service Bulletin SBF100–32–094, dated November 10, 1994; or Fokker Service Bulletin SBF100–32–094, Revision 1, dated March 15, 1995; or Fokker Service Bulletin F28/32–153, dated November 10, 1994; as applicable. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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.

(f) This amendment becomes effective on September 9, 1996.

Issued in Renton, Washington, on July 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19523 Filed 8–2 –96; 8:45 am]

BILLING CODE 4910–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 136, 137, and 139

[Docket No. 91N–100S]

RIN 0910–AA19

Food Standards: Amendment of Standards of Identity for Enriched Grain Products to Require Addition of Folic Acid; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of March 5, 1996 (61 FR 8781). The final rule amended the standards of identity for several enriched cereal-grain products and by cross-reference, the standards of identity for enriched bromated flour, enriched vegetable macaroni, and enriched vegetable noodle products, to require fortification of those cereal grain products with folic acid. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. No. 96–5014, appearing on page 8781 in the Federal Register of Tuesday, March 5, 1996, the following corrections are made:

1. On page 8781, in the third column, under the ''**SUPPLEMENTARY INFORMATION**'' caption, in the second paragraph, in the eighth line, ''consideration'' is corrected to read ''considerable''.

2. On page 8782, in the first column, in the fourteenth line, ''Health Claims'' is corrected to read ''folic acid health claims''; and beginning on the same line ''58 FR 23254 at 23256'' is corrected to read ''58 FR 53254 at 53256''; and in the nineteenth line,''the claims'' is corrected to read ''the folic acid health claims''.

3. On page 8783, in the first column, in the first full paragraph, in the second line from the bottom, ''folate'' is corrected to read ''folic acid''.

4. On page 8786, in the first column, in the first full paragraph, in the seventh line, the word ''direct'' is inserted after the word ''include'', and in the same page, in the third full paragraph, the last sentence in parenthesis is deleted.

5. On page 8788, in the third column, in the second full paragraph, in the fifth line, the word ''raises'' is removed and is reinserted in the sixth line, after the word ''request''.

6. On page 8794, in the third column, in the fifth full paragraph, in the ninth line, the last sentence is corrected to read:

The cost of the required label changes will vary with the compliance period. The estimated cost of the required label changes in the proposed rule was based on a compliance period of 1 year. However, this final rule changes the compliance period from 1 year to 2 years. This increase in the compliance period reduces the estimated cost of required label changes to $11 million. The cost of adding the required folic acid and the cost of testing are recurring costs that are not significantly affected by the change in the compliance period. Thus, the total one-time cost of relabeling these products is estimated to be $11 million and the recurring costs are estimated to be $6.5 million. These costs are extremely small relative to the estimated health benefits of this final rule.

7. On page 8795, in the first column, before ''*B. Benefits*'', the following paragraph is added:

''*Total Costs*. If fortification were to be at 70 μ/100 g, quantified costs for allowing 2 years for compliance are now estimated to be $16 million. If fortification were to be at 350 μg/100 g, quantified costs for allowing 2 years for compliance are now estimated to be $23.5 million. Again, FDA has declined to quantify the costs of neurologic effects due to masking of anemia of vitamin B_{12} deficiency.''

8. On page 8795, in the second column, under section 2.a, in the sixth line ''10 to 50 percent of'' is removed; on the same page, in the third column, under ''*C. Conclusion*'', in the second paragraph, in the third line ''$27 million'' is corrected to read ''$17.5 million''; in the same paragraph, beginning in the thirteenth line, ''should be approximately 25 percent of the first year cost'' is corrected to read ''is estimated to be approximately $7 million''; and in the third paragraph, in the second line, ''$27 million'' is corrected to read ''$17.5 million''.

Dated: July 25, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–19803 Filed 8–2–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–045]

RIN 2115–AE46

Special Local Regulations; City of Palm Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Palm Beach Offshore Grand Prix. The event will be held on August 10–11, 1996, from 9 a.m. to 4 p.m. EDT (Eastern Daylight Time). The race will take place in the Atlantic Ocean from Singer Island out to two and a half nautical miles offshore. During the event, race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. Therefore, these regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This section is effective on August 10–11, 1996, from 9 a.m. to 4 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: QM2 S.E. Fowler, project officer, U.S. Coast Guard Group Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days after publication. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining after the date of the event was finalized to publish proposed rules in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

Temporary special local regulations are being established for the Palm Beach Offshore Grand Prix. The event will be held on August 10–11, 1996, from 9 a.m. to 4 p.m. EDT. The Palm Beach Offshore Grand Prix Festival Inc. is sponsoring a high speed power boat race with approximately sixty race boats, ranging in length from 24 to 50 feet, participating in the event. The race will take place in the Atlantic Ocean from Singer Island out to two and a half nautical miles offshore. Several hundred spectator craft are anticipated in the area to watch the racing events. Due to the numerous spectator craft and race boats, these regulations are necessary to provide for the safety of life on the navigable waterways.

The first regulated area is established within the following points:

(a) 26–49.39N, 080–02.22W
(b) 26–49.39N, 080–00.92W
(c) 26–47.41N, 080–01.21W
(d) 26–46.80N, 080–01.35W
(e) 26–46.80N, 080–01.90W

All coordinates referenced use datum: NAD 1983. This area is effective from 9 a.m. to 4 p.m. EDT, on August 10, 1996.

A second regulated area is establish within the following points:

(a) 26–49.39N, 080–02.22W
(b) 26–49.39N, 079–59.32W
(c) 26–49.05N, 079–59.32W
(d) 26–47.38N, 080–01.23W
(e) 26–46.80N, 080–01.35W
(f) 26–46.80N, 080–01.90W

All coordinates referenced use datum: NAD 1983. This second regulated area is effective from 9 a.m. to 4 p.m. EDT, on August 11, 1996.

Entry into these regulated areas by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. The Patrol Commander is a commissioned, warrant, or petty officer of the United States Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated areas is prohibited for only 7 hours on each day of the event.

Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying from QM2 S. Fowler, Coast Guard Group Miami, Florida, (305) 535–4448. As a condition to the permit, the applicant is required to educate the operators of participant craft and spectator craft regarding the possible presence of manatees/sea turtles and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations: In consideration of the foregoing, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

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

2. A temporary § 100.35T96–045 is added to read as follows:

§ 100.35T96–045 Palm Beach Offshore Grand Prix; Palm Beach, FL.

(a) *Regulated Areas*—(1) *Regulated Area 1:* The regulated area corner points are established as follows:

(i) 26–49.39N, 080–02.22W
(ii) 26–49.39N, 080–00.92W
(iii) 26–47.41N, 080–01.21W
(iv) 26–46.80N, 080–01.35W
(v) 26–46.80N, 080–01.90W

All coordinates referenced use datum: NAD 1983.

(2) *Regulated Area 2:* The regulated area corner points established as follows:

(i) 26–49.39N, 080–02.22W
(ii) 26–49.39N, 079–59.32W
(iii) 26–49.05N, 079–59.32W
(iv) 26–47.38N, 080–01.23W
(v) 26–46.80N, 080–01.35W
(vi) 26–46.80N, 080–01.90W

All coordinates referenced use datum: NAD 1983.

(b) *Definitions*—(1) *Patrol Commander.* Patrol Commander is a commissioned, warrant, or petty officer of the United States Coast Guard who has been designated by the commander, Coast Guard Group Miami, Florida.

(c) *Effective dates*—(1) *Regulated Area 1.* This regulated area is effective from 9 a.m. to 4 p.m. EDT, on August 10, 1996.

(2) *Regulated Area 2.* This regulated area is effective from 9 a.m. to 4 p.m. EDT, on August 11, 1996.

(d) *Special local regulations*—(1) Entry into the regulated areas by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

Dated: July 11, 1996.

John W. Lockwood,

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

[FR Doc. 96–19749 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD09–96–003]

RIN 2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice; Direct final rule confirmation of effective date.

SUMMARY: On May 14, 1996, the Coast Guard published, in the Federal Register, a direct final rule, 61 FR 24235, CGD09–96–003. This direct final rule notified the public of the Coast Guard's intent to place the CSX Railroad bridge, mile 18.0 over the Saginaw River in Saginaw, MI, in a fixed status. The bridge will be locked in the closed position. The Coast Guard has not received any adverse comments or any notice of an intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 522–3993.

Dated: July 17, 1996.

G.F. Woolever,

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

[FR Doc. 96–19748 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1–96–068]

RIN 2115–AE84

Regulated Navigation Area: Boston Harbor, Spectacle Island, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) in the waters surrounding the west side of Spectacle Island, Boston Harbor, Boston, MA. Dredging operations are being conducted to ensure adequate depth is maintained for vessels operating in the area. This RNA will protect the sediment curtain from damage by passing vessels and increase safety of the workers by requiring all vessels in the regulated area to operate at a no-wake speed.

EFFECTIVE DATES; This temporary final rule is effective July 16, 1996, until August 16, 1996, Monday through Saturday, 24 hours per day.

FOR FURTHER INFORMATION CONTACT: LTJG John Buckley, Vessel and Waterway Management Division, Coast Guard Captain of the Port Boston, 455 Commercial Street, Boston, MA 02109–1045, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after Federal Register publication. The date the Massachusetts Highway Department provided notice of delays in the project left insufficient time to publish a NPRM or extend the previous RNA which expired on July 1, 1996. It is in the public interest to have the west side of Spectacle Island dredged and to have a no-wake zone established during operations. The actual water depth to the west of Spectacle Island is considerably less than the charted depth, making vessel movements in the area dangerous. Immediate action is needed to regulate vessel traffic in the vicinity of Spectacle Island to avoid groundings and enable dredging operations to continue. Comments were requested in the previous RNA and none were received.

Background and Purpose

Massachusetts Highway Department is conducting dredging operations in the waters off the west side of Spectacle Island. Spectacle Island is the deposit site for excavated material from the Central Artery/Tunnel project. As a result of this deposition and subsequent erosion and runoff, sediment has built up in the waters west of Spectacle Island. Due to sedimentation, the act water depth is considerably less than the charted depth, making vessel movements in the area dangerous. Spectacle Island receives regular tugboat and barge traffic in conjunction with the Central Artery Tunnel project. The dredging operation will remove the sediment in order to increase water depth for vessels operating in the area. A sediment curtain is required to be in place during the dredging operation to minimize damage to the environment. In order to minimizes damage to the environment and provide for the safety of personnel and vessels involved in the dredging operation, the Coast Guard deemed an RNA necessary.

The Coast Guard published a Regulated Navigation Area (CGD1–96–042) (which regulated vessel traffic from June 10, 1996, until July 1, 1996. The Massachusetts Highway Department informed the Coast Guard on or about June 29, 1996, that they had encountered two large concrete containers in the vicinity of the dredging operations and, consequently, would fail to meet their estimated project completion deadline. The Department requested an extension of the RNA. With such short notice it was not possible to extend the original RNA. A second Regulated Navigation Area is needed to protect the sediment curtain and ensure the safety of the workers.

Discussion of the Rule

The RNA includes all waters of Boston Harbor bounded by the western shore of Spectacle Island and the following coordinates: 42°19′35″N, 070°59′28″W; 42°19′30″N, 070°59′37″W; 42°19′09″N, 070°59′22″W; 42°19′11″N, 070°59′16″W. (NAD 1983) The boundaries are identical to those in the previous RNA for Boston Harbor, Spectacle Island.a

Several work boats and barges involved in the dredging will be operating within the RNA. Vessels transiting the RNA will be required to operate at a no-wake speed to minimize damage to the sediment curtain and protect workers aboard the work boats and barges. The dredging operation is scheduled to continue until August 16, 1996. Operations will be conducted 24 hours per day, Monday through Saturday.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this section to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The waters surrounding the west side of Spectacle Island are used by commuter vessels, commercial fishing vessels, commercial lobster vessels and recreational vessels. Due to the minimal time delay caused by the requirement to proceed at a no-wake speed, this regulation is not expected to have a significant impact on these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the above Regulatory Evaluation, this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2(e)(34)(g) of Commandant Instruction M16475.1B, (as amended by 59 FR 38654, July 29, 1994), this rule is a Regulated Navigation Area and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–068 is added to read as follows:

§ 165.T01–068 Regulated Navigation Area; Spectacle Island, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a Regulated Navigation Area: All waters of Boston Harbor bounded by the western shore of Spectacle Island and the following coordinates: 42°19′35″N, 070°59′28″W; 42°19′30″N, 070°59′37″W; 42°19′09″N, 070°59′22″W; 42°19′11″N, 070°59′16″W. (NAD 1983)

(b) *Effective date.* This section is effective Monday through Saturday, 24 hours per day, July 16, 1996 to August 16, 1996.

(c) *Regulations.* All vessels shall operate at no-wake speed.

Dated: July 16, 1996.

J. L. Linnon,

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

[FR Doc. 96–19747 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI45–01–7240a; FRL–5545–2]

Designation of Areas for Air Quality Planning Purposes; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: In this action the Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) submitted by the State of Michigan through the Michigan Department of Environmental Quality (MDEQ) on July 24, 1995 for the purpose of redesignating the portion of Wayne County currently designated as nonattainment to attainment status for the particulate matter National Ambient Air Quality Standard (NAAQS).

DATES: This ''direct final'' is effective on October 4, 1996, unless EPA receives adverse or critical comments by September 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of this SIP revision and EPA's analysis are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). (See 40 CFR § 50.6). The 24-hour primary PM standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year. The annual primary PM standard is 50 $\mu g/m^3$ expected annual arithmetic mean. The secondary PM standards are identical to the primary standards.

On August 7, 1987 (52 FR 29383), EPA identified the entire Wayne County, Michigan area as a PM ''Group I'' area of concern, i.e., an area with a strong likelihood of violating the PM NAAQS and requiring a substantial SIP revision. This Group I area was reduced in size on October 31, 1990 (55 FR 45799). The reduced area was subsequently designated as a moderate PM nonattainment area upon enactment of the Clean Air Act Amendments of 1990. 56 FR 56694 at 56705–706, 56714 (November 6, 1991).

II. Evaluation Criteria

Section 107(d)(3)(D) of the amended Clean Air Act (Act) allows the Governor

of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, the general preamble to Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), and a September 4, 1992 policy and guidance memorandum from John Calcagni entitled *Procedures for Processing Requests to Redesignate Areas to Attainment.* An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement must be permanent and enforceable;
4. The area has met all relevant requirements under section 110 and Part D of the Act;
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

Under a cover letter dated July 24, 1995 the State submitted a redesignation request for the Wayne County PM nonattainment area. A public hearing was held on March 2, 1995. The State did not receive any adverse comments during the public hearing or the 30-day comment period. The request was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittal was found to be complete and a letter dated October 5, 1995 was forwarded to the Director, Michigan Department of Environmental Quality (MDEQ), indicating the completeness of the submittal and the next steps to be taken in the review process. The following is a brief description of how the State's redesignation request meets the requirements of Section 107(d)(3)(E). A more detailed discussion is found within EPA's May 1, 1996 Technical Support Document (TSD), which is available at the Regional Office listed above.

1. Attainment of the PM NAAQS

A state must demonstrate that an area has attained the PM NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing peak PM concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. The data must represent the three consecutive years of complete ambient air quality monitoring data collected in accordance with EPA methodologies.

The Wayne County Air Quality Management Division operates three PM monitoring sites in the nonattainment area. National Chemical Services, a private company, also operates a site. The MDEQ submitted ambient air quality data and supporting documentation from each monitoring site for the 1985–1993 period demonstrating that the area has attained the PM NAAQS. This air quality data was quality assured and placed in AIRS. One exceedance of the 24-hour PM NAAQS was recorded in 1986, two in 1988, two in 1989, and one in 1992. No exceedances were recorded in 1987, 1990, 1991, and 1993. Although there was one exceedance in 1992, the number of expected exceedances for the 1991–1993 three-year period is one or less, and therefore, would not be considered a monitored violation of the PM NAAQS. Therefore, the State has adequately demonstrated, through ambient air quality data, that the PM NAAQS has been attained in Wayne County, with 1993 as the attainment year. Further, recent data shows that the area is continuing to attain the PM NAAQS.

2. State Implementation Plan Approval

Those States containing initial moderate PM nonattainment areas were required to submit by November 15, 1991 a SIP which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. On January 17, 1995 (60 FR 3346), EPA approved the Wayne County PM nonattainment area SIP originally submitted by the State on June 11, 1993 and revised on October 14, 1994.

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

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual, enforceable emission reductions.

The State provided a detailed discussion of the development of PM emission reductions during the attainment demonstration period of 1986–1993. The PM dispersion modeling conducted as part of the Wayne County PM SIP predicted that the control measures included in the SIP were sufficient to provide for attainment and maintenance of the PM NAAQS. The State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 2042.91 tons of PM as a result of implementing the federally enforceable control measures in the SIP.

4. Meeting Applicable Requirements of Section 110 and Part D of the Act

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 and of part D of the Act. The EPA interprets this to mean that for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request.

A. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Michigan SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. Title 40 CFR Part 52, subpart X, further evidences that the Michigan SIP was approved under section 110 of the Act and found that the SIP satisfied all Part D requirements.

B. Part D Requirements

Before a PM nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of Part D. Subpart 1 of Part D establishes the general requirements applicable to all nonattainment areas and subpart 4 of Part D establishes specific requirements applicable to PM nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory have been satisfied through the 1995 approval of the Wayne County PM SIP (60 FR 3346), the 1996 approval of the Wayne County PM contingency measures SIP (61 FR 8009), and the demonstration that the area is now attaining the standard. The requirements of the Part D—New Source Review (NSR) permit program will be replaced by the Part C—Prevention of Significant Deterioration (PSD) program once the area has been redesignated. Because the PSD program was delegated to the State of Michigan on September 10, 1979, and amended on November 7,

1983 and September 26, 1988, it will become fully effective immediately upon redesignation.

5. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 175(A) of the Act requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period.

The State of Michigan has adequately demonstrated attainment and maintenance of the PM NAAQS through the dispersion modeling submitted as part of the Wayne County PM attainment demonstration SIP. Although the modeling only projected PM emissions to the year 2005, protection of the NAAQS is assured beyond that because the State SIP includes permanent allowable PM emission limitations. Actual PM emissions are also generally less than the allowable PM emissions considered in the modeling. The maintenance plan for the Wayne County area also contains a commitment from the State to revise and submit a new maintenance plan within eight years of approval of this redesignation.

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM monitoring stations to demonstrate ongoing compliance with the PM NAAQS.

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). However, if an area has been able to attain the NAAQS without implementation of the Part D nonattainment SIP contingency measures, and the contingency plan includes a requirement that the State will implement all of the PM control measures which were contained in the SIP before redesignation to attainment, then the State can carry over into the area's maintenance plan the Part D SIP measures not previously implemented.

Under a cover later dated July 13, 1995, MDEQ submitted State Administrative Rule 336.1374 to satisfy the contingency measures requirements specified in both section 172(c)(9) and section 175(A) for the Wayne County PM nonattainment area. On March 1, 1996, EPA approved the rule into the Michigan SIP in a direct final rulemaking (61 FR 8009), which became effective on April 30, 1996. The State may use this rule as the maintenance plan contingency measures, because the State was able to attain the PM NAAQS with the limitations and control measures already contained in the SIP prior to promulgation of Rule 336.1374.

IV. Final Action

In this action, EPA is approving the State of Michigan's request to redesignate the Wayne County PM nonattainment area to attainment.

V. Miscellaneous

A. Comment and Approval Procedure

The EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, EPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on October 4, 1996, unless EPA receives adverse or critical comments by September 4, 1996.

If EPA receives comments adverse to or critical of the approval discussed above, EPA will withdraw this approval before its effective date by publishing a subsequent document which withdraws this final action. All public comments received will then be addressed in a subsequent final rulemaking action.

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, EPA hereby advises the public that this action will be effective on October 4, 1996.

B. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for a 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.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Act, 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 October 4, 1996. 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 Act, 42 U.S.C. 7607(b)(2)].

D. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Regulatory Flexibility

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 populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(e) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the

State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

G. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in this Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 16, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set forth in the preamble 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1173 is amended by adding a new paragraph (f) to read as follows:

§ 52.1173 Control strategy: particulates.

* * * * *

(f) On July 24, 1995, the Michigan Department of Natural Resources requested the redesignation of Wayne County to attainment of the National Ambient Air Quality Standard for particulate matter. The State's maintenance plan is complete and the redesignation satisfies all of the requirements of the Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323, the table entitled ''Michigan PM–10'' is revised to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—PM–10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Wayne County—The area bounded by Michigan Avenue from its intersection with I–75 west to I–94, I–94 southwest to Greenfield Road, Greenfield Road south to Schaefer Road, Schaefer Road south and east to Jefferson Avenue, Jefferson Avenue south (Biddle Avenue through the city of Wyandotte) to Sibley Avenue, Sibley Avenue west to Fort Street, Fort Street south to King Road, King Road east to Jefferson Avenue, Jefferson Avenue south to Helen Road, Helen Road east extended to Trenton Channel, Trenton Channel north to the Detroit River, the Detroit River north to the Ambassador Bridge, Ambassador Bridge to I–75, I–75 to Michigan Avenue.	October 4, 1996	Attainment		
Rest of State	11/15/90	Unclassifiable		

* * * * *

[FR Doc. 96–19785 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[FRL–5546–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Correction.

SUMMARY: On July 18, 1996, the Environmental Protection Agency (EPA or Agency) published a final rule granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or ''delist''), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§ 261.31 and

261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency concluded that UTA's petitioned waste will not adversely affect human health and the environment. Delisting levels for cadmium, chromium, lead, nickel, and cyanide which would be protective of human health and the environment were calculated and promulgated. This action addresses the fact that the calculated level of 9.6 mg/l of chromium in the TCLP extract is greater than the toxicity characteristic (TC) level of 5.0 mg/l (see 40 CFR 261.24). A waste exhibits the TC for chromium, and is, therefore, a hazardous waste, if its TCLP extract contains greater than or equal to 5.0 mg/l of chromium. Therefore, today's notice corrects the delisting level for chromium by requiring the concentration of chromium in a TCLP extract of UTA's petitioned waste to be less than 5.0 mg/l. This action also addresses the fact that the calculated level for cyanide was 19.2 mg/l in a TCLP extract of the petitioned waste. In order to be consistent with previous delistings, cyanide should be measured in a waste extract obtained by using deionized water as the extraction medium, rather than the acetic acid of the TCLP. (See, for example, 56 *FR* 33004–33005, 33012, July 18, 1991; and 56 *FR* 67199, 67208, December 30, 1991.) Therefore, today's notice corrects the delisting level for cyanide by requiring the cyanide extraction to be conducted using deionized water.

EFFECTIVE DATE: July 18, 1996.

ADDRESSES: The RCRA regulatory docket for the final rule and today's notice is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–96–UTEF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation, please see below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Judy Sophianopoulos, RCRA Compliance Section, (Mail Code 4WD-RCRA), U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, x6408, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact Jerry Ingram, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–0850. If you wish to copy documents at TDEC, please contact Mr. Ingram for copying procedures and costs.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for This Action

Although 40 CFR 260.22 requires a petitioner to demonstrate that the petitioned waste does not exhibit any of the characteristics in § 261.21, § 261.22, § 261.23, and § 261.24, and that a waste excluded in accordance with § 261.22 may still be a hazardous waste under Subpart C of Part 261, today's notice changes the delisting level for chromium to below the regulatory level for the toxicity characteristic (TC) in § 261.24, in order to ensure that the petitioned waste does not exhibit the TC and to clarify that no waste which exhibits the TC is allowed to be disposed in a Subtitle D facility.

The calculated level of 9.6 mg/l for chromium in the final rule resulted from the fact that the maximum contaminant level (MCL) for chromium, established by the Safe Drinking Water Act, was changed from 0.05 mg/l to 0.10 mg/l (see 56 *FR* 3526–3597, January 30, 1991). The TC levels in § 261.24, which equal 100 x the appropriate MCL at the time of their promulgation, have not been changed to be consistent with current MCL values.

As stated in the Summary paragraph of today's correction notice, in order to be consistent with previous delistings, cyanide should be measured in a waste extract obtained by using deionized water as the extraction medium, rather than the acetic acid of the TCLP. (See, for example, 56 *FR* 33004–33005, 33012, July 18, 1991; and 56 *FR* 67199, 67208, December 30, 1991.) Therefore, today's notice corrects the delisting level for cyanide by requiring the cyanide extraction to be conducted using deionized water.

II. Corrections to the Final Rule

A. On page 37401, of the Federal Register of July 18, 1996, Table 1 of the Preamble:

The delisting level for chromium is corrected to read: ''9.6; delisting level is set at less than 5.0, the toxicity characteristic level.''

The delisting level for cyanide is corrected to read: ''19.2; (cyanide extraction must be conducted using deionized water.)''

B. On page 37402, Table 1 of Appendix IX of Part 261:

Condition (3) is corrected to read: ''(3) *Delisting Levels:* All leachable concentrations for these constituents must not exceed the following levels (ppm): Cadmium—0.48; cyanide—19.2; lead—1.4; and nickel—9.6. The leachable concentration of chromium must be less than 5.0 ppm. Metal concentrations in the waste leachate must be measured by the method specified in 40 CFR 261.24. The cyanide extraction must be conducted using deionized water. Total cyanide concentration in the leachate must be measured by Method 9010 or Method 9012 of SW–846.''

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 19, 1996.

James S. Kutzman,

Associate Director, Office of RCRA & Fed. Facilities.

[FR Doc. 96–19844 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5544–9]

Illinois: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Illinois has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter RCRA). Illinois' revisions consist of provisions contained in rules promulgated between July 1, 1991, and June 30, 1993, otherwise known as RCRA Clusters 2 and 3. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Illinois' application and has made a decision, subject to public review and comment, that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Illinois' hazardous waste program revisions, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA). Illinois'

application for program revision is available for public review and comment.

EFFECTIVE DATE: Final authorization for Illinois shall be effective October 4, 1996 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Illinois' program revision application must be received by the close of business September 4, 1996.

ADDRESSES: Copies of Illinois' program revision application are available for inspection and copying, from 9 a.m. to 4 p.m., at the following addresses: Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794–9276, contact: Todd Marvel (217) 524–5024; U.S. EPA, Region 5, DR–7J, 77 W. Jackson Blvd., Chicago, Illinois 60604, contact: Gary Westefer (312) 886–7450. Written comments should be sent to Mr. Gary Westefer, Illinois Regulatory Specialist, U.S. EPA, Office of RCRA, DR–7J, 77 W. Jackson Blvd., Chicago, Illinois 60604, phone 312/886–7450.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Westefer, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Phone: 312/886–7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter HSWA) allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273 and 279.

B. Illinois

Illinois initially received final authorization for its program effective January 31, 1986. (51 FR 3778, January 30, 1986). Illinois received authorization for revisions to its program effective on March 5, 1988 (53 FR 126, January 5, 1988), April 30, 1990 (55 FR 7320, March 1, 1990), June 3, 1991 (56 FR 13595, April 3, 1991), August 15, 1994 (59 FR 30525, June 14, 1994), and May 14, 1996 (61 FR 10684, March 15, 1996). On March 15, 1996, Illinois submitted a program revision application for additional program approvals. Today, Illinois is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Illinois' application, and has made an immediate final decision that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Illinois. The public may submit written comments on EPA's immediate final decision up until September 4, 1996. Copies of Illinois' application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Illinois' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On October 4, 1996, Illinois will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous State authority
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) August 19, 1991, 56 FR 41164–41178 [1].	Rules 35 IAC 721.103; 721.104; 728.141; 728 Table A, Effective November 6, 1992.
Burning of Hazardous Waste in Boilers and Industrial Furnaces—Administrative Stay for Coke Ovens, September 5, 1991, 56 FR 43874–43877 [1].	Rules 35 IAC 726.200; 728.141; 728.142, Effective November 6, 1992.
Amendments to Interim Status Standards for Downgradient Ground Water Monitoring Well Locations, December 23, 1991, 56 FR 66365–66369.	Rules 35 IAC 720.110; 725.191, Effective November 6, 1992.
Liners and Leak Detection Systems for Hazardous Waste Disposal Systems, January 29, 1992, 57 FR 03462–03497 [1].	Rules 35 IAC 702.181; 703.203; 703.204; 703.207; 703 Appendix A; 720.110; 724.115; 724.119; 724.173; 724.321; 724.322; 724.323; 724.326; 724.328; 724.351; 724.352; 724.353; 724.354; 724.401; 724.402; 724.403; 724.404; 724.410; 725.115; 725.119; 725.173; 725.321; 725.322; 725.323; 725.326; 725.328; 725.354; 725.355; 725.359; 725.360; 725.401; 725.402; 725.403; 725.404; 725.410, Effective March 26, 1993.
Administrative Stay for the Requirement that Existing Drip Pads be Impermeable, February 18, 1992, 57 FR 05859–05861 [1].	Rules 35 IAC 724.673; 725.543, Effective March 26, 1993.
Hazardous Debris Case by Case Capacity Variance, May 15, 1992, 57 FR 20766–20770 [1].	Rule 35 IAC 728.135, Effective March 26, 1993.
Used Oil Filter Exclusion, May 20, 1992, 57 FR 21524–21534 [1]	Rule 35 IAC 721.104, Effective March 26, 1993.
Recycled Coke By Product Exclusion, June 22, 1992, 57 FR 27880–27888 [1].	Rules 35 IAC 721.104; 726.200, Effective March 26, 1993.
Lead Bearing Hazardous Materials Case by Case Capacity Variance, June 26, 1992, 57 FR 28628–28632 [1].	Rule 35 IAC 728.135, Effective March 26, 1993.
Used Oil Filter Exclusion; Technical Corrections, July 1, 1992, 57 FR 29220 [1].	Rule 35 IAC 721.104, Effective November 22, 1993.

Federal requirement	Analogous State authority
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, August 18, 1992, 57 FR 37194–37282 [1].	Rules 35 IAC 703.155; 703.181; 703.183; 703.280; 703 Appendix A and M; 720.110; 721.103; 722.134; 724.210; 724.211; 724.212; 724.240; 724.242; 724.1100; 724.1101; 724.1102; 725.210; 725.211; 725.212; 725.240; 725.242; 725.321; 725.1100; 725.1101; 725.1102; 728.102; 728.107; 728.109; 728.114; 728.136; 728.140; 728.141; 728.142; 728.143; 728.145; 728.146; 728.150; 728 Tables B, F, and G; 728 Appendix B, Effective November 22, 1993.
Coke By Products Listings, August 18, 1992, 57 FR 37284–37306 [1]	Rules 35 IAC 721.104; 721.132; 721 Appendix G, Effective November 22, 1993.
Recycled Used Oil Management Standards, September 10, 1992, 57 FR 41566–41626 [1].	Rules 35 IAC 720.110; 721.103; 721.105; 721.106; 726.200; 739.101; 739.110; 739.111; 739.112; 739.120; 739.121; 739.122; 739.123; 739.124; 739.130; 739.131; 739.132; 739.140; 739.141; 739.142; 739.143; 739.144; 739.145; 739.146; 739.147; 739.150; 739.151; 739.152; 739.153; 739.154; 739.155; 739.156; 739.157; 739.159; 739.160; 739.161; 739.162; 739.163; 739.164; 739.165; 739.166; 739.167; 739.170; 739.171; 739.172; 739.173; 739.174; 739.175; 739.180; 739.181; 739.182, Effective November 22, 1993.
Consolidated Liability Requirements, September 1, 1988, 53 FR 33938–33960, as amended July 1, 1991, 56 FR 30200,* and September 16, 1992, 57 FR 42832–42844 [1].	Rules 35 IAC 724.241; 724.243; 724.245; 724.247; 724.251; 725.241; 725.243; 725.245; 725.247, Effective November 13, 1989, June 9, 1992, and November 22, 1993.
Chlorinated Toluenes Production Waste Listing, October 15, 1992, 57 FR 47376–47386 [1].	Rules 35 IAC 721.132; 721 Appendix G, Effective November 22, 1993.
Hazardous Soil Case by Case Capacity Variance, October 20, 1992, 57 FR 47772–47776 [1].	Rule 35 IAC 728.135, Effective November 22, 1993.
Reissuance of the Mixture and Derived From Rules, March 3, 1992, 57 FR 07628–07633 [1] as amended June 1, 1992, 57 FR 23062–23063 [1] and October 30, 1992, 57 FR 49278–49279 [1].	Rule 35 IAC 721.103, Effective March 26, 1993, and November 22, 1993.
Toxicity Characteristic Amendment, June 1, 1992, 57 FR 23062–23063 [1].	Rule 35 IAC 721.103, Effective March 26, 1993.
Liquids in Landfills II, November 18, 1992, 57 FR 54452–54461 [1]	Rules 35 IAC 720.110; 724.113; 724.414; 724.416; 725.113; 725.114; 725.414; 725.416, Effective November 22, 1993.
Corrective Action Management Units and Temporary Units, February 16, 1993, 58 FR 08658–08685 [1].	Rules 35 IAC 702.110; 703.283 Appendix A; 720.110; 724.103; 724.201; 724.652; 724.653; 725.101; 728.102, Effective April 21, 1994.
Recycled Used Oil Management Standards; Technical Amendments and Corrections I, May 3, 1993, 58 FR 26420–26426 [1] as amended June 17, 1993, 58 FR 33341–33342 [1].	Rules 35 IAC 721.104; 721.105; 724.101; 725.101; 739.101; 739.110; 739.111; 739.112; 739.121; 739.122; 739.123; 739.140; 739.142; 739.143; 739.145; 739.151; 739.152; 739.154; 739.160; 739.162; 739.164; 739.170; 739.172; 739.174, Effective April 21, 1994.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case by Case Capacity Variance, May 14, 1993, 58 FR 28506–28511 [1].	Rule 35 IAC 728.135, Effective April 21, 1994.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, May 24, 1993, 58 FR 29860–29887 [1].	Rules 35 IAC 703 Appendix A 724.101; 725.101; 728.101; 728.102; 728.107; 728.109; 728.137; 728.140; 728 Table A and B, Effective April 21, 1994.

[1] Indicates HSWA Provision

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, March 5, 1988, April 30, 1990, June 3, 1991, August 15, 1994, and May 14, 1996, the effective dates of Illinois' final authorizations for the RCRA base program and for the subsequent program revisions, respectively.

This authorization includes authorization for Illinois to impose certain land disposal prohibitions. Under 40 CFR 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes provided certain criteria are met. States that have authority to impose land disposal prohibitions may ultimately be authorized under RCRA section 3006 to grant petitions for such exemptions. However, EPA is currently requiring that these petitions be handled at EPA Headquarters. It should be noted that Illinois has its own procedures for petition submission and approval to allow land disposal of a prohibited waste. Therefore, the petitioner must satisfy both Federal and Illinois requirements, and be granted approval by both EPA and the State.

Illinois is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

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

D. Incorporation by Reference

EPA incorporates by reference, authorized State programs in 40 CFR Part 272, to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Illinois program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Illinois' hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. EPA's approval of State programs generally have a deregulatory effect on the private sector because once it is determined that a State hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved State may exercise. Such flexibility will reduce, not increase, compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved State program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

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

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

Dated: July 12, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–19703 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5546–2]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Bio-Ecology Systems Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Bio-Ecology Site in Grand Prairie, Texas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Texas have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the

State of Texas have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager, US EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Bio-Ecology Systems Site, Grand Prairie, Texas. A Notice of Intent to Delete for this site was published in the Federal Register on May 6, 1996, (60 FR 422). The closing date for public comment was June 5, 1996. EPA received no comments during the comment period.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substance Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP, provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: July 23, 1996.

Jane N. Saginaw,

Regional Administrator, U.S. Environmental Protection Agency, Region 6.

For the reasons set out in the preamble, 40 CFR part 300, is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., 351; E.O. 12580; 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing BIO–ECOLOGY SYSTEMS Superfund Site, Grand Prairie, Texas.

[FR Doc. 96–19708 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 49]

RIN 3090–AG07

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to change the maximum per diem rate prescribed in FTR Amendment 47 (61 FR 10252, March 12, 1996) for the Kansas City area (Johnson and Wyandotte counties in the State of Kansas, and Clay, Jackson and Platte counties in the State of Missouri).

The General Services Administration (GSA), after an analysis of additional data has determined that the current lodging allowance for the Kansas City area does not reflect the costs of lodging facilities near Federal Government facilities. To provide adequate per diem reimbursement for Federal employee travel to the Kansas City area, the maximum lodging allowance is being changed to $76 and the meals and incidental expenses (M&IE) rate remain at $34, resulting in a maximum per diem rate of $110.

EFFECTIVE DATE: This final rule is effective August 5, 1996, and applies for travel performed on or after August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joddy Garner, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 301–7

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as set forth below.

CHAPTER 301—TRAVEL ALLOWANCES

1. The authority citation for part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975., p. 586.

Appendix A—Prescribed Maximum Per Diem Rates for CONUS

2. Appendix A to chapter 301 is amended by removing the ''Kansas City'' entries under the States of Kansas and Missouri, and the corresponding lodging and M&IE rates, and adding in their places the following entries:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * *	* * *	*	*	*
Kansas City	Johnson and Wyandotte (See also Kansas City, MO)	76	34	110
* * *	* * *	*	*	*
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS)	76	34	110
* * *	* * *	*	*	*

Dated: July 16, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–19739 Filed 8–2–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

Requirements for Audits of Institutions of Higher Education and Other Non-Profit Institutions; Clarification of Policy

AGENCY: Office of the Secretary, Interior.

ACTION: Clarification of applicability of policy.

SUMMARY: This document provides clarification of Departmental policy concerning the applicability of the final version of the Office of Management and Budget (OMB) Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions,'' published on April 30, 1996 (61 FR 19134–19150). It is the intent of the Department that this revised version of OMB Circular A–133 apply to awards made by the Department and its bureaus and offices as applicable.

EFFECTIVE DATE: The clarification of the applicability of the policy is effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman, (Director, Procurement and Property Management Systems), (202) 208–3336.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget published a revised version of Circular A–133 on April 30, 1996 (61 FR 19134–19150). Paragraph 6, *Required Action*, of the final revision of the Circular requires that agencies making awards to non-profit organizations, either directly or indirectly, shall adopt the language in the Circular in codified regulations not later than November 30, 1996, unless different provisions are required by Federal statute or are approved by OMB. The Department already has published permanent regulations incorporating the Circular. See 43 CFR 12.2(b)(2) and 43 CFR 12.2(b)(3). 43 CFR 12.2(c) also makes any changes to the Circular published in the Federal Register a part of the regulation.

The Department adopted the Common Rule on ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' at 43 CFR Part 12, Subpart C. In addition, promulgation of the regulation, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations,'' in subpart F, implements OMB Circular A–110.

43 CFR 12.66(b)(1) requires that State or local governments determine whether subgrantees covered by OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations,'' have met audit requirements. 43 CFR 12.926 refers to the applicability of OMB Circular A–133. Neither regulation identifies the specific version of the Circular to which it is referring. Nevertheless, because the Department's regulatory language at 43 CFR 12.2(c) indicates that any changes published in the Federal Register apply, the Department interprets our regulation to mean that the April 30, 1996, publication of the revised OMB Circular A–133 applies, according to the conditions stated in the Circular.

Therefore, the Department is clarifying that the April 30, 1996, version of the Circular is adopted without further promulgation of regulations. Until OMB issues another version, any reference to OMB Circular A–133 after the effective date for the Circular means the April 30, 1996, version.

Dated: July 23, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 96–19779 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7645]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional

burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Michigan:			
Thompson, township of, Schoolcraft County	260519	June 5, 1996.	
Harrisville, township of, Alcona County	260955	Do..	
Minnesota: Courtland, city of, Nicollet County	270314	.....do	June 4, 1976.
Nebraska: Creighton, city of, Knox County	310360	June 6, 1996	November 12, 1976.
Illinois: Livingston County, unincorporated areas	170929	.....do	March 31, 1978.
Vermont: Westfield, town of, Orleans County	500257	June 7, 1996	December 24, 1976.
South Carolina: Bamberg, city of, Bamberg County	450259	Do..	
South Dakota: Gary, town of, Deuel County	460112	June 19, 1996	June 27, 1975.
Nebraska: Chapman, village of, Merrick County	310260	June 26, 1996	March 26, 1976.
New Eligibles—Regular Program			
Alabama: [1] Pickensville, town of, Pickens County	010423	June 6, 1996.	
Vermont: Enosburg, town of, Franklin County	500051	June 19, 1996	January 2, 1981.
Washington: Federal Way, city of, King County	530322	June 21, 1996	May 20, 1996.
California: [2] Agua Caliente Band of Cahuilla Indians Tribe, Riverside County.	060763	Do..	
Reinstatements			
Arkansas: Colt, city of, St. Francis County	050186	April 25, 1975—Emerg.; March 4, 1986—Susp.; June 3, 1996—Rein.	October 3, 1975.
South Carolina: Eastover, town of, Richland County.	450173	June 26, 1975—Emerg.; September 30, 1988—Reg.; February 16, 1990—Susp.; June 7, 1996—Rein.	July 17, 1995.
Fountain Inn, town of, Greenville & Laurens Counties.	450209	June 2, 1977—Emerg.; June 17, 1986—Reg.; June 17, 1986—Susp.; June 7, 1996—Rein.	June 17, 1986.
West Virginia: Smithfield, town of, Wetzel County	540258	November 5, 1975—Emerg.; April 1, 1988—Reg.; April 1, 1988—Susp.; June 11, 1996—Rein.	April 1, 1988.
New York: Pittsfield, town of, Otsego County	361277	May 13,1977—Emerg.; November 4, 1983—Reg.; November 4, 1992—Susp.; June 13, 1996—Rein.	October 4, 1983.
Indiana: La Porte County, unincorporated areas	180144	January 15, 1976—Emerg.; January 1, 1987—Reg.; June 4, 1996—Susp.; June 19, 1996—Rein.	June 4, 1996.
Pennsylvania: Fayette City, borough of, Fayette County.	420464	July 30, 1975—Emerg.; February 3, 1982—Reg.; March 5, 1996—Susp.; June 19, 1996—Rein.	December 19, 1995.
New York: Rossie, town of, St. Lawrence County	361186	September 12, 1980—Emerg.; July 30, 1982—Reg.; November 4, 1992—Susp.; June 21, 1996—Rein.	July 30, 1982.
Regular Program Conversions			
Region I			
Maine: Arundel, town of, York County	230192	June 4, 1996—Suspension Withdrawn	June 4, 1996.
Region IV			
Georgia: Dooly County, unincorporated areas	130532	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region V			
Illinois: Kane County, unincorporated areas	170896	.....do	Do.
Indiana: LaPorte, city of, LaPorte County	180490	.....do	Do.
Region VI			
New Mexico: Eddy County, dounincorporated areas	350120	.....do	Do.
Region IX			
Arizona: Tucson, city of, Pima County	040076	.....do	Do.
Region V			
Michigan:			
Bangor, charter township of, Bay County	260019	June 18, 1996—Suspension Withdrawn	June 18, 1996.
Bay City, city of, Bay County	260020	.....do	Do.
Beaver, township of, Bay County	260357	.....do	Do.
Essexville, city of, Bay County	260021	.....do	Do.
Frankenlust, township of, Bay County	260022	.....do	Do.
Fraser, township of, Bay County	260657	.....do	Do.
Hampton, township of, Bay County	260023	.....do	Do.
Kawkawlin, township of, Bay County	260658	.....do	Do.
Merritt, township of, Bay County	260024	.....do	Do.
Monitor, township of, Bay County	260358	.....do	Do.
Pinconning, city of, Bay County	260607	.....do	Do.
Pinconning, township of, Bay County	260025	.....do	Do.
Portsmouth, township of, Bay County	260026	.....do	Do.
Williams, township of, Bay County	260359	.....do	Do.
Region VI			
Louisiana: St. Mary Parish, unincorporated areas	220192	.....do	Do.
Oklahoma: Noble County, unincorporated areas	400132	.....do	Do.
Region VII			
Nebraska:			
Dakota County, unincorporated areas	310429	.....do	Do.
Homer, village of, Dakota County	310241	.....do	Do.

[1] The Town of Pickensville has adopted Pickens County's Flood Insurance Study and Flood Insurance Rate Map dated 6/4/90, for floodplain management and flood insurance purposes. (Panels #0400B, 0275B, 0425B, and 0300B). The Community Identification number for Pickens County is 010283.

[2] The Agua Caliente Band of Cahuilla Indians Tribe has adopted by reference the Flood Insurance Studies (FISs) and Flood Insurance Rate Maps (FIRMs) for floodplain management and insurance purposes of the following communities: Riverside County (CID #060245) FIRM date September 30, 1992; the Cities of Cathedral City (CID #060704) and Palm Springs (CID #060257) FIRMs dated June 18, 1996.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

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

Issued: July 26, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–19817 Filed 8–2–96; 8:45 am]

BILLING CODE 6718–05–P

44 CFR Part 65

[Docket No. FEMA–7189]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

The modified base flood elevations are the basis for the floodplain management measures that the

community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where Notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Coconino	City of Flagstaff	May 17, 1996, May 24, 1996, *Arizona Daily Sun*.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	April 22, 1996	040020
Maricopa	City of Phoenix	June 6, 1996, June 13, 1996, *Arizona Business Gazette*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	May 8, 1996	040051
Arkansas: Garland	City of Hot Springs	May 24, 1996, May 31, 1996, *Sentinel Record*.	The Honorable Helen Selig, Mayor, City of Hot Springs, P.O. Box 700, Hot Springs, Arkansas 71902.	May 8, 1996	050084
California:					
Fresno	City of Clovis	May 3, 1996, May 10, 1996, *Fresno Bee*.	The Honorable Harry Armstrong, Mayor, City of Clovis, 1033 Fifth Street, Clovis, California 93612.	April 9, 1996	060044
Fresno	Unincorporated Areas	May 3, 1996, May 10, 1996, *Fresno Bee*.	The Honorable Sharon Levy, Chairperson, Fresno County, Board of Supervisors, Hall of Records, 2281 Tulare Street, Room 301, Fresno, California 93721–2198.	April 9, 1996	065029
Contra Costa	City of Pittsburg	May 24, 1996, May 31, 1996, *Ledger Dispatch*.	The Honorable Joseph Canciamella, Mayor, City of Pittsburg, P.O. Box 1518, Pittsburg, California 94565.	May 7, 1996	060033

State and county	Location	Dates and name of newspaper where Notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sacramento	Unincorporated Areas	May 22, 1996, May 29, 1996, *Sacramento Bee*.	The Honorable Roger Dickinson, Chairman, Sacramento County, Board of Supervisors, 700 H Street, Suite 2450, Sacramento, California 95814.	April 25, 1996	060262
Santa Barbara	Unincorporated Areas	May 15, 1996, May 22, 1996, *Santa Barbara News-Press*.	The Honorable Jeanne Graffy, Chairperson, Santa Barbara County, Board of Supervisors, 104 East Anapamu Street, Santa Barbara, California 93101.	May 3, 1996	060331
Colorado:					
Adams, Arapahoe, and Douglas.	City of Aurora	May 22, 1996, May 29, 1996, *Aurora Sentinel*.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Suite 808, Aurora, Colorado 80012.	April 16, 1996	080002
Denver	City and County of Denver.	May 22, 1996, May 29, 1996, *The Daily Journal*.	The Honorable Wellington E. Webb, Mayor, City County of Denver, 1437 Bannock Street, Room 350, Denver, Colorado 80202.	April 16, 1996	080046
Weld	Town of Erie	June 12, 1996, June 19, 1996, *Longmont Daily Times-Call*.	The Honorable Victor F. Smith, Mayor, Town of Erie, P.O. Box 100, Erie, Colorado 80516.	May 24, 1996	080181
Nevada: Clark	Unincorporated Areas	June 19, 1996, June 26, 1996, *Las Vegas Review Journal*.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County, Board of Commissioners, 225 Bridger Avenue, Sixth Floor, Las Vegas, Nevada 89155.	May 7, 1996	320003
North Dakota: Grand Forks.	City of Grand Forks	June 4, 1996, June 11, 1996, *Grand Forks Herald*.	The Honorable Michael Polivitz, Mayor, City of Grand Forks, P.O. Box 5200, Grand Forks, North Dakota 58206–5200.	May 10, 1996	385365
Texas:					
Tarrant	City of Bedford	June 5, 1996, June 12, 1996, *Fort Worth Star Telegram*.	The Honorable Rick D. Hurt, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095–0157.	May 7, 1996	480585
Tarrant	City of Colleyville	May 22, 1996, May 29, 1996, *Fort Worth Star Telegram*.	The Honorable Ed Baker, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	May 13, 1996	480590
Collin	Unincorporated Areas	May 22, 1996, May 29, 1996, *Plano Star Courier*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	May 6, 1996	480130
Collin	City of Plano	June 12, 1996, June 19, 1996, *Plano Star Courier*.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	May 22, 1996	480140

State and county	Location	Dates and name of newspaper where Notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin	City of Plano	May 22, 1996, May 29, 1996, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	May 6, 1996	480140
Tarrant	City of Southlake	June 18, 1996, June 25, 1996, *Fort Worth Star Telegram.*	The Honorable Gary Fickes, Mayor, City of Southlake, 667 North Carroll Avenue, Southlake, Texas 76092.	May 22, 1996	480612
Tarrant	City of Southlake	June 18, 1996, June 25, 1996, *Fort Worth Star Telegram.*	The Honorable Gary Fickes, Mayor, City of Southlake, 667 North Carroll Avenue, Southlake, Texas 76092.	May 22, 1996	480612

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

Dated: July 26, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–19815 Filed 8–2–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 94–31]

Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Amendments to final rule.

SUMMARY: The Federal Maritime Commission is amending the final rule in this proceeding so that monitoring reports will be due within 75 days of the end of each calendar quarter, rather than 30 days as presently required. The intent of this amendment is to allow carriers subject to monitoring report obligations adequate time to gather, organize and submit all required data. In addition, the Commission is amending the final rule to provide that annual classification of agreements for monitoring purposes will be done on the basis of second-quarter market share, rather than third-quarter market-share as presently required. The purpose of this amendment is to ensure adequate time for the submission and review of such data before the end of each calendar year.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5787.

SUPPLEMENTARY INFORMATION: In Docket No. 94–31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984,* the Federal Maritime Commission amended its regulations set forth in 46 CFR part 572 governing the filing, processing and review of agreements subject to the Shipping Act of 1984. 61 FR 11564 (Mar. 21, 1996). 46 CFR 572.701(f) provides in part that Monitoring Reports shall be filed within 30 days of the end of each calendar quarter. *Id.* at 11,576. Upon further consideration, the Commission has determined that ocean common carriers subject to Monitoring Report obligations need additional time to gather, organize and submit all required data. Accordingly, 46 CFR 572.701(f) is amended to provide that Monitoring Reports shall be filed within 75 days of the end of each calendar quarter.

In addition, 46 CFR 572.702(b) provides in part that the Commission's Bureau of Economics and Agreement Analysis shall determine the monitoring obligations for certain kinds of agreements for each upcoming calendar year, based on the market share data reported on the agreements' Monitoring Reports for the previous third quarter (July-September). 61 FR at 11,577. Upon further consideration, the Commission has determined that third-quarter data would not be available to agreement carriers in time to allow for the orderly submission and review of such data before the end of each calendar year. Accordingly, monitoring classifications will be done on the basis of market share data for the previous second quarter (April–June).

Notice and opportunity for public comment were not necessary prior to issuance of these amendments because they liberalize existing requirements and are less burdensome on the public. For the same reasons, the amendments are effective upon publication in the Federal Register, rather than being delayed for 30 days. 5 U.S.C. 553.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 10, 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1703, 1704, 1705, 1709, 1714 and 1716, Part 572 of Title 46, Code of Federal Regulations, is amended as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. In § 572.701, the first sentence of paragraph (f) is revised as follows:

§ 572.701 General requirements.

* * * * *

(f) *Time for filing.* Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. * * *

* * * * *

3. In § 572.702, the second sentence of paragraph (b) is revised as follows:

§ 572.702 Agreements subject to Monitoring Report requirements.

* * * * *

(b) * * * Thereafter, before the beginning of each calendar year, the Bureau of Economics and Agreement Analysis shall determine whether the agreement should be classified as ''Class A'' or ''Class B'' for that year, based on the market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April-June).

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19781 Filed 8–2–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CS Docket No. 96–46; FCC 96–312]

Video Dialtone Systems; Regulatory Scheme for Future Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The First Order on Reconsideration requires operators of existing video dialtone systems to make an election concerning what regulatory scheme they will operate under in the future. This order clarifies our rules in accordance with the Telecommunications Act of 1996. This order fulfills the mandate of the Telecommunications Act of 1996.

DATES: Effective August 5, 1996.

Public and agency comments on the information collection are due on or before August 30, 1996. OMB notification of action is requested September 4, 1996.

ADDRESSES: Comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collection contained herein contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This First Order on Reconsideration contains a new information collection under the Paperwork Reduction Act of 1995 (the ''1995 Act''). The Commission has requested approval of this collection by the Office of Management and Budget (''OMB''), under the emergency processing provisions of the 1995 Act. Approval is requested to be effective September 4, 1996. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection contained in this First Order on Reconsideration, as required by the1995 Act. Public and agency comments are due on or before August 30, 1996. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. OMB notification of action is requested September 4, 1996.

OMB Approval Number: New collection submitted for OMB approval.

Title: Implementation of Section 302 of the Telecommunications Act of 1996.

Type of Review: New collection.

Respondents: Businesses, and other for profit entities.

Number of Respondents: Approximately 10.

Number of Responses: 14. (10 elections letters+4 showings of good cause=14.).

Estimated Time Per Response: .5–5.5 hours. The Commission estimates an average burden of .5 hours to prepare and file each election letter. The Commission estimates a burden of 5 hours to prepare and file a showing of good cause requesting an extension of time. The Commission estimates entities will undergo an average burden of 2 hours to coordinate information with outside legal assistance in preparing each showing of good cause.

Total Annual Burden: 13 hours. (10 election letters×.5 hours=5 hours.) (4 showings of good cause×2 hours=8 hours.)

Estimated costs per respondent: $3000. The Commission estimates that respondents will use outside legal assistance paid at $150 per hour to prepare showings for good cause. (4 showings of good cause×5 hours @ $150 per hour=$3000.)

Needs and Uses: The election letters and any potential showings of good cause will be collected and reviewed by the Commission to ensure that all existing video dialtone operators have elected an option for the delivery of video programming services under Section 651. The filings will serve as an official record to verify that video dialtone operators are in compliance with the Commission's rules and the intent of Congress.

First Order on Reconsideration

I. Introduction

1. On February 8, 1996, the Telecommunications Act of 1996 (the ''1996 Act'') was signed into law. Among other things, the 1996 Act repealed the telephone-cable cross-ownership restriction imposed by the Cable Communications Policy Act of 1984 (''1984 Cable Act''), which generally prohibited common carriers from providing video programming directly to subscribers in their telephone service areas. The 1996 Act also repealed the Commission's ''video dialtone'' rules and policies, which had been established to permit common carriers to participate in the video marketplace in a manner that was consistent with the statutory telephone-cable cross-ownership restriction. In repealing the Commission's video dialtone rules and policies, the 1996 Act provided:

> The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87–266 shall cease to be effective on the date of enactment of this Act. This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.

2. Consistent with the above statutory provisions, in the *Report and Order and Notice of Proposed Rulemaking* in CS Docket No. 96–46, the Commission: (1) Eliminated our rules implementing the telephone-cable cross-ownership restriction; (2) eliminated our video dialtone rules and policies; (3) terminated our proceeding that established our video dialtone rules and policies (CC Docket No. 87–266); and (4) did not require currently approved video dialtone systems to cease operations.

3. The general regulatory treatment for video programming services provided by common carriers is now set forth in new Sections 651 through 653 of Title VI of the Communications Act of 1934 (the ''Communications Act''). The

options for common carriers entering the video programming marketplace are found in Section 651, which provides that common carriers may: (1) Provide video programming to subscribers through radio communication under Title III of the Communications Act; (2) provide transmission of video programming on a common carrier basis under Title II of the Communications Act; (3) provide video programming as a cable system under Title VI of the Communications Act; or (4) provide video programming by means of an ''open video system'' under new Section 653 of the Communications Act.

II. Pleadings

4. On April 1 and April 10, 1996, the National Cable Television Association (''NCTA'') filed nearly identical petitions for reconsideration of the Commission's decision in the *First Report and Order* not to require currently approved video dialtone systems to cease operations. NCTA filed one petition for reconsideration as part of its comments in the open video system rulemaking proceeding. *See Comments and Petition for Reconsideration of the National Cable Television Association, Inc.,* CS Docket No. 96–46, CC Docket 87–266 (Terminated) (filed April 1, 1996) (''*NCTA April 1 Petition*''). NCTA then filed a nearly identical petition for reconsideration of the order terminating CC Docket No. 87–266. See Petition for Reconsideration, CC Docket No. 87–266 (Terminated) (filed April 10, 1996) (''*NCTA April 10 Petition*''). Because they present identical issues, and because CC Docket No. 87–266 has been terminated, we will consider these petitions, and the responses thereto, in CS Docket No. 96–46. According to NCTA, Congress did not ''require'' the termination of existing video dialtone authorizations, but left termination to the Commission's discretion. With the repeal of the Commission's video dialtone rules, NCTA argues that the Commission has two choices: either conduct another rulemaking to establish new rules for these few systems, or require that they select between open video and franchised cable service. NCTA argues that the latter alternative is preferable, after a reasonable transition period. NCTA therefore asks the Commission to require (1) outstanding video dialtone trials to terminate in accordance with the dates previously established by the Commission, and (2) companies holding outstanding commercial authorizations to choose between open video and franchised cable service by a date certain.

5. In response, BellSouth Telecommunications, Inc. (''BellSouth'') argues that the Commission did not err by issuing an Order that conformed strictly to Section 302(b)(3) of the 1996 Act. Further, BellSouth and the Bell Atlantic Telephone Companies (''Bell Atlantic'') argue that NCTA overlooks a third wireline option for telephone companies under Section 651—common carrier video transmission subject to Title II regulation. In addition, Pacific Bell argues that NCTA erroneously asserts that Congress did not ''grandfather'' existing video dialtone authorizations, and that existing video dialtone systems should have the opportunity to continue operating as common carriers under Section 651, under any other provision of the 1996 Act or under any other option available prior to the 1996 Act's passage and not repealed by Congress. Recently, Sprint Corporation (''Sprint'') filed an ex parte letter, objecting to the proposed discontinuance of operations of existing approved video dialtone trials. In particular, Sprint argued that it would be disruptive for the customers of its video dialtone trial in Wake Forest, North Carolina if its operations were to cease prematurely, and that the 1996 Act does not require the Commission to terminate such systems.

6. In its reply, NCTA argues that Pacific Bell is ''simply wrong'' to claim that existing video dialtone authorizations were somehow ''grandfathered'' by the 1996 Act. While the 1996 Act does not ''require'' the termination of currently authorized video dialtone systems, NCTA asserts that the 1996 Act does not prohibit the Commission from terminating the authorizations. NCTA further argues that the common carrier video programming transmission model applies when only video transmission is being provided on a common carrier basis. If a common carrier provides more than video transmission (e.g., when it provides its own video programming, or provides enhanced services associated with video transmission), NCTA asserts that the common carrier option is not available and the common carrier must choose either the open video or the traditional cable model.

III. Discussion

7. We agree with NCTA that Section 302(b)(3) was not intended to ''grandfather'' existing video dialtone systems indefinitely as video dialtone systems. Again, Section 302(b)(3) of the 1996 Act provides: ''This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.'' Rather, we interpret Section 302(b)(3) to mean that the repeal of the Commission's video dialtone rules does not also require the immediate termination of video dialtone systems operating under those rules. We believe that Section 302(b)(3) was intended to give the Commission the discretion to avoid an immediate disruption of video dialtone service, and to develop an orderly transition plan for existing video dialtone systems.

8. We find that the public interest would be served by requiring currently authorized video dialtone operators to select one of the four video programming delivery options set forth in Section 651—radio-based, common carrier transmission, traditional cable or open video. The Commission's open video system rules were released on June 3, 1996, and the Commission must release any reconsideration of those rules by August 8, 1996. We believe that after August 8, 1996 video dialtone operators will possess adequate information regarding their options to make such an election.

9. We realize that video dialtone operators will need time to evaluate their options under Section 651 and to implement their choice. We therefore will provide video dialtone operators ninety days from August 8, 1996 in which to effect a transition to one of the four options for providing video programming services under Section 651. A video dialtone operator may, of course, begin providing video service under one of the regulatory options in Section 651 at any time and need not wait until the end of the election period. This will also permit video dialtone subscribers to continue receiving service without disruption. At or before the end of this 90-day period, each currently authorized video dialtone operator must inform the Office of the Secretary of the Commission in writing, with a copy to the Chief of the Cable Services Bureau, which option under Section 651 it has elected. We realize, however, that it may not be possible in all circumstances for a video dialtone operator to complete the transition in ninety days. In those instances, we would consider reasonable extensions of time based on a showing of good cause. For example, if the video dialtone operator were diligently pursuing a cable franchise and the local franchising authority had not yet granted the franchise, we would likely consider that good cause.

10. We believe that requiring such an election is fully consistent with congressional intent. We are not requiring video dialtone operators to

cease providing video service to their subscribers, but simply to provide service in compliance with one of the statutorily-recognized video programming delivery options. We also believe that this conclusion is consistent with the Conference Report, since we are not requiring video dialtone operators to elect a different option until after our open video system rules have become effective. To hold otherwise, as NCTA points out, would require the Commission to initiate a new rulemaking proceeding to establish rules governing a handful of systems. We believe that creating a fifth option for a limited number of systems would be unnecessary, wasteful, and contrary to Congress' Section 651 framework. We decline to adopt such an approach.

11. We also believe that the above election requirement generally is consistent with the positions advanced by BellSouth, Bell Atlantic and Pacific Bell. We also believe that the election requirement generally is consistent with Sprint's position that the Commission is not required to terminate currently authorized video dialtone systems, and addresses its concern that subscribers' service not be disrupted. None of those companies has argued for, or expressed an interest in, providing video programming service separate and apart from the Communication Act's current framework. These parties have all posited that entities with existing video dialtone authorizations should have the opportunity to continue offering service under Title II. For instance, although Pacific Bell disagrees with NCTA's assertion that existing video dialtone authorizations were not ''grandfathered,'' it argues that existing video dialtone systems ''should have the opportunity to continue offering service under Title II'' or some other permissible framework. Similarly, Bell Atlantic asserts that its video dialtone system in Dover Township, New Jersey already qualifies as a common carrier system, and that it will evaluate the appropriate regulatory framework for its Dover Township system once the Commission's open video system rules are in place. We expressly do not reach the merits of Bell Atlantic and BellSouth's assertions that some or all video dialtone systems qualify as common carrier video offerings under Section 651. As noted above, common carrier transmission is one of the Section 651 alternatives under which video dialtone operators may continue to provide service.

12. We do not distinguish between video dialtone trials and commercial authorizations for purposes of this election. The repeal of our video dialtone rules requires an election comporting with the provisions of the amended law. The type of authorization under the video dialtone structure is not relevant to this requirement.

IV. Paperwork Reduction Act of 1995 Analysis

13. This *First Order on Reconsideration* contains a new information collection under the Paperwork Reduction Act of 1995 (the ''1995 Act''). The Commission has requested approval of this collection by the Office of Management and Budget (''OMB''), under the emergency processing provisions of the 1995 Act. Approval is requested to be effective September 4, 1996. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection contained in this *First Order on Reconsideration* as required by the 1995 Act. Public and agency comments on the information collection are due on or before August 30, 1996. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. OMB notification of action is requested September 4, 1996.

14. A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236, NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov. For additional information concerning the information collections contained herein contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

V. Ordering Clauses

15. Accordingly, it is Ordered that NCTA's Petition for Reconsideration in CS Docket No. 96–46 is granted in part and denied in part, as provided herein.

16. It is further ordered that pursuant to Sections 4(i), 4(j), 651, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 571, and 573, and Section 302(b)(3) of the Telecommunications Act of 1996, the requirements and policies discussed in this *First Order on Reconsideration* are adopted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Regulatory Flexibility Analysis

The Federal Communications Commission certifies that the Regulatory Flexibility Act is not applicable to the requirements we adopt in this First Order on Reconsideration. There will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Entities directly subject to the requirements herein are large corporations engaged in the provision of video programming services, and therefore are not ''small entities'' as defined by the Small Business Act. We are nevertheless committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this First Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Sections 603(a) and 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601, *et seq.* (1981).

Federal Communications Commission.

[FR Doc. 96–19428 Filed 8–2–96; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1806, 1852

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Parts 1801 through 1806, and clauses affected by these parts, are revised in their entirety. The numbering of NFS sections has been changed to indicate the exact section of the FAR being implemented or supplemented.

The FAR numbering system is by part, subpart, section, and subsection, for example 1.105–2. Subdivisions below these numbers are designated by

parenthetical alpha numerics in the following sequence: (a)(1)(i)(A).

The NFS ''implements'' and ''supplements'' the FAR. Implementing coverage is that which directly carries out the FAR policies and procedures. Supplementing coverage is that additional information not required by the FAR but necessary to satisfy the specific needs of NASA.

Numbering of NFS text implementing the FAR will be the same as that of the related FAR text when the NFS coverage is one paragraph.

Implementing NFS coverage exceeding one paragraph is numbered by first identifying the corresponding FAR test to the lowest appropriate FAR number and then adding the NFS coverage. To indicate where the FAR subdivision ends and the NFS begins, the NFS coverage is identified by skipping a sequence in the (a)(1)(i)(A) alpha numeric subdivision scheme. For example, four paragraphs implementing FAR 1.602–3(c)(7) are numbered 1801.602–3(c)(7)(A), (B), (C), and (D) (instead of the 1801.602–3(b)(1) through (4) in the current NFS). In this case, the next available alpha numeric subdivision identifier (i) is skipped and the NFS coverage starts with the subsequent identifier (A).

NFS text that supplements the FAR will be numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105–3 is numbered 1801.105–370. Supplemental text exceeding one paragraph is numbered using the prescribed alpha numeric sequence without skipping a unit.

Parts 1801 through 1806 use the new numbering system. Other NFS parts will be transitioned as the NFS rewrite progresses. The new numbering system will require a short orientation period. However, it will prove to be a significant value to the user of the NFS in that it will clearly and precisely identify the associated FAR coverage, as well as clearly distinguish implementing from supplementing coverage.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; Mr. Bruce King, (202) 358–0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and issued through Procurement Notices (PNs). Upon completion of all parts, the NFS will be reissued in a new edition.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rules does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1806, and 1852 Government procurement.

Tom Luedtke,

Deputy Associated Administrator for Procurement.

Accordingly, 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1806, and 1852 are amended as follows:

1.–2. Part 1801 is revised to read as follows:

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.000 Scope of part.

Subpart 1801.1 Purpose, Authority, Issuance

1801.103 Authority.
1801.104 Applicability.
1801.105 Issuance.
1801.105–1 Publication and code arrangement.
1801.105–2 Arrangement of regulations.
1801.105–3 Copies.
1801.105–370 Internal dissemination.
1801.106 OMB approval under the Paperwork Reduction Act.

Subpart 1801.2 Administration

1801.270 Amendment of Regulation.
1801.270–1 Revisions.
1801.270–2 Procurement Notices.
1801.270–3 Effective date.
1801.270–4 Numbering.
1801.271 NASA procedures for FAR and NFS changes.
1801.272 Procurement Information Circulars.

Subpart 1801.3 Agency Acquisition Regulations

1801.301 Policy.
1801.303 Publication and codification.

Subpart 1801.4 Deviations From the FAR

1801.400 Scope of subpart.
1801.471 Procedure for requesting deviations.

Subpart 1801.6 Career Development, Contracting Authority, and Responsibilities

1801.601 General.
1801.602–3 Ratification of unauthorized commitments.
1801.603 Selection, appointment, and termination of appointment.
1801.603–2 Selection.
1801.670 Delegations to contracting officer's technical representatives (COTRs).

Subpart 1801.7 Determinations and Findings

1801.707 Signatory authority.
1801.770 Legal review.

Authority: 42 U.S.C. 2473(c)(1)

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulations (FAR) Supplement, also referred to as the NFS.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority. (NASA supplements paragraph (a))

(a) Under the following authorities, the Administrator has delegated to the Associate Administrator for Procurement authority to prepare, issue, and maintain the NFS:

(i) The National Aeronautics and Space Act of 1958 (Public Law 85–568; 42 U.S.C. 2451 et seq.).

(ii) 10 U.S.C. chapter 137.

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this chapter.

1801.105 Issuance.

1801.105–1 Publication and code arrangement. (NASA supplements paragraphs (a) and (b))

(a)(i) The NFS is published in the same publications and formats as the FAR.

(ii) The NFS is published in ''editions'' and ''versions.'' An ''edition'' is a loose-leaf publication of the entire regulation and is denoted by the calendar year of publication. A ''version'' is the basic loose-leaf edition NFS with all NFS Directive (NFSD) change pages filed up to and including the NFSD number that corresponds to the ''version'' number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSD 89–0 (basic NFS), with change pages filed from NFSDs 89–1, 89–2, and 89–3.

(b) The NFS is issued as chapter 18 of title 48, Code of Federal Regulations (CFR).

1801.105–2 Arrangement of regulations. (NASA supplements paragraph (b))

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105–2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105–2(b)(1) are numbered 1801.105–2(b)(1) (A) and (B), rather than (1) (i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105–3 is numbered 1801.105–370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105–2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

1801.105–3 Copies (NASA paragraphs (1), (2) and (3))

(1) Subscriptions to the NFS may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 512–1800. All requests should cite the NFS GPO Subscription Stock No. 933–003–00000–1. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by GPO.

(2) The NFS is also available on the Internet (address: http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm).

(3) Copies of NASA Handbooks (NHBs), NASA Management Instructions (NMIs), NASA Policy Directives (NPDs), and NASA Procedures and Guidelines (NPGs) may be obtained from NASA Headquarters, Office of Management Systems and Facilities (Code JM).

1801.105–370 Internal dissemination.

The Headquarters Office of Procurement (Code HK), (202–358–1248), distributes the FAR, Federal Acquisition Circulars (FACs), the NFS, NFSDs, Procurement Notices (PNs), and Procurement Information Circulars (PICs) directly to NASA Headquarters offices and installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation.

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) *NFS requirements.* The following OMB control numbers apply:

NFS segment	OMB control No.
1815.406–70(b)(5)(iii)	2700–0082
1815.608–72	2700–0080
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (acquisitions up to $25,000), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts exceeding $500,000).

Subpart 1801.2—Aministration

1801.270 Amendment of regulation.

1801.270–1 Revisions.

The NFS is amended by publishing amendments in the Federal Register and issuing NFSDs containing loose-leaf replacement pages revising various segments of it (also see 1801.270–2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270–2 Procurement Notices.

(a) The NFS is amended by publishing amendments in the Federal Register and issuing Procurement Notices (PNs) when it is necessary or advisable to change the NFS in advance of an NFSD.

(b) Unless otherwise indicated, each PN remains in effect until the effective date of the subsequent NFSD incorporating the PN or until specifically canceled.

1801.270–3 Effective date.

(a) Compliance with a revision to the NFS shall be in accordance with the NFSD or PN containing the revision.

(b) Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

1801.270–4 Numbering.

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b) (1) Formal requests for changes to the FAR or the NFS should be written and contain

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy. (NASA supplements paragraphs (a) and (b))

(a) (2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b) (i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define ''significant effect beyond the internal operating procedures'' or ''significant cost or administrative impact.'' Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is a part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.303 Publication and codification. (NASA supplements paragraph (a))

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

Subpart 1801.4—Deviations From the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

1801.601 General.

The authority to contract for authorized supplies and services is delegated to the Associate Administrator for Procurement and installation officials by NPD 5101.32.

1801.602–3 Ratification of unauthorized commitments. (NASA supplements paragraphs (b) and (c))

(b) Policy. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602–3 may be exercised only when—

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

1801.603 Selection, appointment, and termination of appointment.

1801.603–2 Selection.

Normally, only GS–1102 and –1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

1801.670 Delegations to contracting officer's technical representatives (COTRs).

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or

authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant.

Subpart 1801.7—Determinations and Findings

1801.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Associate Administrator for Procurement or by a contracting officer.

1801.770 Legal review.

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

3. Part 1802 is revised to read as follows:

PART 1802—DEFINITIONS OF WORDS AND TERMS

1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

Authority: 42 U.S.C. 2473(c)(1)

PART 1802—DEFINITIONS OF WORDS AND TERMS

1802.000 Scope of part.

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

Administrator means the Administrator or Deputy Administrator of NASA.

Contracting activity in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, Marshall Space Flight Center, Space Station Program Office and Stennis Space Center.

Head of the agency or *agency head* means the Administrator or Deputy Administrator of NASA.

Head of the contracting activity means, for field installations, the Director or other head and, for NASA Headquarters, the Associate Administrator for Headquarters Operations.

Procurement officer means the chief of the contracting office, as defined in FAR 2.101.

Senior Procurement Executive means the Associate Administrator or Deputy Associate Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

4. Part 1803 is revised to read as follows:

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.
1803.101–1 General.
1803.101–2 Solicitation and acceptance of gratuities by Government personnel.
1803.104 Procurement integrity.
1803.104–4 Definitions.
1803.104–5 Disclosure, protection, and marking of proprietary and source selection information.
1803.104–7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.
1803.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.
1803.104–11 Processing violations or possible violations.
1803.104–12 Ethics program training requirements.

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.
1803.705 Procedures.

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.
1803.806 Processing suspected violations.

Authority: 42 U.S.C. 2473(c)(1)

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101–1 General.

The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

1803.101–2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

1803.104 Procurement integrity.

1803.104–4 Definitions.

Designated agency ethics official means for Headquarters, the General Counsel, and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

1803.104–5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (c) and (d))

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing material described in FAR 3.104–4(k)(2)(i) through (ix) shall assure that the material is marked with the legend in FAR 3.104–5(c) at the time the material is prepared.

(ii) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104,'' draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR subpart 7.1). All documents, once released, must remain

available to the public until the conclusion of the acquisition.

(d)(1) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(A) Personnel participating in source evaluation board (SEB) procedures under 1870.303, App. I, or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(B) Personnel assigned to the contracting office.

(C) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(D) Small business specialists.

(E) Personnel assigned to counsel's office.

(F) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(G) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(H) Other government employees authorized by the contracting officer.

(I) Supervisors, at any level, of the personnel listed in paragraphs 1803.104–5(d)(1) (A) through (H).

(J) Duly designated ombudsman.

(3) For contracts and contract modifications over $100,000, release of proprietary or source selection information to another Government activity shall be made by a letter citing the obligation under FAR 3.104–5(d) to maintain a list of persons or classes of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for the contract file.

1803.104–7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service. (NASA supplements paragraph (a))

(a) The contracting officer shall obtain the following certification from any procurement official leaving the Government or transferring to another Government agency or any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of an acquisition expected to result in a contract or modification in excess of $100,000.

(Certification)

PROCUREMENT OFFICIAL CERTIFICATION UPON TERMINATION OF GOVERNMENT SERVICE

I, [Name of procurement official], hereby certify that I understand the continuing obligation under Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) not to disclose proprietary or source selection information relating to any ongoing acquisition for which I have served as a procurement official.

Signature of procurement official and date

_____

Identify applicable acquisitions (ones for which awards have not been made at the time of the procurement official's departure):

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

1803.104–B Knowing violations, duty to inquire, and ethics advisory opinions.

When a contracting officer has not been appointed, questions regarding whether information is proprietary or source selection information shall be referred to the procurement officer.

1803.104–11 Processing violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations in accordance with FAR 3.104–11.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Associate Administrator for Procurement (Code HS).

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Associate Administrator for Procurement (Attn: Code HS) simultaneous with transmittal to the Administrator.

1803.104–12 Ethics program training requirements. (NASA supplements paragraph (a))

(a)(3) Individuals who will serve as procurement officials shall complete either Optional Form 333 or the following certification. The Privacy Act Notice is intended for use when either the executed Optional Form 333 or the executed certification will be filed in the employee's official personnel file and a social security number is needed. When an individual's social security number is being requested, Centers may use the attached Privacy Act Notice or an appropriate alternative Privacy Act Notice. The Privacy Act Notice may be omitted if a social security number is not being requested.

(Certification)

PROCUREMENT INTEGRITY CERTIFICATION FOR PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I, [Name], hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101–189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understood that, should I leave the Government during the conduct of an acquisition for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to the acquisition and a requirement to so certify.

I understand that my execution of this certification does not make me a procurement official, nor will it be utilized to establish that I am a procurement official.

Signature and date

(End of certification)

(Notice)

Name

Social Security Number

PRIVACY ACT NOTICE TO EMPLOYEES AND OFFICIALS

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided: AUTHORITY FOR COLLECTION OF INFORMATION: 41 U.S.C. 423 and Executive Order 9397. Your signature on the Procurement Integrity Certification for Procurement Officials and disclosure of your Social Security Number are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal purpose for collection of this information:

To obtain and maintain a completed certification from any person designated as a ''Procurement Official,'' as defined by 41 U.S.C. 423 and applicable acquisition regulations.

Routine uses which may be made of the collected information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal,

administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled ''PM/GOT–1. General Personnel Records,'' as published in the Federal Register periodically by OPM.

(End of Notice)

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203–3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations. (NASA supplements paragraphs (b) and (d))

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of he General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Associate Administrator for Procurement has been delegated the authority to authorize an exception to the policy in FAR 3.601. The Associate Administrator for Procurement has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Associate Administrator for Procurement (Code HS) for approval.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy. (NASA supplements paragraph (a))

(a) The Associate Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201–224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

Procurement officers shall make reports to the Associate Administrator for Procurement (Code HS). The Associate Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy

Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF–LLL) furnished pursuant to FAR 3.803 to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

1803.806 Processing suspected violations.

The Associate Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

5. Part 1804 is revised as set forth below:

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1 Contract Executive

1804.103 Contract clause.
1804.170 Contract effective date.

Subpart 1804.2 Contract Distribution

1804.202 Agency distribution requirements.

Subpart 1804.4 Safeguarding Classified Information Within Industry

1804.402 General.
1804.404–70 Contract clause.
1804.470 Security requirements for unclassified automated information resources.
1804.470–1 Scope.
1804.470–2 Policy.
1804.470–3 Contract clauses.

Subpart 1804.6 Contract Reporting

1804.601 Record requirements.
1804.602 Federal Procurement Data System.
1804.670 Individual Procurement Action Report (NASA Form 507 series).
1804.670–1 Applicability and coverage.
1804.670–2 Submission due date.
1804.670–3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).
1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

Subpart 1804.8 Government Contract Files

1804.802–70 Handling of classified material.
1804.803 Contents of contract files.
1804.803–70 Checklist.
1804.804 Closeout of contract files.
1804.804–2 Closeout of the contracting office files if another office administers the contract.
1804.804–5 Detailed procedures for closing out contract files.
1804.805 Storage, handling, and disposal of contract files.
1804.805–70 Review, separation, and retirement of contract files.

Subpart 1804.70 Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.
1804.7001 Definition.
1804.7002 Approval of transfer requests.

1804.7003 Responsibilities of the contracting officer of the transferring installation.
1804.7003–1 Coordinations.
1804.7003–2 File inventory.
1804.7003–3 Notifications.
1804.7003–4 Transfer.
1804.7003–5 Retention documentation.
1804.7004 Responsibilities of the contracting officer of the receiving installation.
1804.7004–1 Pre-transfer file review.
1804.7004–2 Post-transfer actions.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.
1804.7101 Policy.
1804.7102 Prefixes.
1804.7103 Serial numbers.
1804.7104 Modifications of contracts or agreements.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Contract review by Headquarters.

Subpart 1804.73—Procurement Requests

1804.7301 General.

Authority: 42 U.S.C. 2473(c)(1)

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Execution

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204–1, Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert ''NASA Associate Administrator for Procurement'' in the clause's blank space.

1804.170 Contract effective date.

(a) *Contract effective date* means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205–32) and the clause prescribed at 1831.205–70 is used.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General. (NASA supplements paragraph (b))

(b) NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. (See also 1842.202–72).

1804.404–70 Contract clause.

The contracting officer shall insert the clause at 1852.204–75, Security Classification Requirements, in solicitations and contracts if work is to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

1804.470 Security requirements for unclassified automated information resources.

1804.470–1 Scope.

This section implements the acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470–2 Policy.

NASA policies and procedures on automated information security are prescribed in NMI 2410.7, Assuring the Security and Integrity of NASA Automated Information Resources, and in NHB 2410.9, NASA Automated Information Security Handbook, Chapters 3 and 4. Security requirements for safeguarding sensitive information in unclassified Federal computer systems are required in:

(a) Contracts for automatic data processing equipment, software, the management or operation of Data Processing Installations (DPIs) or related services; and

(b) Contracts under which contractor personnel must have physical or electronic access to sensitive automated information, or automated information that supports mission-critical functions.

1804.470–3 Contract clauses.

The contracting officer shall insert the clause substantially as stated at 1852.204–76, Security Requirements for Unclassified Automated Information Resources, in solicitations and contracts involving unclassified automated information resources. Paragraph (a) of the clause shall be completed with information supplied by the cognizant requiring activity.

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.

The Headquarters Office of Procurement (Code HC) is responsible for meeting the requirements of FAR 4.601, based on installation submission of Individual Procurement Action Reports (NASA Form 507 series) data.

1804.602 Federal Procurement Data System. (NASA supplements paragraph (d))

(d) Code HC is responsible for requesting, obtaining, and reporting Contractor Establishment Codes to the FPDS.

1804.670 Individual Procurement Action Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are integral parts of the agencywide Financial and Contractual Status (FACS) system.

§ 1804.670–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and funded Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial value is more than $25,000.

(4) All purchase orders for advisory and assistance services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported.

1804.670–2 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of

business on the fifth work day following each month being reported. The installation procurement officer should establish an agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

1804.670–3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

(a) The information required by the following forms shall be provided when submitting individual Procurement Action Reports:

(1) New contract awards—NASA Forms 507, 507A, and 507B.

(2) New grants, cooperative agreements, funded Space Act agreements, intragovernmental agreements, and orders against federal supply schedules—NASA Forms 507G and 507B.

(3) Modifications to any procurement action—NASA Forms 507M and, if necessary, 507B.

(b) The NASA Forms 507 series shall be prepared in accordance with instructions issued by Code HC. These instructions will be issued and updated through Procurement Information Circulars (PICs).

1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, cooperative agreement, or funded Space Act agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Headquarters Office of Human Resources and Education (Code FET).

Subpart 1804.8—Government Contract Files

1804.802–70 Handling of classified material.

When a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.803 Contents of contract files.

1804.803–70 Checklist.

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the ''top page'' in contract files.

1804.804 Closeout of contract files.

1804.804–2 Closeout of the contracting office files if another office administers the contract. (NASA supplements paragraph (b))

(b) Upon receiving the NASA Form 1611 or DD Form 1594, Contract Completion Statement, from the contract administration office and complying with FAR 4.804–2(b), the contracting officer shall complete the form.

1804.804–5 Detailed procedures for closing out contract files. (NASA supplements paragraphs (a) and (b))

(a) When the contracting office retains contract administration (excluding acquisitions under the simplified acquisition threshold), the contracting officer shall comply with FAR 4.804–5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.

(b) To comply with FAR 4.804–5(b), the contracting officer shall complete NASA Form 1611 or DD Form 1594, Contract Completion Statement, except for acquisitions under the simplified acquisition threshold.

1804.805 Storage, handling, and disposal of contract files. (NASA supplements paragraph (a))

(a) See NHB 1441.1, NASA Records Disposition Handbook.

1804.805–70 Review, separation, and retirement of contract files.

(a) Upon determination of contract completion under the procedures outlined in 1804.804, each office shall remove the official contract files from the active file series, mark each file folder with ''Completed (Date)'', and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for contracts of more than $25,000, to facilitate later disposal. Any original or official file copies of documents contained in duplicate or ''working'' contract files shall be removed and placed in the appropriate official file; any remaining material in the duplicate or ''working'' file shall be destroyed immediately or segregated and marked for early disposal.

(b) Each office shall review contractor ''general'' files (i.e., a file containing documents relating generally to a contractor rather than a specific contract) at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1, NASA Records Disposition Handbook.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

Transfer of a contract, as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Approval of transfer requests.

(a) The approval authority for requests to transfer a contract is the official in charge of the cognizant Headquarters program office or designee. Requests for approval shall be submitted by the director of the transferring installation after receiving the concurrence of the director of the receiving installation. Concurrence of the Associate Deputy Administrator (Code AI) is also required for a transfer where an installation's roles and missions may be affected.

(b) Approval of a program transfer by the cognizant Headquarters official

constitutes approval to transfer program-related contracts.

1804.7003 Responsibilities of the contracting officer of the transferring installation.

1804.7003–1 Coordinations.

The contracting officer of the transferring installation shall take the following steps before transferring the contract:

(a) Agree on a plan and schedule with the contracting officer of the receiving installation for transferring contract responsibility and contract files.

(b) Coordinate with the following offices:

(1) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(2) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(3) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(4) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(5) Transportation Office, to determine the status of bills of lading furnished the contractor.

(6) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(7) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7003–2 File inventory.

The contracting officer of the transferring installation shall prepare an inventory of the contract file. This inventory shall also include a separate listing of all outstanding requests for contract administration assistance issued to other Government agencies, indicating the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services yet to be performed for each requested function. Copies of this inventory shall be provided to the contracting officer of the receiving installation.

1804.7003–3 Notifications.

The contracting officer of the transferring installation shall provide written notification of the planned transfer to the contractor and all agencies performing or requested to perform administration services.

1804.7003–4 Transfer.

(a) Upon completion of the actions described in 1804.7003–1 through 1804.7003–3, the contracting officer of the transferring installation shall issue a letter to the contractor, agencies performing contract administration functions, contracting officer representatives, and the contracting officer of the receiving installation. This letter shall provide notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer of the receiving installation.

(b) After issuing the letters described in 1804.7003–4(a), the contracting officer of the transferring installation shall send the contract file to the contracting officer of the receiving installation with a letter transferring contract responsibility. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer of the receiving installation.

1804.7003–5 Retention documentation.

The contracting officer of the transferring installation shall retain for permanent file a copy of the approvals and concurrences required by 1804.7002, the transfer acceptance letter of the contracting officer of the receiving installation, and any additional documents necessary for a complete summary of the transfer action.

1804.7004 Responsibilities of the contracting officer of the receiving installation.

1804.7004–1 Pre-transfer file review.

The contracting officer of the receiving installation shall review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract. This review may be waived by written notification to the contracting officer of the transferring installation.

1804.7004–2 Post-transfer actions.

The contracting officer of the receiving installation shall—

(a) Provide the contracting officer of the transferring installation written acceptance of contract responsibility and receipt of the contract files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's technical representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to affected installation offices; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the procedures for uniform numbering of NASA solicitations, contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other agreements between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments.

1804.7101 Policy.

(a) Contractual documents shall be numbered with approved prefixes and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of not more than 11 alpha-numeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

1804.7102 Prefixes.

(a) Approved prefixes are as follows:

Installation	Contract prefix	Purchase order prefix
Ames Research Center	NAS 2	A
Dryden Flight Research Center.	NAS 4	E
Goddard Space Flight Center.	NAS 5	S
Headquarters	NASW	W

Installation	Contract prefix	Purchase order prefix
Lyndon B. Johnson Space Center.	NAS 9	T
John F. Kennedy Space Center.	NAS10	CC
Langley Research Center.	NAS 1	L
Lewis Research Center	NAS 3	C
George C. Marshall Space Flight Center.	NAS 8	H
NASA Management Office-JPL.	NAS 7	WO
John C. Stennis Space Center.	NAS13	NS
Space Station Program Office.	NAS15	K

(b) The contract prefix shall be used for the following documents:

(1) Contracts, including letter contracts, indefinite-delivery contracts, utilities, leases of real property and renewals.

(2) Easements.

(3) Basic ordering agreements.

(4) Other written agreements involving payment or receipt of funds not covered by 1804.7102(e).

(c) Contracts totally funded under reimbursable arrangements with the department of Energy shall use a DEN prefix instead of the NAS prefix (e.g., DEN 8 for Marshall).

(d) Space Act agreements awarded under the authority of Section 203(c)(5) or 203(c)(6) of the Space Act shall use an NCA prefix instead of the NAS prefix (e.g., NCA 8 for Marshall).

(e) The purchase order prefix shall be used for purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services.

(f) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the portion of the installation's contract prefix following ''NAS.''

(g) If a prefix is required for an installation or office not listed in this section, a request for a prefix assignment shall be submitted to the Headquarters Office of Procurement (Code HC).

1804.7103 Serial numbers.

(a) Installations shall number contracts and agreements identified in 1804.7102(b) serially by fiscal year. The serial number shall be five digits beginning with a two-digit fiscal year identifier followed by a three digits commencing with ''001'' and continuing in succession. For example, the first contracts awarded by Ames Research Center in fiscal year 1997 shall be numbered NAS 2 97001 and NAS 2 97002. Fiscal year identification is optional for Space Act agreements.

(b) Serial number for purchase orders shall be assigned serially without fiscal year identification. When the series of numbers exceeds five digits (over 99,999), a new series shall be used, beginning the series with number ''1'' and followed by the capital letter ''A.'' Should additional series become necessary, they will be distinguished by the capital letters ''B,'' ''C,'' and so forth, as may be required, except that the letters ''I'' and ''O'' shall not be used.

1804.7104 Modifications of contracts or agreements.

(a) Modifications of definitive or letter contracts or agreements shall (1) bear the same identification as the contract or agreement being modified and (2) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a) of this section.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Contact review by Headquarters.

(a) Requests for approval of contracts and supplemental agreements by the Associate Administrator for Procurement shall be submitted to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 15 days for review.

(b) Each request for approval shall be accompanied by (1) five copies of the contractual document, one of which has been executed by the contractor and contracting officer, and (2) the official contract file containing the appropriate documentation as set forth in FAR 4.803(a). However, for the items specified in FAR 4.803(a) (10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, in lieu of the items specified in FAR 4.803(a)(26) (ii) and (iii), the contracting officer shall provide an index briefly describing the content of all previous modifications.

(c) The approval required under this section shall be made by signature of the Associate Administrator for Procurement on the contract/supplemental agreement.

Subpart 1804.73—Procurement Requests

1804.7301 General.

Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the approved procurement request certifying that funds are available when—

(a) Such action is necessary to meet critical program schedules;

(b) Program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(c) The procurement officer authorizes such action in writing before solicitation issuance.

(d) The solicitation includes the clause at FAR 52.232–18, Availability of Funds. The clause shall be deleted from the resultant contract.

6. Part 1805 is revised as set forth below:

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.
1805.205 Special situations.
1805.207 Preparation and transmittal of synopses.
1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards.
1805.303–70 NASA Headquarters public announcement.
1805.303–71 Notification to the Administrator of significant procurement actions.

Subpart 1805.4—Release of Information

1805.402 General public.
1805.403 Requests from Members of Congress.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information. (NASA supplements paragraph (b))

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General. (NASA supplements paragraph (a))

(a)(i) Except for acquisitions described in (a)(ii) of this section, a copy of each synopsis shall be made available on the Internet as well as published in the CBD.

(ii) Midrange acquisitions (see part 1871) with annual values of up to $500,000 shall be made available only on the Internet.

1805.205 Special situations. (NASA supplements paragraph (a))

(a) Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205–1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

(a) Architect-engineering services. (1) Each notice publicizing the acquisition of architect-engineer services shall be headed ''C. Architect-Engineer Services.''

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning ''Selection of firms for negotiations,'' the fourth additional consideration listed is changed to read: ''(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;'' and (b) in the last sentence, ''National Aeronautics and Space Administration'' is substituted for ''Department of Defense.''

(b) Federal Information Processing (FIP) Resources. (1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/idenfinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The ____ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: ____ (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards. (NASA supplements paragraph (a))

(a)(i) In lieu of the $3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of $25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of $25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than $25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303–70 have been completed.

1805.303–70 NASA Headquarters public announcement.

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

(1) A brief description of the work, including identification of the program and project;

(2) Identification of the contract action as either a new contract or additional work of services under an existing contract;

(3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) Name and address (including zip code) of the contractor;

(6) Principal work performance locations;

(7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section

shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 p.m. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Associate Administrator for Procurement (Code HS).

1805.303–71 Notification to the Administrator of significant procurement actions.

(a) In addition to the public announcement requirements described in 1805.303–70, contracting officers shall notify the Administrator of the following procurement actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of $25 million or more, including all priced options.

(2) Planned contract award of non-competitive awards and new work modifications of $100 million or more, including all priced options.

(3) Planned award of other procurement actions at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b) (1) through (10) of this subsection to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202–358–4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone (202–358–2080) of the impending transmission. In accordance with FAR 3.104–5(c), the contracting officer shall mark all pages that include source selection information with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104.'' The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over $1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) *For competitive selections only,* provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303–70.

Subpart 1805.4—Release of Information

1805.402 General public. (NASA paragraphs (1) and (2))

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, installation Public Affairs Offices may make public the following information on NASA acquisitions:

(i) The names of firms invited to submit offers;

(ii) The names of firms that attended any pre-bid or pre-proposal conference; and

(iii) The names of firms that submitted offers.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

1805.403 Requests from Members of Congress. (NASA supplements paragraph (a))

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

7. Part 1806 is revised as set forth below:

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources.
1806.202–70 Formats.

Subpart 1806.3—Other Than Full and Open Competition

1806.302 Circumstances permitting other than full and open competition.
1806.302–4 International agreement.
1806.302–470 Documentation.
1806.302–7 Public interest.
1806.303 Justifications.
1806.303–1 Requirements.
1806.303–170 Sole-source purchases by contractors.
1806.303.2 Content.
1806.303–270 Use of unusual and compelling urgency authority.
1806.304–70 Approval of NASA justifications.

Subpart 1806.5—Competition Advocates

1806.501 Requirement.
1806.502 Duties and responsibilities.

Authority: 42 U.S.C. 2473(c)(1)

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources. (NASA supplements paragraphs (a) and (b))

(a) The authority of FAR 6.202 is to be used to totally or partially exclude a particular source.

(b) The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(i) The specific purpose to be served in excluding the source as enumerated in FAR 6.202(a).

(ii) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(iii) The circumstances making it necessary to exclude a particular source from the contract action:

(A) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(B) Current annual requirement and prospective needs for the supplies and services.

(C) Projected future requirements.

(iv) Whether the existing source must be totally excluded from the action or whether a partial exclusion is sufficient.

(v) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(vi) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(A) Assumptions regarding future competition; and

(B) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(vii) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(A) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(B) A comparison of current production capacity with current and mobilization requirements; and

(C) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

§ 1806.202–70 Formats.

A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

Natonal Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of_____(1).

Findings

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of _____(2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on _____ (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because_____(5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because_____(5).

Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date_____

NOTES:

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.

5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

§ 1806.302 Circumstances permitting other than full and open competition.

§ 1806.302–4 International agreement.

§ 1806.302–470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302–4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) Describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition;

(b) Is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304–70; and

(c) Is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

1806.302–7 Public interest. (NASA supplements paragraph (c))

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code LC). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302–7(c)(1) in any format that clearly documents the determination and the supporting findings.

1806.303 Justifications.

1806.303–1 Requirements. (NASA supplements paragraphs (b) and (d))

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites that authority of FAR 6.302–1 (a)(2)(i) or FAR 6.302–7 to NASA Headquarters, International Relations Division (Code IR), unless one of the exceptions at FAR 25.403 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303–1(d).

1806.303–170 Sole-source purchases by contractors.

The requirements of FAR part 6 and this part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where ''brand name or equal'' purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under

1811.104, the justification requirements of FAR part 6 and this part 1806 do not apply.

1806.303–2 Content.

1806.303–270 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302–2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303–2 and;

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304–70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over $500,000 but not exceeding $10,000,000—

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over $10,000,000 but not exceeding $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Center Director or Associate Administrator for Headquarters Operations.

(c) For proposed contracts over $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Center Director or Associate Administrator for Headquarters Operations

(iv) Agency Competition Advocate

(2) Approving Official: Associate Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Associate Administrator for Procurement, the original justification shall be forwarded to the Associate Administrator for Procurement (Code HS).

(f) Regardless of dollar value, class justifications shall be approved by the Associate Administrator for Procurement.

Subpart 1806.5—Competition Advocates

1806.501 Requirement. (NASA paragraphs (1), (2), (3) and (4))

(1) The Deputy Associate Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Director, Program Operations Division, Code HS, is the competition advocate for the Headquarters contracting activity.

(4) The Deputy Manager is the contracting activity competition advocate for the Space Station Program Office.

1806.502 Duties and responsibilities. (NASA supplements paragraph (b))

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7a. The authority citation for part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

8. Part 1852 is amended as follows:

1852.000 [Amended]

a. Section 1852.000 is revised to read as follows:

1852.000 Scope of part.

This part, in conjunction with FAR Part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,

(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

Subpart 1852.1—[Revised]

b. Subpart 1852.1 is revised to read as follows:

Subpart 1852.1—Instructions for Using Provisions and Contracts.

1852.101 Using Part 52.
1852.103 Identification of provisions and clauses.
1852.103–70 Identification of modified provisions and clauses.
1852.104 Procedures for modifying and completing provisions and clauses.

1852.101 Using FAR part 52. (NASA supplements paragraphs (b) and (e))

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of subpart 1801.3 are met.

(e)(1) The NFS matrix in subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the ''required-when-applicable'' and ''optional'' categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses. (NASA supplements paragraphs (b) and (c))

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b) (i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GSFC, CW, JSC, KSC, LARC, LERC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with ''52.2,'' with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from −90 to −199. For example, the first Johnson Space Center (JSC) provision or clause relating to part 36 of the FAR or NFS shall be JSC 52.236–90, the second JSC 52.236–91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(A) I.2 BID ENVELOPES (GSFC 52.214–90) (AUGUST 1987) This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number (''I.2'') designates the UCF section and the sequential clause within that section ''GSFC 52.214–90'' specifies the clause number.

(B) GSFC 52.214–90—Bid Envelopes (AUGUST 1987) This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(C) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, ''F.3 Delivery Procedures for Special Hardware'' cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown in this subsection. This format shall be used both for incorporation by reference and when using full text.

''52.232–28 Electronic Funds Transfer Payment Methods (APR 1989)—as modified by NASA FAR Supplement 1832.908(a)''

1852.104 Procedures for modifying and completing provisions and clauses.

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1852.2—Text of Provisions and Clauses.

1852.203–70, 1852.204–77, 1852.204–78, 1852.207–70 [Removed]

c. Sections 1852.203–70, 1852.204–77, 1852.204–78, and 1852.207–70 are removed.

1852.204–75, 1852.204–76, 1852.208–81, 1852.209–70, 1852.209–71, 1852.209–72 [Revised]

d. Sections 1852.204–75, 1852.204–76, 1852.208–81, 1852.209–70, 1852.209–71, and 1852.209–72 are revised to read as follows:

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS (SEPTEMBER 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254].

(End of clause)

1852.204–76 Security requirements for unclassified automated information resources.

As prescribed in 1804.470–3, insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED AUTOMATED INFORMATION RESOURCES (SEPTEMBER 1993)

(a) In addition to complying with any functional and technical security requirements set forth in the schedule and the clauses of this contract, the Contractor shall initiate personnel screening checks and obtain user responsibility agreements, as required by this clause, for each contractor employee requiring unescorted or unsupervised physical access or electronic access to the following limited or controlled areas, systems, programs and data: [List areas, systems, programs and data].

(1) The Contractor shall submit a personnel security questionnaire (NASA Form 531, Name Check Request, for National Agency Check (NAC) investigations and Standard Form 85P, Questionnaire for Public Trust Positions, for specified sensitive positions) and a Fingerprint Card (FD–258 with NASA overprint in Origin Block) to the installation Security Officer for each Contractor employee who requires access. The required forms may be obtained from the installation security office. Employees may have fingerprints taken at the [Insert office name and location], or at any police department.

(i) Several months may be required for completion of complex personnel screening investigations. Background screening may not be required for employees with recent or current Federal Government investigations.

(ii) When employee access is necessary prior to completion of personnel screening, each contractor employee requiring access may be considered for escorted access. The installation Security Officer will establish the eligibility of proposed escorts.

(2) The Contractor shall ensure that each contractor employee requiring access executes any user responsibility agreements required by the Government prior to access. The Contractor shall provide signed copies of the agreements to the installation Security Officer for inclusion in the employee's security file. Unauthorized access is a violation of law and punishable under the provisions of 18 U.S.C. 1029, 18 U.S.C. 1030 and other applicable statutes.

(3) The Contractor shall notify the installation AIS Manager no later than the end of the day of the termination for cause of an authorized employee's access. The Contractor shall notify the COTR no later than ten days after an authorized employee no longer requires access for any other type of termination. Verbal notifications shall be confirmed in writing within thirty days.

(b) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in paragraph (a) are applicable to performance of the subcontract.

(End of clause)

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1801.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (AUGUST 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) ''Duplicating/copying'' is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production unites provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10¾ by 14¼ inches. A ''production unit'' is one sheet, size 8½ × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to

proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

1852.209–70 Product removal from Qualified Products List.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DECEMBER 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

1852.209–71 Limitation of Future Contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507–2:

LIMITATION OF FUTURE CONTRACTING (DECEMBER 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime of first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to complete with those other companies.

(End of clause)

1852.209–72 Composition of the Contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DECEMBER 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

[FR Doc. 96–19422 Filed 8–2–96; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 61, No. 151
Monday, August 5, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV96–911–1PR]

Limes Grown in Florida and Imported Limes; Increase in the Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed increase in the current minimum size requirement for limes grown in Florida and for limes imported into the United States. The Florida Lime Administrative Committee (Committee), is the agency responsible for the local administration of the marketing order covering limes grown in Florida. This rule would increase the minimum size requirement from 1 7/8 inches to 2 inches in diameter during the period of January 1 through May 31. Larger fruit tend to have a higher juice content. Therefore, the increase in fruit size would enable handlers to meet the 42 percent juice content requirement specified in the regulations for limes shipped to the fresh market. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 4, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456 or by FAX at (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: 202–720–2491, Fax # 202–720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 911 (7 CFR Part 911), as amended, regulating the handling of limes grown in Florida, 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.''

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including limes, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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 an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 10 handlers subject to regulation under the order and approximately 30 producers of Florida limes. There are approximately 35 importers of limes. Small agricultural service firms, which include lime handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, producers, and importers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule proposes an increase in the minimum size requirement for Florida and imported limes, which could impose some additional costs on handlers and importers, including small entities. However, any additional costs

will not impose a significant economic impact. The minimum size requirement would be applied to both small and large handlers and importers in the same way. With an increase in the minimum size, the larger limes are more likely to meet the 42 percent minimum juice content requirement. This change is expected to reduce the incidence of repacking and may lower costs to handlers and importers. Increasing the minimum size would also ensure that such limes would be more mature and have a higher juice content, which would encourage repeat purchases by consumers. This increase in quality to the consumer is expected to increase returns to handlers, importers, and producers. Therefore, AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific pack, container, grade and size requirements. These requirements are specified under §§ 911.311, 911.329 and 911.344. Section 911.51 requires inspection and certification that these requirements are met. Currently, the minimum size requirement for Florida limes is that they measure at least 1⅞ inches in diameter.

The destruction caused by Hurricane Andrew in 1992 has drastically reduced the lime acreage in Florida from 6,500 acres to approximately 1,500 acres. During the 1991–92 season, prior to Hurricane Andrew, 1,682,677 bushels of limes were assessed. For the 1993–94 season, assessments were collected on 228,455 bushels, and for the 1994–95 season, assessments were collected on 283,977 bushels of limes. These factors led the Committee to reconsider current marketing order requirements, including the 1⅞ inches in diameter size requirement.

The Committee met on January 10, 1996, and recommended to increase the minimum size requirement for Florida limes from 1⅞ inches to 2 inches in diameter during the period of January 1 through May 31. The recommendation passed by a vote of seven in favor to one opposed. The one dissenting voter did not comment on why he was opposed to the increase.

Florida lime production and the quantity of lime imports into the United States reach their lowest point from January through May. During the 1994–95 season, 32,035 bushels of Florida limes and 2,402,987 bushels of imported limes, were shipped to the fresh market during the January through May production period. In comparison, 257,178 bushels of Florida limes and 5,980,669 bushels of imported limes, were shipped to the fresh market during the peak production period of June through December.

During the January through May period, prices are generally higher while lime quality is lower. Market demand however, remains the same as in the peak production period. These factors have resulted in an incentive to pack low quality fruit. Also, the juice content requirement for limes shipped to the fresh market is 42 percent. Handlers have had difficulty meeting the requirement during the low production period because limes are less mature and have thicker skins. The thicker-skinned limes tend to have lower juice content.

Limes that are 2 inches or larger in diameter have a higher juice content than smaller limes. The larger limes, therefore, have a greater chance of meeting the 42 percent juice content requirement. Increasing the minimum size to 2 inches in diameter would therefore result in more fresh limes meeting the 42 percent juice content requirement. These limes would pass inspection without the expense of repacking and regrading the fruit which would reduce handling costs.

The increase would have a positive cost effect on consumers because it would allow handlers of limes to provide the consumer with higher quality fruit at a reasonable cost. According to the Committee, the industry's past sales records indicate that consumers have a preference for the larger sized limes. Producers and importers of limes would also benefit by experiencing higher return rates.

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would increase the minimum size requirement for Florida limes, a corresponding change would also apply to imports.

In a separate rulemaking action, the Department is proposing to reduce the regulatory period for Florida limes and limes imported into the United States. The proposed action would modify language in both the domestic and import regulations to change the regulatory period to January 1 through May 31 from its current continuous, year round, implementation.

Minimum grade, size, quality, and maturity requirements for limes imported into the United States are currently in effect under § 944.209 (7 CFR 944.209). This proposal would increase the minimum size requirement for imported limes from 1⅞ inches to 2 inches in diameter during the period of January 1 through May 31. This rule would result in more imported limes passing the 42 percent juice content requirement, providing higher quality fruit at a reasonable cost.

The largest exporter of limes to the United States is Mexico, with the heaviest volumes of lime shipments occurring between June 1 and December 31. Mexico exported 6,075,685 bushels of fresh limes to the United States during the 1994–95 season, while other import sources shipped a total of 201,053 bushels, combined.

The 1⅞ inches in diameter size requirement is not specifically stated in the lime import regulation. Therefore, no change is needed in the text of § 944.209.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

Interested persons are invited to submit comments on this proposal. A 60-day comment period is deemed appropriate because all parties need time to ensure all comments are received in order to be of maximum benefit to the lime industry during the January 1 through May 31 period.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 911 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

§ 911.344 [Amended]

2. In § 911.344, paragraph (a)(3) the words ''at least 1 7/8 inches'' are revised to read ''at least 2 inches''.

Dated: July 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19854 Filed 8–2–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 103, 212, 235, 236, 242, 287, 292, 292a

[EOIR No. 113P; A.G. Order No. 2046–96]

RIN 1125–AA14

Executive Office for Immigration Review; List of Free Legal Services

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule transfers the responsibility for maintaining the list of free legal services in deportation proceedings from the Immigration and Naturalization Service (INS) to the Executive Office for Immigration Review, Office of the Chief Immigration Judge. This rule also proposes to amend the regulations governing the list by permitting attorneys who provide free legal services to indigent aliens to apply to be included on the list of free legal services. The rule also amends 8 CFR Part 103 by transferring appellate jurisdiction to the Board of Immigration Appeals from the Associate Commissioner for Examinations, INS, for appeals from decisions on applications relative to the list of free legal services and from decisions on removals from such a list.

DATES: Written comments must be received on or before October 4, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This proposed rule amends 8 CFR Parts 3 and 292a by transferring the responsibility for maintaining the list of free legal services in deportation proceedings from the Immigration and Naturalization Service (INS) to the Executive Office for Immigration Review (EOIR), Office of the Chief Immigration Judge. Because EOIR will be assuming this new responsibility, this regulatory provision will be moved from 8 CFR Part 292a to 8 CFR Part 3, which pertains specifically to EOIR. This list of free legal services is given to aliens who have been placed in deportation proceedings in Immigration Court. Accordingly, the list will only include organizations and attorneys, qualified pursuant to this rule, who can represent aliens in such proceedings before the Board and the Immigration Courts.

This list of free legal services is not to be confused with the Roster of Recognized Organizations and Accredited Representatives (Roster) maintained by the Board pursuant to § 292.2(e). The Roster includes the names of accredited representatives who are authorized to practice before the Service alone or the Service and the Board (including practice before the Immigration Court).

This proposed rule has been drafted in response to a May 1994 Inspector General's (IG) report on the Case Hearing Process before EOIR. The IG's report focused, *inter alia*, on regulatory and procedural changes which would improve the effectiveness and timeliness of immigration proceedings. One of the recommendations in the report suggested that the responsibility for maintaining the referral lists of pro bono legal services be transferred from INS to EOIR. The IG report noted that EOIR is responsible for the recognition of non-profit religious, charitable, and social organizations and the accreditation of its representatives who provide legal services to aliens for nominal fees. In light of these agency responsibilities and the frequent contact of immigration judges with the legal services community, the IG report concluded that EOIR is the appropriate entity to develop and maintain these referral lists of pro bono legal services.

This rule also proposes to amend the present regulation by permitting attorneys who provide free legal services to indigent aliens to apply to be included on the list of free legal services. Section 242B(b)(2) of the Immigration and Nationality Act, as amended, requires the Attorney General to provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in immigration proceedings. Enabling attorneys to apply to be included on the list of free legal services will enhance the opportunities for indigent aliens to find free legal counsel.

This proposed rule also amends 8 CFR Part 103 by transferring appellate jurisdiction to the Board of Immigration Appeals from the Associate Commissioner for Examinations, INS, for appeals from decisions on applications relative to the list of free legal services and from decisions on removals from such a list. In addition, the rule proposes to amend 8 CFR Parts 212, 235, 236, 242, and 287 by removing all references to Part 292a and replacing them with references to Part 3. Finally, this proposed rule amends 8 CFR Part 292 by clarifying that representatives authorized to practice before the Board are also authorized to practice before the Immigration Court.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule merits the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers,

Reporting and recordkeeping requirements.

8 CFR Part 292a

Aliens, Legal services.

For the reasons set forth in the preamble, and under the authority of 8 U.S.C. 1103, 1252b, chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by adding a new paragraph (b)(11) to read as follows:

§ 3.1 General.

* * * * *

(b) * * *

(11) Decisions on applications from organizations or attorneys requesting to be included on a list of free legal services and removal therefrom pursuant to this part 3.

* * * * *

3. Subpart D is added and reserved and a new Subpart E is added to read as follows:

Subpart D—[Reserved]

Subpart E—List of Free Legal Services

Sec.
3.61 List.
3.62 Qualifications.
3.63 Applications.
3.64 Approval and denial of applications.
3.65 Removal of an organization or attorney from list.

Subpart D—[Reserved]

Subpart E—List of Free Legal Services

§ 3.61 List.

(a) The Chief Immigration Judge, or his or her designee, shall maintain a current list of free legal services, to be updated not less than quarterly, for the purpose of providing aliens in immigration proceedings with such a list. Organizations and attorneys may be included on the list of free legal services if they qualify under one of the following categories:

(1) Organizations recognized under § 292.2 of this chapter that meet the qualifications set forth in § 3.62(a) and whose representatives, if any, are authorized to practice before the Board (including practice before the Immigration Court);

(2) Organizations not recognized under § 292.2 of this chapter that meet the qualifications set forth in § 3.62(b);

(3) Bar associations that meet the qualifications set forth in § 3.62(c); and

(4) Attorneys, as defined in § 1.1(f) of this chapter, who meet the qualifications set forth in § 3.62(d).

(b) The listing of an organization qualified under this subpart is not equivalent to recognition under § 292.2 of this chapter.

§ 3.62 Qualifications.

(a) *Organizations recognized under § 292.2.* An organization that is recognized under § 292.2 of this chapter that seeks to have its name appear on the list maintained by the Chief Immigration Judge, or his or her designee, must have on its staff:

(1) An attorney, as defined in § 1.1(f) of this chapter, or

(2) At least one accredited representative as defined in § 292.1(a)(4) of this chapter who is authorized to practice before the Board (including practice before the Immigration Court).

(b) *Organizations not recognized under § 292.2.* An organization that is not recognized under § 292.2 of this chapter which seeks to have its name appear on the list maintained by the Chief Immigration Judge, or his or her designee, must declare that:

(1) It is established in the United States;

(2) It provides free legal services to indigent aliens; and

(3) It has on its staff, or retains at no expense to the alien, an attorney, as defined in § 1.1(f) of this chapter, who is available to render such free legal services by representation in immigration proceedings.

(c) *Bar associations.* A bar association that provide a referral service of attorneys who render pro bono assistance to aliens in immigration proceedings may apply to have its name appear on the list maintained by the Chief Immigration Judge, or his or her designee.

(d) *Attorneys.* An attorney, as defined in §1.1(f) of this chapter, who seeks to have his or her name appear on the list maintained by the Chief Immigration Judge, or his or her designee, must declare that he or she provides free legal services to indigent aliens and that he or she is willing to represent indigent aliens in immigration proceedings. An attorney under this section may not receive any direct or indirect remuneration from indigent aliens, except that the attorney may be regularly compensated by the firm or organization with which he or she is associated.

§ 3.63 Applications.

(a) *Generally.* In order to qualify to appear on the list maintained by the Chief Immigration Judge, or his or her designee, under this subpart, an organization or attorney must file an application requesting to be placed on the list of free legal services. This application must be filed with the Office of the Chief Immigration Judge, along with proof of service on the Court Administrator of the Immigration Court having jurisdiction over each locality where the organization or attorney provides free legal services. Each submission shall be identified by the notation ''Application for Free Legal Services List'' on the envelope.

(b) *Organizations not recognized under § 292.2.* An organization which is not recognized under § 292.2 of this chapter must submit a declaration signed by an authorized officer of the organization which states that the organization complies with all of the qualifications set forth in § 3.62(b).

(c) *Attorneys.* An attorney must:

(1) Submit a declaration which states that:

(i) He or she provides free legal services to indigent aliens;

(ii) He or she is willing to represent indigent aliens in immigration proceedings; and

(iii) He or she is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; and

(2) Which includes the attorney's bar number, if any, from each bar of the highest court of the state, possession, territory, or commonwealth in which he or she is admitted to practice law.

(d) *Changes in address or status.* Organizations and attorneys referred to in this subpart are under a continuing obligation to notify the Chief Immigration Judge, or his or her designee, in writing within ten business days, of any change of address, telephone number, or status. Failure to notify the Chief Immigration Judge, or his or her designee of any such changes may result in the name of the organization or attorney being removed from the list.

§ 3.64 Approval and denial of applications.

The Court Administrator of the Immigration Court having jurisdiction over each locality where the organization or attorney provides free legal services shall forward a recommendation for approval or denial of each application submitted by an organization or attorney, and the reasons therefore, to the Chief Immigration Judge, or his or her

designee. The Chief Immigration Judge, or his or her designee, shall have the authority to approve or deny an application submitted by an organization or an attorney pursuant to § 3.63. If an application is denied, the organization or attorney shall be notified of the decision in writing, at the organization's or attorney's last known address, and shall be given a written explanation of the grounds for such denial. A denial must be based on the failure of the organization or attorney to meet the qualifications and/or comply with the procedures set forth in this subpart. The organization or attorney shall be advised of its right to appeal this decision to the Board of Immigration Appeals in accordance with § 3.1(b) and § 103.3(a)(1)(ii) of this chapter.

§ 3.65 Removal of an organization or attorney from list.

(a) *Involuntary removal.* If the Chief Immigration Judge, or his or her designee, believes that an organization or attorney qualified under this subpart no longer meets the qualifications set forth in this subpart, he or she shall promptly notify the organization or attorney in writing, at the organization's or attorney's last known address, of his or her intention to remove the name of the organization or attorney from the list of free legal services. The organization or attorney may submit within 30 days from the date the notice was served. The organization or attorney must establish by clear, unequivocal, and convincing evidence that its name should not be removed from the list. If, after consideration of any answers submitted by the organization or attorney, the Chief Immigration Judge, or his or her designee, determines that the organization or attorney no longer meets the qualifications set forth in this subpart, the Chief Immigration Judge, or his or her designee, shall promptly remove the name of the organization or attorney from the list of free legal services, the removal of which will be reflected in the next quarterly update, and shall notify the organization or attorney of such removal in writing, at the organization's attorney's last known address. The organization or attorney shall be advised of its right to appeal this decision to the Board of Immigration Appeals in accordance with § 3.1(b) and § 103.3(a)(1)(ii) of this chapter.

(b) *Voluntary removal.* Any organization or attorney qualified under this subpart may, at any time, submit a written request to have its name removed from the list of free legal services. Such a request shall be honored and the name of the organization or attorney shall promptly be removed from the list of free legal services, the removal of which will be reflected in the next quarterly update.

PART 103—POWERS AND DUTIES OF SERVICES OFFICERS; AVAILABILITY OF SERVICE RECORDS

4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

5. Section 103.1 is amended by removing and reserving paragraph (f)(3)(iii)(U).

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

6. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; and 8 CFR part 2.

§ 212.6 [Amended]

7. In § 212.6, paragraph (d)(1) is amended in the third sentence by removing the word ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

8. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

§ 235.6 [Amended]

9. In § 235.6, paragraph (a) is amended in the fourth sentence by removing the word ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

PART 236—EXCLUSION OF ALIENS

10. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

§ 236.2 [Amended]

11. § 236.2, paragraph (a) is amended in the third sentence by removing the work ''programs'' and adding ''provided by organizations and attorneys'' in its place and be revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

12. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

§ 242.1 [Amended]

13. In § 242.1, paragraph (c) is amended in the fourth sentence by removing the word ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

§ 242.2 [Amended]

14. § 242.2, paragraph (c)(2) is amended in the third sentence by removing the work ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to part 292a of this chapter'' to read ''part 3 of this chapter''.

15. In § 242.2, paragraph (d) is amended in the fourth sentence by removing the word ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

§ 242.16 [Amended]

16. In § 242.16, paragraph (a) is amended in the first sentence by removing the word ''programs'' and adding ''provided by organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

§ 242.24 [Amended]

17. In § 242.24, paragraph (g) is amended in the first and second sentences by revising the phrase ''found on the free legal services list'' to read ''or attorney found on the list of free legal services maintained in accordance with part 3 of this chapter''.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

18. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

§ 287.3 [Amended]

19. In § 287.3, the sixth sentence is amended by removing the word ''programs'' and adding ''provided by

organizations and attorneys'' in its place and by revising the reference to ''part 292a of this chapter'' to read ''part 3 of this chapter''.

PART 292—REPRESENTATION AND APPEARANCES

20. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

21. Section 292.2 is amended by revising the first sentence in paragraph (a) introductory text to read as follows:

§ 292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.

(a) *Qualifications of organizations.* A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Board may designate a representative or representatives to practice before the Service alone or the Service and the Board (including practice before the Immigration Court). * * *

* * * * *

PART 292A—[REMOVED]

22. Part 292a is removed.

Dated: July 27, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–19732 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

RIN 3150–AF37

Access to and Protection of Classified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to conform the requirements for the protection of and access to classified information to new national security policy documents. This proposed rule is necessary to ensure that classified information in the possession of NRC licensees and others under the NRC's regulatory requirements is protected in accordance with current national policies.

DATES: The comment period expires October 4, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSESES: Comments may be submitted either electronically or in written form. For written comments submit to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Electronic comments may be submitted, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax ((301) 415–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated above.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone (301) 415–7403, Email DGK@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The national requirements for the protection of and access to Classified National Security Information have been revised by the issuance of the National Industrial Security Program Operating Manual (NISPOM), Executive Order 12958, ''Classified National Security Information,''dated April 17, 1995, and Executive Order 12968, ''Access to Classified Information,'' dated August 4, 1995. In order to conform to these new national security policy documents, the

NRC must revise its regulations for the protection of classified information. The requirements of 10 CFR parts 25 and 95 are substantially based on Executive Order 12356, dated April 6, 1982, which was superseded by Executive Order 12958.

The proposed rule would amend the provisions of 10 CFR Parts 25 and 95 that deal with requirements for access to and protection of classified information that have been changed or added by the NISPOM or the Executive Orders. Specifically, changes include revised and added definitions such as Cognizant Security Agency, Classified National Security Information, Classified Information, Facility Security Clearance, Foreign Ownership, Control, or Influence and numerous amendments to reflect the fact that the NRC may permit another Cognizant Security Agency (DOE, DoD, or CIA) to assume some or all of the security oversight functions at an NRC facility under the requirements of 10 CFR parts 25 and/or 95 when that agency also has a significant security interest at the facility. The proposed rule addresses the intent of Executive Order 12829, ''National Industrial Security Program,'' to reduce wasteful and inefficient duplicative oversight of private facilities which have classified interests from more than one government agency.

The proposed rule would also adopt new requirements in areas where the Executive Orders or the NISPOM mandate specific requirements not included in the previous versions of the rules. These new requirements include: Requiring that key management personnel have personnel security clearances as well as those employees with access to classified information; Permitting reinstatement of a personnel security clearance up to 24 months after termination instead of the previous 6 months; Permitting facility security officers to issue visit authorization letters directly rather than through the NRC Division of Security; Requiring a finding that a facility is not under foreign ownership, control or influence; Requiring facility security officers to have specific training related to their position; Permitting the use of reinforced steel filing cabinets with lockbars and key locks for classified information (provided appropriate supplemental protection is in place during non-working hours); Changing the security classification markings to conform to Executive Order 12958; Reducing the accountability requirements for Secret documents; Defining procedures for challenging classification decisions that one believes to be in error; Allowing for additional methods of transmitting classified information; and imposing fewer limitations on a facilities authority to reproduce classified information when operationally necessary.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average .5 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. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0046, –0047, 3150–0051), Office of Management and Budget, Washington, DC 20503. Comments to OMB on the collections of information or on the above issues should be submitted by September 4, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7403

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The NRC carefully considered the effect on small entities in developing this proposed rule on the protection of classified information and have determined that none of the facilities affected by this rule would qualify as a small entity under the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, applies to this rulemaking initiative because it falls within the criteria of 10 CFR Part 50.109(a)(1), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 10 CFR 50.109(a)(4)(iii) that reads ''That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate.''

List of Subjects

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC proposes to adopt the following amendments to 10 CFR parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829; E.O. 12958; E.O. 12968

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

2. Section 25.1 is revised to read as follows:

§ 25.1 Purpose.

The regulations in this part establish procedures for granting, reinstating, extending, transferring, and terminating access authorizations of licensee personnel, licensee contractors or agents, and other persons (e.g., individuals involved in adjudicatory procedures as set forth in 10 CFR part 2, subpart I) who may require access to classified information.

3. Section 25.3 is revised to read as follows:

§ 25.3 Scope.

The regulations in this part apply to licensees and others who may require access to classified information related to a license or an application for a license.

4. Section 25.5 is amended by revising the definitions *Access authorization* and *Need to know* and by adding the definitions of *Certificate holder, Classified information, Classified National Security Information, Cognizant Security Agency*, and *Visit authorization letters* in alphabetical order to read as follows:

§ 25.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, licensees and certificate holders, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to classified information.

* * * * *

Certificate holder means a facility operating under the provisions of part 71 or 76 of this chapter.

Classified information means either Classified National Security Information, Restricted Data, or Formerly Restricted Data or any one of them. It is the generic term for information requiring protection in the interest of National Security whether classified under an Executive Order or the Atomic Energy Act.

Classified National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

Cognizant Security Agency (CSA) means agencies of the Executive Branch that have been authorized by E.O. 12829 to establish an industrial security program for the purpose of safeguarding classified information under the jurisdiction of those agencies when disclosed or released to U.S. Industry. These agencies are the Department of Defense, the Department of Energy, the Central Intelligence Agency, and the Nuclear Regulatory Commission. The Secretary of Defense (SECDEF) has been designated as Executive Agent for the National Industrial Security Program (NISP).

* * * * *

Need-to-know means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function under the cognizance of the Commission.

* * * * *

Visit authorization letters (VAL) means a letter, generated by a licensee, certificate holder or other organization under the requirements of 10 CFR parts 25 and/or 95, verifying the need to know and access authorization of an individual from that organization who needs to visit another authorized facility for the purpose of exchanging or acquiring classified information.

* * * * *

5. In § 25.8, paragraphs (a) and (b) are revised to read as follows:

§ 25.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0046.

(b) The approved information collection requirements contained in this part appear in §§ 25.11, 25.17, 25.21, 25.23, 25.25, 25.27, 25.29, 25.31, 25.33, and 25.35.

* * * * *

6. In § 25.13, paragraph (a) is revised to read as follows:

§ 25.13 Maintenance of records.

(a) Each licensee or organization employing individuals approved for personnel security access authorization under this part, shall maintain records as prescribed within the part. These records are subject to review and inspection by CSA representatives during security reviews.

* * * * *

7. Section 25.15 is revised to read as follows:

§ 25.15 Access permitted under ''Q'', ''L'' or equivalent CSA access authorization.

(a) A ''Q'' or CSA equivalent access authorization permits an individual access on a need-to-know basis to Critical Secret Restricted Data and Secret and Confidential Classified National Security Information including intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information.

(b) An ''L'' or CSA equivalent access authorization permits an individual access on a need-to-know basis to Secret and Confidential classified information other than the categories specifically included in paragraph (a) of this section. In addition, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1985.

(c) Each employee of the Commission is processed for one of the two levels of access authorization. Licensees and other persons will furnish classified information to a Commission or CSA employee on official business when the employee has the appropriate level of access authorization and need-to-know. Some individuals are permitted to begin NRC employment without an access authorization. However, no NRC or CSA employee is permitted access to any classified information until the appropriate level of access authorization has been granted to that employee by NRC or the CSA.

8. Section 25.17 is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

(a) Access authorizations must be requested for licensee employees or other persons (e.g., 10 CFR part 2, subpart I) who need access to classified information in connection with activities under parts 50, 70, 72, or 76.

(b) The request must be submitted to the facility CSA. If NRC is the CSA, the procedures in § 25.17(c) and (d) will be followed. If NRC is not the CSA, the request will be submitted to the CSA in accordance with procedures established by the CSA.

(c) The request must include a completed personnel security packet (see § 25.17(d)) and request form (NRC Form 237) signed by a licensee, licensee contractor official or other authorized person.

(d)(1) Each personnel security packet submitted, must include the following completed forms:

(i) Questionnaire for National Security Positions (SF - 86, parts 1 and 2);

(ii) Two Standard fingerprint cards (FD - 258);

(iii) Security Acknowledgment (NRC Form 176); and

(iv) Other related forms where specified in accompanying instructions (NRC Form 254).

(2) Only a Security Acknowledgment (NRC Form 176) need be completed by any person possessing an active access authorization, or who is being processed for an access authorization, by another Federal agency. The active or pending access authorization must be at an equivalent level to that required by the NRC and be based on an adequate investigation not more than five years old.

(e) To avoid delays in processing requests for access authorizations, each security packet should be reviewed for completeness and correctness (including legibility of response on the forms) prior to submittal.

(f) Applications for access authorization or access authorization renewal processing that are submitted to NRC for processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each ''Q'' and ''L'' access authorization, or renewal request. Access authorization and access authorization renewal fees will be published each time the Office of Personnel Management notifies NRC of a change in the rates it charges NRC for the conduct of investigations. Any changed access authorization or access authorization renewal fees will be applicable to each access authorization or access authorization renewal request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, since the Commission may accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

9. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for access authorization or access authorization renewal must be submitted to the CSA. If NRC is the CSA, the application and its accompanying fee must be submitted to the NRC Division of Security. If necessary, the NRC Division of Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

10. Section 25.21 is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

(a) Following receipt by the CSA of the reports of the personnel security investigations, the record will be reviewed to determine that granting an access authorization or renewal of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. If this determination is made, access authorization will be granted or renewed. If NRC is the CSA, questions as to initial or continued eligibility will be determined in accordance with part 10 of Chapter I. If another agency is the CSA, that agency will, under the requirements of the NISPOM, have established procedures at the facility to resolve questions as to initial or continued eligibility for access authorization. Such questions will be determined in accordance with established CSA procedures already in effect for the facility.

(b) The CSA must be promptly notified of developments that bear on continued eligibility for access authorization throughout the period for which the authorization is active (e.g., persons who marry subsequent to the completion of a personnel security packet must report this change by submitting a completed NRC Form 354, ''Data Report on Spouse'' or equivalent CSA form).

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC ''Q'' and ''L'' access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to Classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(d).

(2) Renewal applications and the required paperwork are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements. (The DOE Reinvestigation Program has been determined to meet NRC's requirements). For these individuals, the submission of the SF–86 by the licensee or other person to the other government agency pursuant to their reinvestigation requirements will satisfy the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC ''Q'' or ''L'' access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC ''Q'' or NRC ''L'' renewal application to NRC may not exceed seven years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in § 25.17(d) before the expiration of the seven-year period.

(3) If NRC is not the CSA, reinvestigation program procedures and requirements will be set by the CSA.

11. Section 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant or renew access authorization will be furnished in writing to the licensee or organization that initiated the request. Upon receipt of the notification of original grant of access authorization, the licensee or organization shall obtain, as a condition for grant of access authorization and access to classified information, an executed ''Classified Information Nondisclosure Agreement'' (SF–312) from the affected individual. The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial access authorization shall execute an SF–312 prior to being granted access to classified information. The licensee or other organization shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other organization shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. Records of access authorization grant and renewal notification must be maintained by the licensee or other organization for three years after the access authorization has been terminated by the CSA. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners, or

(b) When the individual also is the official designated by the licensee or other organization to whom written NRC notifications are forwarded.

12. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of access authorization is withdrawn or canceled, the requestor shall notify the CSA immediately by telephone so that the full field investigation, National Agency Check with Credit Investigation, or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization or access authorization renewal requested. The requestor shall confirm each telephone notification promptly in writing.

13. Section 25.27 is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are canceled.

(a) In conjunction with a new request for access authorization (NRC Form 237 or CSA equivalent) for individuals whose cases were previously canceled, new fingerprint cards (FD–257) in duplicate and a new Security Acknowledgment (NRC Form 176), or CSA equivalents, must be furnished to the CSA along with the request.

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for Sensitive Positions (SF–86), or CSA equivalent, the individual must complete a personnel security packet (see § 25.17(d)). The CSA, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by NRC is required.

14. Section 25.29 is revised to read as follows:

§ 25.29 Reinstatement of access authorization.

(a) An access authorization can be reinstated provided that:

(1) No more than 24 months has lapsed since the date of termination of the clearance;

(2) There has been no break in employment since the date of termination of the clearance;

(3) There is no known adverse information;

(4) The most recent investigation must not exceed 5 years (Top Secret, Q) or 10 years (Secret, L); and

(5) Must meet or exceed the scope of the investigation required for the level of access authorization that is to be reinstated or granted.

(b) An access authorization can be reinstated at the same, or lower, level by submission of a CSA-designated form to the CSA. The employee may not have access to classified information until receipt of written confirmation of reinstatement and an up-to-date personnel security packet will be furnished with the request for reinstatement of an access authorization. A new Security Acknowledgment will be obtained in all cases. Where personnel security packets are not required, a request for reinstatement shall state the level of access authorization to be reinstated and the full name and date of birth of the individual in order to establish positive identification. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by NRC is required.

15. In § 25.31, paragraphs (a) and (c) are revised to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

(a) The NRC Division of Security may, on request, extend the authorization of an individual who possesses an access authorization in connection with a particular employer or activity, to permit access to classified information in connection with an assignment with another employer or activity.

* * * * *

(c) Requests for extension or transfer of access authorization shall state the full name of the person, his date of birth and level of access authorization. The Director, Division of Security, may require a new personnel security packet (see § 25.17(c)) to be completed by the applicant. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by NRC is required.

* * * * *

16. Section 25.33 is revised to read as follows:

§ 25.33 Termination of access authorizations.

(a) Access authorizations will be terminated when:

(1) Access authorization is no longer required, or

(2) An individual is separated from the employment or the activity for which he obtained an access authorization for a period of 90 days or more, or

(3) An individual, pursuant to 10 CFR part 10 or other CSA approved adjudicatory standards, is no longer eligible for access authorization.

(b) A representative of the licensee or other organization which employs the individual whose access authorization will be terminated shall immediately notify the CSA when the circumstances noted in paragraph (a)(1) or (a)(2) of this section exist; inform the individual that his access authorization is being terminated, and the reason; and that he will be considered for reinstatement of access authorization if he resumes work requiring it.

(c) When an access authorization is to be terminated, a representative of the

licensee or other organization shall conduct a security termination briefing of the individual involved, explain the Security Termination Statement (NRC Form 136 or CSA approved form) and have the individual complete the form. The representative shall promptly forward the original copy of the completed Security Termination Statement to CSA.

17. Section 25.35 is revised to read as follows:

§ 25.35 Classified visits.

(a) The number of classified visits must be held to a minimum. The licensee, certificate holder, or other facility shall determine that the visit is necessary and that the purpose of the visit cannot be achieved without access to, or disclosure of, classified information. All classified visits require advance notification to, and approval of, the organization to be visited. In urgent cases, visit information may be furnished by telephone and confirmed in writing.

(b) Representatives of the Federal Government, when acting in their official capacities as inspectors, investigators, or auditors, may visit a licensee, certificate holder or other's facility without furnishing advanced notification, provided these representatives present appropriate government credentials upon arrival. Normally, however, Federal representatives will provide advance notification in the form of an NRC Form 277, ''Request for Visit or Access Approval,'' with the ''need to know'' certified by the appropriate NRC Office exercising licensing or regulatory authority and verification of NRC access authorization by the Division of Security.

(c) Licensee, certificate holder or others shall include the following information in all Visit Authorization Letters (VAL) which they prepare.

(1) Visitor's name, address, and telephone number and certification of the level of the facility security clearance.

(2) Name, date and place of birth, and citizenship of the individual intending to visit;

(3) Certification of the proposed visitor's personnel clearance and any special access authorizations required for the visit;

(4) Name of person(s) to be visited;

(5) Purpose and sufficient justification for the visit to allow for a determination of the necessity of the visit; and

(6) Date or period during which the VAL is to be valid.

(d) Classified visits may be arranged for a 12 month period. The requesting facility shall notify all places honoring these visit arrangements of any change in the individual's status that will cause the visit request to be canceled prior to its normal termination date.

(e) The responsibility for determining need-to-know in connection with a classified visit rests with the individual who will disclose classified information during the visit. The licensee, certificate holder or other facility shall establish procedures to ensure positive identification of visitors prior to the disclosure of any classified information.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

18. The authority citation for part 95 is revised to read as follows:

Authority: Secs. 145, 161, 193 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12958; E.O. 12968; E.O. 12829.

19. Section 95.1 is revised to read as follows:

§ 95.1 Purpose.

The regulations in this part establish procedures for obtaining security facility approval and for safeguarding Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed, certified or regulated by the Commission. This part does not apply to Top Secret information because Top Secret information may not be forwarded to licensees, certificate holders, or others within the scope of an NRC license or certificate.

20. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees, certificate holders and others regulated by the Commission who may require access to Classified National Security Information and/or Restricted Data that is used, processed, stored, reproduced, transmitted, transported, or handled in connection with a license or certificate or an application for a license or certificate.

21. In § 95.5, the definitions for *Authorized classifier, National security information, NRC access authorization, Security facility approval,* and *Security survey* are removed and the definitions *Classified mail address, Infraction,* and *Need to know* are revised and the definitions *Access authorization, Classified National security information, Classified shipping address, Closed area, Cognizant Security Agency (CSA), Facility (Security) clearance (FCL), Foreign ownership control or influence (FOCI), Restricted area, Security reviews, Supplemental Protection* and *Violation* are added.

§ 95.5 Definitions.

* * * * *

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, licensees and certificate holders of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or Classified National Security Information.

* * * * *

Classified mail address means a mail address established for each facility approved by the NRC, to which all Classified information for the facility is to be sent.

* * * * *

Classified National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

Classified shipping address means an address established for a facility, approved by the NRC, to which classified material, that cannot be transmitted as normal mail is to be sent.

* * * * *

Closed area means an area that meets the requirements of the CSA, for the purpose of safeguarding classified material that, because of its size, nature, or operational necessity, cannot be adequately protected by the normal safeguards or stored during nonworking hours in approved containers.

Cognizant Security Agency (CSA) means agencies of the Executive Branch that have been authorized by E.O. 12829 to establish an industrial security program for the purpose of safeguarding classified information under the jurisdiction of those agencies when disclosed or released to U.S. Industry. These agencies are the Department of Defense, the Department of Energy, the Central Intelligence Agency, and the Nuclear Regulatory Commission. The Secretary of Defense has been designated as Executive Agent for the National Industrial Security Program.

* * * * *

Facility (Security) Clearance (FCL) means an administrative determination

that, from a security viewpoint, a facility is eligible for access to classified information of a certain category (and all lower categories).

Foreign ownership, control, or influence (FOCI) means a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of a U.S. company's securities, by contractual arrangements or other means, to direct or decide matters affecting the management or operations of that company in a manner which may result in unauthorized access to classified information or may affect adversely the performance of classified contracts.

Infraction means any knowing, willful, or negligent action contrary to the requirements of E.O. 12958, or its implementing directives, that does not comprise a ''violation,'' as defined below.

* * * * *

Need-to-know means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function under the cognizance of the Commission.

* * * * *

Restricted area means a controlled access area established to safeguard classified material, that because of its size or nature, cannot be adequately protected during working hours by the usual safeguards, but that is capable of being stored during non-working hours in an approved repository or secured by other methods approved by the CSA.

* * * * *

Security reviews means random security reviews of cleared facilities conducted to ensure that safeguards employed by licensees and others are adequate for the protection of classified information.

Supplemental protection means additional security procedures such as intrusion detection systems, security guards, and access control systems.

Violation means any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information or any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of Executive Order 12958 or its implementing directives.

22. Section 95.8 is revised to read as follows:

§ 95.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0047.

(b) The approved information collection requirements contained in this part appear in §§ 95.11, 95.15, 95.18, 95.19, 95.21, 95.25, 95.29, 95.33, 95.36, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.53, 95.57.

23. In § 95.13, paragraph (a) is revised to read as follows:

§ 95.13 Maintenance of records.

(a) Each licensee, certificate holder or other person granted facility clearance under this part shall maintain records prescribed within the part. These records are subject to review and inspection by CSA representatives during security reviews.

* * * * *

24. In § 95.15, paragraphs (a) and (b) are revised to read as follows:

§ 95.15 Approval for processing licensees and others for facility clearance.

(a) A licensee, certificate holder or other person who has a need to use, process, store, reproduce, transmit, transport, or handle classified information at any location in connection with Commission related activities shall promptly request an NRC facility clearance.

(b) The request must include the name of the facility, the location of the facility and an identification of any facility clearance issued by another government agency. If there is no existing facility clearance, the request must include a security Standard Practice and Procedures Plan that outlines the facility's proposed security procedures and controls for the protection of classified information, a floor plan of the area in which the matter is to be used, processed, stored, reproduced, transmitted, transported or handled; and Foreign Ownership, Control or Influence information as required by § 95.17(a).

* * * * *

25. Section 95.17 is revised to read as follows:

§ 95.17 Processing facility clearance.

(a) Following the receipt of an acceptable request for facility clearance, the NRC will either accept an existing facility clearance granted by a current CSA and authorize possession of license or certificate related classified information or process the facility for a facility clearance. Processing will include—

(1) A determination based on review and approval of a Standard Practice and Procedure Plan that granting of the Facility Security Clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to a such a degree that such a determination could not be made;

(2) An acceptable security survey conducted by NRC;

(3) Submitting key management personnel for personnel clearances (PCLs); and

(4) Appointing a U.S. citizen employee as the facility security officer.

(b) An interim Facility Security Clearance may be granted by the CSA on a temporary basis pending completion of the full investigative requirements.

25a. Sections 95.18 and 95.19 are redesignated as §§ 95.19 and 95.20.

26. A new § 95.18 is added to read as follows:

§ 95.18 Key personnel.

The senior management official and the Facility Security Officer must always be cleared to the level of the Facility Security Clearance. Other key management officials, as determined by the CSA, must be granted a personnel security clearance or be excluded from classified access. When formal exclusion action is required, the organization's board of directors or similar executive body shall affirm the following, as appropriate.

(a) Officers, directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively excluded from access to all classified information disclosed to the organization. These individuals also may not occupy positions that would enable them to adversely affect the organization's policies or practices in the performance of activities involving classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

(b) Officers directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively denied

access to higher-level classified information (specify which higher level(s)). These individuals may not occupy positions that would enable them to adversely affect the organization's policies or practices in the protection of classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

27. In newly redesignated § 95.19, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 95.19 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee, certificate holder or other person shall obtain prior CSA approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the CSA with copies to the Director, Division of Security, Office of Administration, NRC, Washington, DC 20555–0001, and the NRC Regional Administrator of the cognizant Regional Office listed in appendix A of part 73. The CSA shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior CSA approval include—

* * * * *

(b) A licensee or other person may effect a minor, non-substantive change to an approved Standard Practice and Procedure Plan for the safeguarding of classified information without receiving prior CSA approval, provided prompt notification of such minor change is furnished to the addressees noted in paragraph (a) of this section, and the change does not decrease the effectiveness of the Standard Practice and Procedure Plan. Some examples of minor, non-substantive changes to the Standard Practice and Procedure Plan include—

* * * * *

28. Newly redesignated § 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization of the Commission's grant, acceptance of another agency's Facility Security Clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of NRC, NRC licensees, NRC Certificate Holders, NRC contractors, or other Federal agencies having a need to transmit classified information to the licensee or other person.

29. Section 95.21 is revised to read as follows:

§ 95.21 Withdrawal of requests for facility clearance.

When a request for facility clearance is to be withdrawn or canceled, the requester shall notify the NRC Division of Security immediately by telephone so that processing for this approval may be terminated. The notification must identify the full name of the individual requesting discontinuance, his position with the facility, and the full identification of the facility. The requestor shall confirm the telephone notification promptly in writing.

30. Section 95.23 is revised to read as follows:

§ 95.23 Termination of facility clearance.

(a) Facility clearance will be terminated when—

(1) There is no longer a need to use, process, store, reproduce, transmit, transport or handle classified matter at the facility; or

(2) The Commission makes a determination that continued facility clearance is not in the interest of national security.

(b) When facility clearance is terminated, the licensee or other person will be notified in writing of the determination and the procedures outlined in § 95.53 apply.

31. In § 95.25, paragraphs (a), (b), (c), (d), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 95.25 Protection of classified information in storage.

(a) Secret documents, while unattended or not in actual use, must be stored in—

(1) A safe, steel file cabinet, or safe-type steel file container that has an automatic unit locking mechanism. All such receptacles will be accorded supplemental protection during non-working hours; or

(2) Any steel file cabinet that has four sides and a top and bottom (all permanently attached by welding, rivets or peened bolts so the contents cannot be removed without leaving visible evidence of entry) and is secured by a rigid metal lock bar and an approved key-operated or combination padlock. The keepers of the rigid metal lock bar must be secured to the cabinet by welding, rivets, or bolts, so they cannot be removed and replaced without leaving evidence of the entry. The drawers of the container must be held securely, so their contents cannot be removed without forcing open the drawer. This type cabinet will be accorded supplemental protection during non-working hours.

(b) Confidential matter while unattended or not in use must be stored in the same manner as SECRET matter except that no supplemental protection is required.

(c) Classified lock combinations.

(1) A minimum number of authorized persons may know the combinations to authorized storage containers. Security containers, vaults, cabinets, and other authorized storage containers must be kept locked when not under the direct supervision of an authorized person entrusted with the contents.

(2) Combinations must be changed by a person authorized access to the contents of the container, or by the Facility Security Officer or his or her designee. Combinations must be changed upon—

(i) The initial use of an approved container or lock for the protection of classified material;

(ii) The termination of employment of any person having knowledge of the combination, or when the clearance granted to any such person has been withdrawn, suspended, or revoked;

(iii) The compromise or suspected compromise of a container or its combination, or discovery of a container left unlocked and unattended;

(iv) At other times when considered necessary by the Facility Security Officer or CSA; or

(v) In any event at least once every 12 months.

(d) Records of combinations. If a record is made of a combination, the record must be marked with the highest classification of material authorized for storage in the container. Superseded combinations must be destroyed.

* * * * *

(g) Posted information. Containers may not bear external markings indicating the level of classified material authorized for storage. A record of the names of persons having knowledge of the combination must be posted inside the container.

(h) End of day security checks.

(1) Facilities that store classified material shall establish a system of security checks at the close of each working day to ensure that all classified material and security repositories have been appropriately secured.

(2) Facilities operating with multiple work shifts shall perform the security checks at the end of the last working shift in which classified material had been removed from storage for use. The checks are not required during continuous 24-hour operations.

(i) Unattended security container found opened. If an unattended security container housing classified matter is found unlocked, the custodian or an alternate must be notified immediately. The container must be secured by protective personnel and the contents inventoried as soon as possible but not later than the next workday. A report reflecting all actions taken must be submitted to the responsible Regional Office (see appendix A, 10 CFR part 73 for addresses) with an information copy to the NRC Division of Security. The licensee shall retain records pertaining to these matters for three years after completion of final corrective action.

(j) Supervision of keys and padlocks. Use of key-operated padlocks are subject to the following requirements:

(1) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of classified material;

(2) A key and lock control register must be maintained to identify keys for each lock and their current location and custody;

(3) Keys and locks must be audited each month;

(4) Keys must be inventoried with each change of custody;

(5) Keys must not be removed from the premises;

(6) Keys and spare locks must be protected equivalent to the level of classified material involved;

(7) Locks must be changed or rotated at least annually, and must be replaced after loss or compromise of their operable keys; and

(8) Master keys may not be made.

32. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, matter containing classified information must be under the direct control of an authorized individual to preclude physical, audio, and visual access by persons who do not have the prescribed access authorization or other written CSA disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

33. Section 95.29 is revised to read as follows:

§ 95.29 Establishment of Restricted or Closed areas.

(a) If, because of its nature, sensitivity or importance, matter containing classified information cannot otherwise be effectively controlled in accordance with the provisions of §§ 95.25 and 95.27, a Restricted or Closed Area must be established to protect such matter.

(b) The following measures apply to Restricted Areas:

(1) Restricted areas must be separated from adjacent areas by a physical barrier designed to prevent unauthorized access (physical, audio and visual) into such areas.

(2) Controls must be established to prevent unauthorized access to and removal of classified matter.

(3) Access to classified matter must be limited to persons who possess appropriate access authorization or other written CSA disclosure authorization and who require access in the performance of their official duties or regulatory obligations.

(4) Persons without appropriate access authorization for the area visited must be escorted by an appropriate CSA access authorized person at all times while within Restricted or Closed areas.

(5) Each individual authorized to enter a Restricted or Closed area must be issued a distinctive form of identification (e.g., badge) when the number of employees assigned to the area exceeds thirty per shift.

(6) During nonworking hours, admittance must be controlled by protective personnel. Protective personnel shall conduct patrols during nonworking hours at least every 8 hours and more frequently if necessary to maintain a commensurate level of protection. Entrances must be continuously monitored by protective personnel or by an approved alarm system.

(c) Due to the size and nature of the classified material, or operational necessity, it may be necessary to construct Closed Areas for storage because GSA-approved containers or vaults are unsuitable or impractical. Closed Areas must be approved by the CSA. The following measures apply to Closed Areas:

(1) Access to Closed Areas must be controlled to preclude unauthorized access. This may be accomplished through the use of a cleared employee or by a CSA approved access control device or system.

(2) Access must be limited to authorized persons who have an appropriate security clearance and a need-to-know for the classified material/information within the area. Persons without the appropriate level of clearance and/or need to know must be escorted at all times by an authorized person where inadvertent or unauthorized exposure to classified information cannot otherwise be effectively prevented.

(3) The Closed Area must be accorded supplemental protection during non-working hours. During these hours, admittance to the area must be controlled by locked entrances and exits secured by either an approved built-in combination lock or an approved combination or key-operated padlock. However, doors secured from the inside with a panic bolt (for example, actuated by a panic bar), a dead bolt, a rigid wood or metal bar, or other means approved by the CSA, do not require additional locking devices.

(4) Open shelf or bin storage of classified documents in Closed Areas requires CSA approval. Only areas protected by an approved intrusion detection system will qualify for approval. 34. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect classified information they shall:

(a) Possess an ''L'' access authorization (or CSA equivalent) if the licensee or other person possesses information classified Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a ''Q'' access authorization (or CSA equivalent) if the licensee or other person possesses Critical Secret Restricted Data and the protective personnel require access as part of their regular duties.

35. Section 95.33 is revised to read as follows:

§ 95.33 Security education.

All cleared employees must be provided with security training and briefings commensurate with their involvement with classified information. The facility may obtain defensive security, threat awareness, and other education and training information and material from their CSA or other sources.

(a) Facility Security Officer Training. Licensees and others are responsible for ensuring that the Facility Security Officer, and others performing security duties, complete security training deemed appropriate by the CSA. Training requirements must be based on the facility's involvement with classified information and may include a Facility Security Officer orientation course and, for Facility Security Officers at facilities with safeguarding capability, a Facility Security Officer Program Management Course. Training, if required, should be completed within 1 year of appointment to the position of Facility Security Officer.

(b) Government-Provided Briefings. The CSA is responsible for providing initial security briefings to the Facility Security Officer, and for ensuring that

other briefings required for special categories of information are provided.

(c) Temporary Help Suppliers. A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee or other facility may conduct these briefings.

(d) Classified Information Nondisclosure Agreement (SF–312). The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial personnel security clearance must, in accordance with the requirements of § 25.23 of this chapter, execute an SF–312 prior to being granted access to classified information. The Facility Security Officer shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other facility shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date.

(e) Initial Security Briefings. Before being granted access to classified information, an employee shall receive an initial security briefing that includes the following topics:

(1) A Threat Awareness Briefing.

(2) A Defensive Security Briefing.

(3) An overview of the security classification system.

(4) Employee reporting obligations and requirements.

(5) Security procedures and duties applicable to the employee's job.

(f) Refresher Briefings. The licensee or other facility shall conduct periodic refresher briefings for all cleared employees. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and by issuing written materials on a regular basis.

(g) Debriefings. Licensee and other facilities shall debrief cleared employees at the time of termination of employment (discharge, resignation, or retirement); when an employee's personnel security clearance is terminated, suspended, or revoked; and upon termination of the Facility Security Clearance.

(h) Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for three years after termination of the individual's access authorization.

36. Section 95.35 is revised to read as follows:

§ 95.35 Access to Classified Information

(a) Unless authorized by the Commission, a person subject to the regulations in this part may not receive or permit any individual to have access to Secret or Confidential National Security Information or Restricted Data unless the individual has:

(1) One of the following access authorizations.

(i) A U. S. Government granted access authorization based on a Single Scope Background Investigation and issued by the CSA which permits an individual access to—

(A) Critical Secret and Confidential Restricted Data; and

(B) Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information, or

(ii) A U. S. Government granted access authorization based on a National Agency Check or National Agency Check with Inquiries and issued by the CSA which permits an individual access to Secret and Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section.

(iii) Access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

(2) An established ''need-to-know'' for the information. (See Definitions, § 95.5).

(3) CSA approved storage facilities if classified documents or material are to be transmitted to the individual.

(b) Classified information must not be released by a licensee or other person to any personnel other than properly access authorized Commission licensee employees or other individuals authorized access by the Commission.

(c) Access to Classified National Security Information at NRC-licensed, certified or otherwise regulated facilities by authorized representatives of IAEA is permitted in accordance with § 95.36.

37. Section 95.36 is revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other International agreements.

(a) Based upon written disclosure authorization from the NRC Division of Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA) or other international organization and that the individual is authorized to make visits or inspections in accordance with an established Agreement with the United States Government, a licensee, certificate holder or other person subject to this part shall permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure authorization) to have access to matter which is Classified National Security Information that is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee, certificate holder, or other person subject to this part to provide access to Restricted Data.

(b) For purposes of this section, Classified National Security Information is relevant to the conduct of a visit or inspection if—

(1) In the case of a visit, this information is needed to verify information according to § 75.13 of this chapter, or

(2) In the case of an inspection, the information is information to which an inspector is entitled to have access under § 75.42 of this chapter.

(c) In accordance with the specific disclosure authorization provided by the Division of Security, licensees or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents which contain Classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive Classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organization in accordance with instructions contained in NRC's disclosure authorization letter. Licensees and other persons subject to this part may also forward these documents through NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees and other persons may not reproduce documents containing Classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for five years beyond the date of the visit or inspection. These records must specifically identify each document which has been released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Security, by letter, may require) the categories of documents to which the authorized representative has had access and the date of this access. A licensee or other person subject to this part shall also retain Division of Security disclosure authorizations for five years beyond the date of any visit or inspection when access to classified information was permitted.

(e) Licensees or other persons subject to this part shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

38. Section 95.37 is revised to read as follows:

§ 95.37 Classification and preparation of documents.

(a) Classification. Classified information generated or possessed by a licensee or other person must be appropriately marked. Classified material which is not conducive to markings (e.g., equipment) may be exempt from this requirement. These exemptions are subject to the approval of the CSA on a case-by-case basis. If a person or facility generates or possesses information that is believed to be classified based on guidance provided by NRC or by derivation from classified documents, but which no authorized classifier has determined to be classified, the information must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. Such information shall be protected as classified information pending final determination.

(b) Classification consistent with content. Each document containing classified information shall be classified Secret or Confidential according to its content. NRC licensees subject to the requirements of 10 CFR Part 95 may not make original classification decisions.

(c) Markings required on face of documents

(1) For derivative classification of Classified National Security Information:

(i) Derivative classifications of Classified National Security Information must contain the identity of the source document or the classification guide, including the agency and office of origin, on the ''Derived From'' line and its classification date. If more than one source is cited, the ''Derived From'' line should indicate ''Multiple Sources.''

(ii) Declassification instructions. When marking derivatively classified documents, the ''DECLASSIFY ON'' line must carry forward the declassification instructions as reflected in the original document. If multiple sources are used, the instructions will carry forward the longest duration.

(iii) If the source document used for derivative classification contains the declassification instruction, ''Originating Agency's Determination Required'' (OADR), the new document should reflect the date of the original classification of the information as contained in the source document or classification guide. An example of the stamp might be as follows:

Derived From _____

(Source)

Reason _____

Declassify On: Source Marked ''OADR''

Date of Source: _____

Classifier: _____

(Name/Title/Number

(iv) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document.

(2) For Restricted Data documents:

(i) Identity of the classifier. The identity of the classifier must be shown by completion of the ''Derivative Classifier'' line. The ''Derivative Classifier'' line must show the name of the person classifying the document and the basis for the classification. Dates for downgrading or declassification do not apply.

(ii) Classification designation (e.g., Secret, Confidential) and Restricted Data. NOTE: No ''Declassification'' instructions will be placed on documents containing Restricted Data.

(d) Placement of markings. The highest classification marking assigned to a document must be placed in a conspicuous fashion in letters at the top and bottom of the outside of the front covers and title pages, if any, and first and last pages on which text appears, on both bound and unbound documents, and on the outside of back covers of bound documents. The balance of the pages must be marked at the top and bottom either with:

(i) The overall classification marking assigned to the document, or

(ii) The highest classification marking required by content of the page, or

(iii) The marking UNCLASSIFIED if they have no classified content.

(e) Additional markings.

(1) If the document contains any form of Restricted Data, it must bear the appropriate marking on the first page of text, on the front cover and title page, if any. For example: ''This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to Administrative and Criminal Sanctions.''

(2) Limitation on reproduction or dissemination. If the originator or classifier determines that reproduction or further dissemination of a document should be restricted, the following additional wording may be placed on the face of the document:

Reproduction or Further Dissemination Requires Approval of _____

If any portion of this additional marking does not apply, it should be crossed out.

(f) Portion markings. In addition to the information required on the face of the document, each classified document is required, by marking or other means, to indicate clearly which portions are classified (e.g., paragraphs or pages) and which portions are not classified. The symbols (S) for Secret, (C) for Confidential, (U) for Unclassified, or (RD) for Restricted Data may be used immediately preceding or following the text to which it applies except that the designation must follow titles or subjects. (Portion marking of paragraphs is not required for documents containing Restricted Data.) If this type of portion marking is not practicable, the document must contain a description sufficient to identify the classified information and the unclassified information.

Example

Pages 1–3 Secret
Pages 4–19 Unclassified
Pages 20–26 Secret
Pages 27–32 Confidential

(g) Transmittal document. If a document transmitting classified information contains no classified information or the classification level of the transmittal document is not as high as the highest classification level of its enclosures, then the document must be marked at the top and bottom with a classification at least as high as its highest classified enclosure. The classification may be higher if the enclosures, when combined, warrant a higher classification than any individual enclosure. When the contents of the transmittal document warrants a lower classification than the highest classified

enclosure(s) or combination of enclosures or requires no classification, a stamp or marking such as the following must also be used on the transmittal document:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS:

(Classification level of transmittal document standing alone or the word ''UNCLASSIFIED'' if the transmittal document contains no classified information.)

(h) Classification challenges. Persons in authorized possession of Classified National Security Information who in good faith believe that the information's classification status, i.e. that the document is classified at either too high a level for its content (overclassification) or too low for its content (underclassification) are expected to challenge its classification status. Persons who wish to challenge a classification status shall—

(i) Refer the document or information to the originator or to an authorized NRC classifier for review. The authorized classifier shall review the document and render a written classification decision to the holder of the information.

(ii) In the event of a question regarding classification review, the holder of the information or the authorized classifier shall consult the NRC Division of Security, Information Security Branch for assistance.

(iii) Persons who challenge classification decisions have the right to appeal the classification decision to the Interagency Security Classification Appeals Panel.

(iv) Persons seeking to challenge the classification of information will not be the subject of retribution.

(i) Files, folders or group of documents. Files, folders, binders, or groups of physically connected documents must be marked at least as high as the highest classified document which they contain.

(j) Drafts and working papers. Drafts of documents and working papers which contain, or which are believed to contain classified information must be marked as classified information.

(k) Classification guidance. Licensees, certificate holders, or other persons subject to this part 95 shall classify and mark classified matter as National Security Information or Restricted Data, as appropriate, in accordance with classification guidance provided by NRC as part of the facility security clearance process.

39. Section 95.39 is revised to read as follows:

§ 95.39 External transmission of documents and material.

(a) Restrictions. Documents and material containing classified information received or originated in connection with an NRC license or certificate must be transmitted only to CSA approved security facilities.

(b) Preparation of documents. Documents containing classified information must be prepared in accordance with the following, when transmitted outside an individual installation.

(1) They must be enclosed in two sealed opaque envelopes or wrappers.

(2) The inner envelope or wrapper must contain the addressee's classified mail address and the name of the intended recipient. The appropriate classification must be placed on both sides of the envelope (top and bottom) and the additional markings, as appropriate, referred to in § 95.37(e) must be placed on the side bearing the address.

(3) The outer envelope or wrapper must contain the addressee's classified mail address. The outer envelope or wrapper may not contain any classification, additional marking or other notation that indicates that the enclosed document contains classified information.

(4) A receipt that contains an unclassified description of the document, the document number, if any, date of the document, classification, the date of transfer, the recipient and the person transferring the document must be enclosed within the inner envelope containing the document and be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred. This receipt process is at the option of the sender for Confidential information.

(c) Methods of transportation.

(1) Secret matter may be transported only by one of the following methods within and directly between the U.S., Puerto Rico, or a U.S. possession or trust territory:

(i) U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail. NOTE: The ''Waiver of Signature and Indemnity'' block on the U.S. Postal Service Express Mail Label 11–B may not be executed and the use of external (street side) express mail collection boxes is prohibited.

(ii) A cleared ''Commercial Carrier.''

(iii) A cleared commercial messenger service engaged in the intracity/local area delivery (same day delivery only) of classified material.

(iv) A commercial delivery company, approved by the CSA, that provides nation wide, overnight service with computer tracing and reporting features. Such companies need not be security cleared.

(v) Other methods as directed, in writing, by the CSA.

(2) Confidential matter may be transported by one of the methods set forth in paragraph (c)(1) of this section, by U.S. first class, express or certified mail. First class, express, or certified mail may be used in transmission of Confidential documents to Puerto Rico or any United States territory or possession.

(d) Telecommunication of classified information. Classified information may not be telecommunicated unless the telecommunication system has been approved by the CSA. Licensees, certificate holders or other persons who may require a secure telecommunication system shall submit a telecommunication plan as part of their request for facility clearance, as outlined in § 95.15, or as an amendment to their existing Standard Practice and Procedure Plan for the protection of classified information.

(e) Security of classified information in transit. Classified matter that, because of its nature, cannot be transported in accordance with § 95.39(c), may only be transported in accordance with procedures approved by the CSA. Procedures for transporting classified matter are based on a satisfactory transportation plan submitted as part of the licensee's, certificate holder, or other person's request for facility clearance or submitted as an amendment to its existing Standard Practice Procedure Plan.

40. Section 95.41 is revised to read as follows:

§ 95.41 External receipt and dispatch records.

Each licensee, certificate holder or other person possessing classified information shall maintain a record that reflects:

(a) The date of the material;

(b) The date of receipt or dispatch;

(c) The classification;

(d) An unclassified description of the material; and

(e) The identity of the sender from which the material was received or recipient to which the material was dispatched. Receipt and dispatch records must be retained for 2 years.

41. Section 95.43 is revised to read as follows:

§ 95.43 Authority to reproduce.

(a) Each licensee or other person possessing classified information shall establish a reproduction control system

to ensure that reproduction of classified material is held to the minimum consistent with operational requirements. Classified reproduction must be accomplished by authorized employees knowledgeable of the procedures for classified reproduction. The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified documents is encouraged.

(b) Unless restricted by the CSA, Secret and Confidential documents may be reproduced. Reproduced copies of classified documents are subject to the same protection as the original documents.

(c) All reproductions of classified material must be conspicuously marked with the same classification markings as the material being reproduced. Copies of classified material must be reviewed after the reproduction process to ensure that these markings are visible.

42. Section 95.45 is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing Classified National Security Information must be downgraded or declassified as authorized by NRC classification guides or as determined by NRC. Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC Division of Security, Office of Administration, Washington, DC 20555–0001. Requests for downgrading or declassifying of Restricted Data will be forwarded to the NRC Division of Security for coordination with the Department of Energy.

(b) If a change of classification or declassification is approved the previous classification marking must be canceled and the following statement, properly completed, must be placed on the first page of the document:

Classification canceled (or changed to)

_____

(Insert appropriate classification) by authority of

_____

(Person authorizing change in classification) by

_____

(Signature of person making change and date thereof)

(c) New markings reflecting the current classification status of the document will be applied in accordance with the requirements of § 95.37.

(d) Any persons making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on their records.

43. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing classified Information.

Documents containing classified information may be destroyed by burning, pulping, or another method that ensures complete destruction of the information that they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the CSA. If the document contains Secret information a record of the subject or title, document number, if any, originator, its date of origination and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for two years after destruction.

44. Section 95.49 is revised to read as follows:

§ 95.49 Security of automatic data processing (ADP) systems.

Classified data or information may not be processed or produced on an ADP system unless the system and procedures to protect the classified data or information have been approved by the CSA. Approval of the ADP system and procedures is based on a satisfactory ADP security proposal submitted as part of the licensee's or other person's request for facility clearance outlined in § 95.15 or submitted as an amendment to its existing Standard Practice and Procedure Plan for the protection of classified information.

45. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked in accordance with the procedures set forth in part 25 of this chapter, or other relevant CSA procedures, the licensee, certificate holder or other organization shall, upon due notice from the Commission of such suspension or revocation, retrieve all classified information possessed by the individual and take the action necessary to preclude that individual having further access to the information.

46. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The facility may deliver all documents and materials containing classified information to the Commission or to a person authorized to receive them or destroy all such documents and materials. In either case, the facility shall submit a certification of nonpossession of classified information to the NRC Division of Security.

(b) In any instance where facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the CSA, immediately deliver all classified documents and materials to the Commission along with a certificate of nonpossession of classified information.

47. Section 95.55 is revised to read as follows:

§ 95.55 Continued applicability of the regulations in this part.

The suspension, revocation or other termination of access authorization or the termination of facility clearance does not relieve any person from compliance with the regulations in this part.

48. Section 95.57 is revised to read as follows:

§ 95.57 Reports.

Each licensee or other person having a facility clearance shall immediately report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in appendix A, 10 CFR part 73:

(a) Any alleged or suspected violation of the Atomic Energy Act, Espionage Act, or other Federal statutes related to classified information.

(b) Any infractions, losses, compromises or possible compromise of classified information or classified documents not falling within paragraph (a) of this section.

(c) In addition, an authorized classifier of a licensee, certificate holder or other organization subject to this Part shall complete an NRC Form 790 (Classification Record) whenever matter containing classified information is generated, its classification changed or it is declassified. Notification of declassification is not required for any document or material which has an automatic declassification date. Completed NRC Forms 790 must be submitted to the NRC Division of Security, Washington, DC 20555–0001, on a monthly basis.

49. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and surveys of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958 and/or NRC rules.

Dated at Rockville, Maryland, this 26th day of July, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–19850 Filed 8–2–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 19, 20, 22, 24, 25, 27, 70, 250, and 251

[Notice No. 834]

RIN 1512–AA72

Importation of Distilled Spirits, Wine and Beer (90 D 003)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to revise and recodify the regulations pertaining to the importation of distilled spirits, wine and beer. The purpose of this revision and recodification is to update and simplify the regulations in 27 CFR part 251, and to reissue those regulations as part 27 of the same chapter. The proposed changes will reduce the regulatory burden on importers of distilled spirits, wine and beer.

DATES: Written comments must be received on or before October 4, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221. Attn: Notice No. 834.

FOR FURTHER INFORMATION CONTACT: Jennifer Kirn, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226, telephone (202–927–8110).

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations pertaining to the importation of distilled spirits, wine and beer revise and recodify existing regulations in part 251 in order to update and simplify present requirements. The importation regulations now found in 27 CFR part 251 will be reissued as part 27 of the same chapter.

Certain restrictive regulations have been eliminated and, where appropriate, ATF rulings and Internal Revenue Service (IRS) Revenue Rulings have been incorporated into the proposed importation regulations. Current United States Customs Service (Customs Service) procedures are also incorporated in this notice where appropriate. Also, many existing regulations have been rewritten in order to clarify current requirements.

The organization of the proposed importation regulations has been changed from the organization of 27 CFR part 251, in order to put related regulations together. Some of the substantive proposed changes from part 251 are noted below.

Change in Designation of Office

The designation of Product Compliance Branch has been changed where it appeared in existing regulations in part 251 to Wine, Beer, and Spirits Regulations Branch in conformity with the change of office designations resulting from the executive level restructuring effective October 2, 1994.

Alternate Methods or Procedures

Proposed subpart C contains proposed regulations changing the alternate methods or procedures requirements for importers. Importers will no longer be required to file an application in triplicate, with the regional director (compliance) for each place of business. Under the proposed regulations, importers will only be required to file one application with the regional director (compliance) for each place of business.

Special Occupational Taxes, Warehouse Receipts Covering Distilled Spirits

Proposed subpart D contains clarifying amendments to existing regulations pertaining to importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer, and warehouse receipts covering distilled spirits.

Commercial Samples—Tax Free

In proposed Subpart E, the quantity of distilled spirits, wine or beer which may be imported free of internal revenue tax as samples for use in soliciting orders for products of foreign countries has been increased slightly and changed to metric quantities, to be consistent with the metric quantities given in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

ATF and IRS Rulings

Also, proposed Subpart E will incorporate pertinent parts of ATF Ruling 77–33, 1977 ATF C.B. 179, into the proposed importation regulations as recodified, and render the ruling obsolete. ATF Ruling 77–33 held that alcohol may be used to increase the alcohol content in wine provided such use of alcohol is an authorized procedure and is consistent with a standard winemaking process in the country of origin. Wine produced in this manner which is imported into the United States will be taxed as a wine, so long as the alcoholic content of that wine does not exceed 24 percent by volume. Imported products which contain distilled spirits and which do not meet the conditions described in proposed 27 CFR 27.44, will be taxed as distilled spirits.

In proposed Subpart F, ATF Ruling 83–6, ATF Q.B. 1983–4, 93, and ATF Ruling 84–3, ATF Q.B. 1984–4, 71, relating to the use of certificates of label (COLA) approval by a person other than the owner, will be declared obsolete, with pertinent parts of these rulings incorporated into proposed subpart F as described below. These rulings held that an importer may use COLAs to release products from customs custody only if the certificates are issued to that importer but that shipments may be released to an importer of record who is not the owner of the COLA provided certain conditions are met.

Also in proposed subpart F, Revenue Ruling 56–579, C.B. 1956–2, 1031, will be declared obsolete, upon incorporation of pertinent parts of that ruling into the proposed regulations. Revenue Ruling 56–579 held that distilled spirits withdrawn from customs bond solely for the use of persons determined by the collector of customs to be entitled to free withdrawal privileges such as duly accredited foreign embassy personnel, the foreign diplomatic corps, or members of the armed services of foreign countries on active duty in the United States are not subject to labeling and liquor bottle regulations.

Alcoholic Beverage Health Warning Statement

Proposed subpart F contains information about the health warning labeling requirements for alcoholic beverages bottled on or after November 18, l989. The proposed regulations

require that a health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed. Sale and distribution includes sampling or any other distribution not for sale.

Samples for Foreign Embassy Use—Exempt From Marking, Bottling and Labeling Requirements

Proposed subpart F contains requirements relating to samples of distilled spirits or wine solely for the use of foreign embassy personnel. Under the proposed regulations, samples to be used solely for the use of the embassy will be exempted from most of the marking, bottling and labeling requirements otherwise applicable.

Certificates of Origin

Proposed subpart F provides that distilled spirits and wine imported in bottles shall not be released from customs custody unless the invoice for such products is accompanied by a certificate of age and origin in accordance with 27 CFR 5.52 (relating to distilled spirits) or a certificate of origin and identity in accordance with 27 CFR 4.45, (relating to wine).

Section 5010 Credit Provisions

Proposed subpart F also contains information regarding the credit allowable under 26 U.S.C. 5010 against the tax imposed on distilled spirits by 26 U.S.C. 5001. The credit against the tax imposed on distilled spirits is allowed under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine, or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis.

Wine Less Than 7 Percent Alcohol by Volume

In proposed subpart F, wine having less than 7 percent alcohol by volume must be labeled prior to importation, or, if entered into customs bond, at the time of withdrawal therefrom, under regulations administered by the U.S. Food and Drug Administration (FDA), rather than under the labeling requirements of the Federal Alcohol Administration Act (FAA). In addition, under the Internal Revenue Code of 1986 (IRC), such wine labels should name the kind of wine (class and type), alcoholic content, net content and, if it is an effervescent wine, whether it is sparkling wine or carbonated wine.

Closures

Subpart F proposes regulations requiring closures or other devices on imported containers of distilled spirits. These proposed regulations will explain the criteria for closures or other devices.

Use of Other Importer's Certificates of Label Approval

Proposed subpart F also discusses use of certificates of label approval (COLA) (ATF F 5100.31) by persons other than the holder of such certificates for purposes of obtaining release of imported products from customs custody. The proposed regulations follow the procedures provided for in ATF Rulings 83–6 and 84–3, supra.

Record/Filing Requirements

Proposed subpart H contains information instructing importers who have obtained certificates of label approval (COLA) to maintain the original COLAs on file at the basic permit location for not less than 3 years following the last importation of such products. This is the usual retention period for required records under most ATF regulations. A record retention requirement is necessary to facilitate the enforcement of the labeling laws and to deter the use of false, fraudulent, and inaccurate COLAs. Further, the paperless entry procedures pursued by the Customs Service makes the retention of these records particularly necessary.

Bulk Importations

Proposed Subpart I discusses the importation of distilled spirits, wine and beer in bulk. Bulk beer may be imported in containers under the provisions of 27 CFR, part 7. Bulk distilled spirits for nonindustrial use will not be released from customs custody unless the invoice is accompanied by a certificate of age and origin in accordance with 27 CFR, part 5. Bulk wine for nonindustrial use may be imported in containers in accordance with the provisions of 27 CFR, part 4.

Removal of Customs Officers from Customs Bonded Warehouses

Subpart K also proposes changes in importation procedures resulting from removal of U. S. Customs officers from customs bonded warehouse regulations.

These proposed changes implement procedures as a result of the withdrawal of customs officers from both customs bonded warehouses and customs manufacturing bonded warehouses. The Customs Service withdrew these officers in accordance with Treasury Decision 82–204, 47 FR 49355, November 1, 1982.

Following the implementation of changes brought about by T.D. 82–204, when spirits are transferred directly from the place of importation to distilled spirits plant premises without being deposited in a customs bonded warehouse, the customs officer remains responsible for signing the transfer record. However, when spirits are transferred from a customs bonded warehouse to distilled spirits premises, the proprietor of the customs bonded warehouse is responsible for signing the transfer record. While existing regulations specifically state that distilled spirits plant proprietors are not required to file an application on ATF Form 5100.16 to receive imported spirits from customs custody, such statement has been deleted from the proposed subpart K to avoid confusion. Finally, under the proposed regulations, importers are no longer required to submit copies of the transfer record and package gauge records to ATF. Instead, the proposed regulations require that a copy of such records be retained as part of the importer's records.

The following table is provided to give a better understanding of the regulation changes proposed. The table provides the applicable regulatory section from which the proposed regulation is derived. In addition the table describes the extent to which a regulation is revised or whether it is a new regulatory section.

DERIVATION TABLE FOR PART 27

The requirements of	Are derived from
Subpart A	
Sec.	Sec.
27.1	251.1 P
27.2	N
27.3	251.2 P
27.4–27.10 [Reserved]	

DERIVATION TABLE FOR PART 27—Continued

The requirements of	Are derived from
Subpart B	
Sec.	Sec.
27.11	251.11 P
Alcoholic beverage	251.11 P
ATF Officer	251.11 N
Beer	251.11 O
Bonded premises-distilled spirits plant	251.11 O
Bulk beer	251.11 N
Bulk distilled spirits	251.11 O
Bulk wine	251.11 N
Cereal beverage	251.11 N
CFR	251.11 0
Commercial bank	251.11 N
Container	251.11 N
Customs bonded warehouse	251.11 C
Customs officer	251.11 O
Delegate	251.11 N
Director	251.11 P
Distilled spirits or spirits	251.11 P
Distilled spirits plant	251.11 P
Effective tax rate	251.11 O
Eligible flavor	251.11 O
Eligible wine	251.11 O
Foreign-trade zone or zone	251.11 N
5010 credit	251.11 N
Gallon or wine gallon	251.11 O
Importer	251.11 O
Industrial or nonindustrial use of spirits or wine	251.11 N
Kind	251.11 P
Liquors	251.11 N
Liquor bottle	251.11 O
Liter	251.11 N
Malt beverage	251.11 N
Package	251.11 N
Person	251.11 O
Port Director of Customs	251.11 P
Proof	251.11 O
Proof Gallon	251.11 O
Region	251.11 O
Regional Director (Compliance)	251.11 O
Secretary	251.11 N
Specially denatured spirits	251.11 N
Standard effective tax rate	251.11 N
Tank truck	251.11 N
Tax	251.11 N
This chapter	251.11 N
United States	251.11 O
U.S.C	251.11 O
Wine	251.11 C
27.12–27.20 [Reserved]	
Subpart C	
27.21	251.221 P
27.22–22.30 [Reserved]	
Subpart D	
27.31	251.30 P
27.32	251.31 P
27.33–27.40 [Reserved]	
Subpart E	
27.41	251.40 P
27.42	251.40a O
27.43	251.41 P
27.44	251.42 C
27.45	251.42a P

DERIVATION TABLE FOR PART 27—Continued

The requirements of	Are derived from
27.46	251.43 P
27.47	251.44 P
27.48	251.45 P
27.49	251.46 O
27.50	251.48 P
27.51	251.48a P
27.52	251.49 P
27.53–27.60 [Reserved]	
Subpart F	
27.61	251.55 P
27.62	N
27.63	251.56 P
27.64	251.57 O
27.65	251.58 P
27.66	N
27.67	251.59 P
27.68	N
27.69	251.60 C
27.70	N
27.71	N
27.72	251.61 P
27.73	251.61 & 251.62 C
27.74	251.74 C
27.75	251.75 C
27.76	251.76 P
27.77	251.76 P
27.78	251.77 P
27.79–27.80 [Reserved]	
Subparts G–H [Reserved]	
27.81–27.110 [Reserved]	
Subpart I	
27.111	251.121 P
27.112	251.120 P
27.113	N
27.114	N
27.115–27.120 [Reserved]	
Subpart J	
27.121	251.133 C
27.122	251.134 O
27.123	251.136 P
27.124	251.137 P
27.125	251.138 O
27.126	251.139 O
27.127–27.130 [Reserved]	
Subpart K	
27.131	251.171 P
27.132	251.172 P
27.133	251.173 C
27.134	251.174 P
27.135	251.175 P
27.136–27.140 [Reserved]	
Subpart L	
27.141	251.181 P
27.142	251.182 O
27.143	251.183 O
27.144	251.184 O
27.145	251.185 O

DERIVATION TABLE FOR PART 27—Continued

The requirements of	Are derived from
27.146–27.150 [Reserved]	
Subpart M	
27.151	251.201 O
27.152	251.202 O
27.153	251.204 P
27.154	251.206 P
27.155	251.207 P
27.156	251.209 P
27.157–27.160 [Reserved]	

Action Legend:
C—Complete revision.
O—No revision.
P—Partial revision.
N—New section.

DISTRIBUTION TABLE FOR PART 251

The requirements of	Are now found in
Subpart A	
Sec.	Sec.
251.1	27.1
251.2	27.3
Subpart B	
251.11	27.11
Subpart C	
251.30	27.31
251.31	27.32
Subpart D	
251.40	27.41
251.40a	27.42
251.41	Obsolete.
251.42	27.44
251.42a	27.45
251.43	27.46
251.44	27.47
251.45	27.48
251.46	27.49
251.48	27.50
251.48a	27.51
251.49	27.52
Subpart E	
251.55	27.61
251.56	27.63
251.57	27.64
251.58	27.65
251.59	27.67
251.60	27.69
251.61	27.72
251.62	27.72 & 27.73
251.74	27.74
251.75	27.75
251.76	27.76
251.77	27.77

DISTRIBUTION TABLE FOR PART 251—Continued

The requirements of	Are now found in
Subpart H	
251.120	27.112
251.121	27.111
Subpart I	
251.133	27.121
251.134	27.122
251.136	27.123
251.137	27.124
251.138	27.125
251.139	27.126
Subpart L	
251.171	27.131
251.172	27.132
251.173	27.133
251.174	27.134
251.175	27.135
Subpart M	
251.181	27.141
251.182	27.142
251.183	27.143
251.184	27.144
251.185	27.145
Subpart N	
251.201	27.151
251.202	27.152
251.204	27.153
251.206	27.154
251.207	27.155
251.208	Obsolete.
251.209	27.156
Subpart O	
251.221	27.21

Public Participation—Written Comments

ATF requests written comments or suggestions concerning these proposed regulations from all interested persons. All written comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in the comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Comments may also be submitted by facsimile transmission during the hours of 8 a.m. to 3 p.m. (Eastern time) to (202)–927–8602, provided the comment is: (1) Legible; (2) 8½″×11″ in size; (3) contains a written signature; and (4) three pages or less in length. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing will be held.

Disclosure

Copies of this notice, and the written comments will be available for public inspection from 7 a.m. to 3:30 p.m. in the ATF Reference Library, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Ave., NW, Washington, DC 20226.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the

proposal, if promulgated as a final rule, is not expected (1) to have a secondary, or incidental effect on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice since the only collection of information involved was previously approved under OMB Control No. 1512–0352 and OMB Control No. 1512–0250 and is proposed to be recodified without change.

Drafting Information

The principal author of this document is Jennifer Kirn, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms.

Lists of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

27 CFR Part 16

Beer, Consumer protection, Customs duties and inspection, Health, Imports, Labeling, Liquors, Packaging and containers, Safety, and Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol, Authority delegations (Government agencies), Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol, Authority delegations (Government agencies), Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 27

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Tobacco.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic Funds Transfers, Excise taxes, Liquors, Packaging and containers, Reporting requirements, Surety bonds, Transportation, U.S. possessions, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting requirements, Transportation, Wine.

Authority and Issuance

Title 27, Chapter I, 27 CFR Parts 4, 5, 7, 19, 20, 22, 24, 25, 27, 70, 250 and 251 are proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. The table of contents is amended by removing from the CROSS REFERENCES section the phrase ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the phrase ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.'' immediately after ''27 CFR Part 16—Alcoholic Beverage Health Warning Statement.''.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.2 [Amended]

Par. 4. Section 5.2 is amended by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer'' immediately after ''27 CFR Part 19—Distilled Spirits Plants.''.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.4 [Amended]

Par. 6. Section 7.4 is amended by removing the reference to ''27 CFR Part 252—Importation of Distilled Spirits, Wine and Beer.'', and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.''

immediately after ''27 CFR Part 25—Beer.''.

PART 19—DISTILLED SPIRITS PLANTS

Par. 7. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

Par. 8. Section 19.3 is amended by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer'' immediately after ''27 CFR Part 24—Wine.''.

§ 19.524 [Amended]

Par. 9. Section 19.524(a)(1) is amended by removing the phrase ''parts 250 and 251'' and adding the phrase ''parts 27 and 250'' in the first sentence.

Par. 10. Section 19.524(b)(1) is amended by removing the phrase ''parts 250 and 251'' and adding the phrase ''parts 27 and 250'' in the first sentence.

Par. 11. Section 19.524(b)(3) is amended by removing the phrase ''part 250 and 251'' and adding the phrase ''part 27 and 250'' in the first sentence.

§ 19.538 [Amended]

Par. 12. Section 19.538(a)(1)(iii) is amended by removing the phrase ''part 251'' and by adding the phrase ''part 27''.

Par. 13. In § 19.662, the undesignated paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 19.662 Affixing closures.

* * * * *

(b) Closures or other devices need bear no letter or design; however, if a closure or other device bears any lettering or design which was not approved for use on such closure or other device as part of the certificate of label approval, ATF Form 5100.31, or which does not appear on a label used in connection with a closure or device, then such lettering or design is required to be approved for use by the Director in response to a letterhead application from the importer. Such application shall contain a copy of the lettering or design which is to appear on the closure or other device and identify the label or labels with which such closures or other devices will be used.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Par. 14. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 15. Section 20.3 is amended by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.'' immediately after ''27 CFR Part 21—Formulas for Denatured Alcohol and Rum.''.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Par. 16.The authority citation for 27 CFR part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.3 [Amended]

Par. 17. Section 22.3 is amended by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.'' immediately after ''27 CFR Part 19—Distilled Spirits Plants.''.

PART 24—WINE

Par. 18. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304 and 9306.

§ 24.4 [Amended]

Par. 19. Section 24.4 is amended by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine and Beer.'' and by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.'' immediately after ''27 CFR Part 19—Distilled Spirits Plants.''.

§ 24.272 [Amended]

Par. 20. Section 24.272(a)(1) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250'' in the first sentence.

Par. 21. Section 24.272(b)(1) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250'' in the first sentence.

Par. 22. Section 24.272(b)(3) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250''.

PART 25—BEER

Par. 23. The authority citation for 27 CFR Part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.4 [Amended]

Par. 24. Section 25.4 is amended by adding the reference ''27 CFR Part 27—Importation of Distilled Spirits, Wine and Beer.'' immediately after ''27 CFR Part 7—Labeling and Advertising of Malt Beverages.''.

§ 25.165 [Amended]

Par. 25. Section 25.165(a)(1) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250'' in the first sentence.

Par. 26. Section 25.165(b)(1) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250'' in the first sentence.

Par. 27. Section 25.165(b)(3) is amended by removing ''parts 250 and 251'' and by adding ''parts 27 and 250'' in the first sentence.

Par. 28. Part 27 is added to read as follows:

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINE AND BEER

Subpart A—Scope Of Regulations

Sec.
27.1 Imported distilled spirits, wine and beer.
27.2 Related regulations.
27.3 Forms prescribed.
27.4–27.10 [Reserved]

Subpart B—Definitions

27.11 Meaning of terms.
27.12–27.20 [Reserved]

Subpart C—Miscellaneous Provisions

27.21 Alternate methods or procedures.
27.22–27.30 [Reserved]

Subpart D—Special (Occupational) Taxes

27.31 Special (occupational) taxes.
27.32 Warehouse receipts covering distilled spirits.
27.33–27.40 [Reserved]

Subpart E—Tax On Imported Distilled Spirits, Wine, and Beer

Distilled Spirits

27.41 Distilled spirits.
27.42 Computation of effective tax rate.
27.43 Perfumes containing distilled spirits.

Wine

27.44 Wine.
27.45 Still wine containing carbon dioxide.

Liqueurs, Cordials, and Other Compounds and Preparations

27.46 Liqueurs, cordials, and similar compounds.
27.47 Other compounds and preparations.

Beer

27.48 Rate of tax.
27.49 Computation of tax.

Collection of Internal Revenue Taxes

27.50 Imported distilled spirits, wine and beer.
27.51 Payment of tax by electronic fund transfer. (EFT).

Exemption of Certain Samples From Internal Revenue Taxes

27.52 Commercial samples of alcoholic beverages.
27.53–27.60 [Reserved]

Subpart F—General Requirements

Permit for Importation of Distilled Spirits, Wine and Beer

27.61 Federal Alcohol Administration Act permit.

Certificate of Origin

27.62 Certificate of origin for distilled spirits and wine.

Packaging and Marking of Distilled Spirits

27.63 Distilled spirits containers of a capacity of not more than 1 gallon (3.785 liters).
27.64 Containers in excess of 1 gallon (3.785 liters).

Labeling of Distilled Spirits

27.65 Containers of 1 gallon (3.785 liters) or less.

Labeling and Marking of Wine and Malt Beverages or Beer

27.66 Wine containing from one-half of one percent to less than 7 percent alcohol by volume.
27.67 Wine containing 7 percent to 24 percent alcohol by volume.
27.68 Mixtures of wine and distilled spirits.
27.69 Malt beverages (Beer).

Alcoholic Beverage Health Warning Statement

27.70 Containers of imported alcoholic beverages to bear health warning statement.

Use of Another Importer's Certificate of Label Approval

27.71 Use of certificates of label approval by other importers.

Closures for Containers of Distilled Spirits

27.72 Containers of distilled spirits to bear closures or other devices.
27.73 Criteria for closures or other devices, and marks appearing thereon.

Exemptions

27.74 Exemption from requirement pertaining to marks, bottles, and labels.
27.75 Imported samples of distilled spirits, wine and beer.

Wine and Flavors Content of Distilled Spirits

27.76 Approval and certification of wine and flavors content.
27.77 Certificate of effective tax rate computation.
27.78 Standard effective tax rate.
27.79–27.80 [Reserved]

Subparts G–H [Reserved]

27.81–27.110 [Reserved]

Subpart I—Importation Of Distilled Spirits, Wine and Beer in Bulk

27.111 Distilled spirit containers.
27.112 Persons authorized to receive distilled spirits imported in bulk.
27.113 Persons authorized to receive wine imported in bulk.
27.114 Persons authorized to receive beer imported in bulk.
27.115–27.120 [Reserved]

Subpart J—Importer's Records and Reports

Records and Reports of Imported Liquors

27.121 General requirements.
27.122 Proprietors of qualified premises.

Filing and Retention of Records and Reports

27.123 Filing.
27.124 Retention.

Other Records

27.125 Transfer record.
27.126 Package gauge record.
27.127–27.130 [Reserved]

Subpart K—Transfer Of Distilled Spirits From Customs Custody To Bonded Premises Of Distilled Spirits Plant

27.131 General provisions.
27.132 Preparation of transfer record and package gauge record.
27.133 Inspection and release.
27.134 Sealing of bulk conveyances.
27.135 Receipt by consignee.
27.136–27.140 [Reserved]

Subpart L—Withdrawal Of Imported Distilled Spirits From Customs Custody Free Of Tax For Use Of The United States

27.141 General.
27.142 Application and permit, Form 5150.33.
27.143 Use of permit, Form 5150.33.
27.144 Entry documents.
27.145 Customs release.
27.146–27.150 [Reserved]

Subpart M—Requirements For Liquor Bottles

27.151 Scope of subpart.
27.152 Standards of fill.
27.153 Distinctive liquor bottles.
27.154 Bottles not constituting approved containers.
27.155 Bottles to be used for display purposes.
27.156 Used liquor bottles.
27.157–27.160 [Reserved]

Authority: 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205, 206, 215.

Cross References: For regulations with respect to distilled spirits, wine, and beer arriving in the United States from Puerto Rico and the Virgin Islands, see part 250 of this chapter.

For regulations with respect to the exportation of distilled spirits, denatured spirits, wine, beer or beer concentrate without payment of tax or with benefit of drawback of tax, see part 252 of this chapter.

Subpart A—Scope Of Regulations

§ 27.1 Imported distilled spirits, wine, and beer.

This part, ''Importation of Distilled Spirits, Wine, and Beer,'' contains the regulations relating to the importation of distilled spirits, wine, and beer into the United States from foreign countries, including special (occupational) and commodity taxes, permits, marking, branding, closing and labeling of containers, and records and reports.

§ 27.2 Related regulations.

Regulations related to this part are listed below:

19 CFR Chapter I—Customs Regulations.

27 CFR Part 1—Basic Permit Requirements under the Federal Alcohol Administration Act, Nonindustrial Use of Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.

27 CFR Part 4—Labeling and Advertising of Wine.

27 CFR Part 5—Labeling and Advertising of Distilled Spirits.

27 CFR Part 7—Labeling and Advertising of Malt Beverages.

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

27 CFR Part 19—Distilled Spirits Plants.

27 CFR Part 21—Formulas for Denatured Alcohol and Rum.

27 CFR Part 24—Wine.

27 CFR Part 25—Beer.

27 CFR Part 30—Gauging Manual.

27 CFR Part 194—Liquor Dealers.

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 27.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including reports, returns and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.

§§ 27.4—27.10 [Reserved]

Subpart B—Definitions

§ 27.11 Meaning of terms.

When used in this part and in forms prescribed under this part, unless the context otherwise requires, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

Alcoholic beverage. Any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption.

ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

Bonded premises-distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bulk beer. Beer in a container other than an authorized original consumer container.

Bulk distilled spirits. Distilled spirits in a container having a capacity in excess of 1 gallon.

Bulk wine. Wine in a container having a capacity in excess of 60 liters.

Cereal beverage. A beverage produced either wholly or in part from malt (or a substitute for malt), and either fermented or unfermented, which contains, when ready for consumption, less than one-half of 1 percent of alcohol by volume.

CFR. The Code of Federal Regulations.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The ''FRCS'' or ''Fedwire'' is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Container. Any receptacle, vessel, or form of package, bottle, can, tank, or pipeline used, or capable of being used, for holding, storing, transferring, or conveying liquor or specially denatured spirits.

Customs bonded warehouse. A customs bonded warehouse, class 2, 3, 6 or 8, established under the provisions of customs regulations (19 CFR Ch. I).

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226 or his/her delegate.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), including alcohol, whisky, brandy, gin, rum and vodka, but not denatured spirits. Distilled spirits does not include beer or wine.

Distilled spirits plant. An establishment qualified under the provisions of Part 19 of this chapter for the production, storage or processing of distilled spirits.

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Foreign-trade zone or zone. A foreign-trade zone established and operated pursuant to the Act of June 18, l934, as amended. See customs regulations.

5010 credit. A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

Gallon or wine gallon. A United States gallon of liquid measure equal to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wine or beer into the United States.

Industrial or nonindustrial use of spirits or wine. The use of spirits or wine shall, for the purposes of this part, be regarded as industrial or nonindustrial based on the provisions of 27 CFR part 1.

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR part 5. As applied to wine, kind shall mean the classes and types of wine as prescribed in 27 CFR parts 4 and 24.

Liquors. Distilled spirits, wine and beer which are fit for beverage use. The word liquor does not include specially denatured spirits, nonbeverage wine or beer concentrate.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters at 20 degrees C. or 33.814 United States fluid ounces at 68 degrees F. of alcoholic beverage.

Malt beverage. When used in connection with the Federal Alcohol Administration Act, a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of

malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. The term includes such products containing alcohol in an amount of less than one-half of one percent alcohol by volume.

Package. Any cask, keg, barrel, drum, or similar portable container.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Port Director of customs. The chief customs official at a customs port.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional Director (Compliance). The principal ATF regional official responsible for administering regulations in this part.

Secretary. The Secretary of the Treasury or his/her delegate.

Specially denatured spirits. Alcohol, or rum, as defined in part 2l of this chapter, denatured pursuant to the formulas authorized in part 21 for specially denatured alcohol or rum, and including denatured spirits for export as authorized by 27 CFR 21.5.

Standard effective tax rate. The rate of tax established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of a distilled spirits product.

Tank truck. A tank-equipped trailer, semi-trailer, or truck.

Tax. The distilled spirits, wine or beer tax imposed by 26 U.S.C. Chapter 51.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Ch. I).

United States. ''United States'' includes only the States and the District of Columbia.

U.S.C. The United States Code.

Wine. When used without qualification, the term includes every kind (class and type) of product produced from fruit, berries, or other suitable agricultural products, excluding a product containing less than one-half percent of alcohol by volume or more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

§§ 27.12–27.20 [Reserved]

Subpart C—Miscellaneous Provisions

§ 27.21 Alternate methods or procedures.

(a) *Application.* An importer who desires to use an alternate method or procedure in lieu of a method or procedure prescribed by this part shall file an application with the regional director (compliance) of the appropriate region, (in which the place of business is located, as determined by the address shown on the importer's basic permit). If the importer has several places of business at which such alternate method or procedure will be used, a separate application shall be submitted for each location. Each application shall:

(1) Specify the name, address, and permit number of the importer to which it relates;

(2) State the purpose for which filed; and

(3) Specifically describe the alternate method or procedure and set forth the reasons therefor.

(b) *Approval.* When an application for use of an alternate method or procedure is received, the regional director (compliance) shall determine whether approval thereof would unduly hinder the effective administration of this part or would result in jeopardy to the revenue. No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph. The regional director (compliance) shall forward the application to the Director, together with a report of findings and a recommendation. The Director may approve the alternate method or procedure if it is found that:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

(c) *Conditions for use.* No alternate method or procedure shall be used until approval has been received from the Director. Authorization for the alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization.

(Approved by the Office of Management and Budget under control number 1512–0352)

§§ 27.22–27.30 [Reserved]

Subpart D—Special (Occupational) Taxes

§ 27.31 Special (occupational) taxes.

Importers engaged in the business of selling liquors (whether distilled spirits, wine or beer) or offering liquors for sale, are subject to the provisions of Part 194 of the chapter relating to special (occupational) taxes. Part 194 requires that before commencing business the special tax registration and return, Form 5630.5, with payment of the tax, shall be filed with ATF in accordance with the instructions on the form. Subsequently, Form 5630.5 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

(Sec 201, Pub. L. 85–859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

§ 27.32 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, and every person engaged in business as an importer of distilled spirits, who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, incurs liability for special tax as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, and must file a return and pay special tax as provided in § 27.31.

(68A Stat. 618, 620, 621 (26 U.S.C. 5111, 5112, 5121, 5122))

§§ 27.33–27.40 [Reserved]

Subpart E—Tax on Imported Distilled Spirits, Wine, and Beer

Distilled Spirits

§ 27.41 Distilled spirits.

(a) A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of each proof gallon. All products of distillation, by whatever name known, which contain distilled spirits, are

considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into customs bond, at the time of removal therefrom.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 27.42. The effective tax rate established will be applied to each entry.

Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 27.42 Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½ percent of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula:

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$13.50)+2265.0(\$1.07)+1020(\$1.57)+16.6^{*}(\$13.50)}{2249.1+100.9+(2265.0\times.28)+(1020\times.38)}$$

$$=\frac{\$30{,}362.85+\$2{,}423.55+\$1{,}601.40+\$224.10}{2350.0+634.2+387.6}$$

$$=\frac{\$34{,}611.90}{3{,}371.8}=\$10.27,\ \text{the effective tax rate}$$

(Approved by the Office of Management and Budget under control number 1512–0352)
(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 27.43 Perfumes containing distilled spirits.

(a) Perfumes imported into the United States containing distilled spirits are subject to the internal revenue tax at the rate prescribed by 26 U.S.C. 5001 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

(b) This section does not apply to importations after December 31, 1994.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Wine

§ 27.44 Wine.

(a) A tax is imposed by 26 U.S.C. 5041 on all wine imported into the United States at the rate prescribed in such section on each wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon. The tax shall be determined at the time of importation, or, if entered into customs bond, at the time of removal therefrom for consumption or sale. All wine containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(b) Imported wine may contain added spirits and remain taxable as wine under 26 U.S.C. 5041 provided:

(1) Such spirits were added to increase the alcoholic content of the wine as part of an authorized fortification procedure and as a standard winemaking process in the country of origin; and

(2) The alcoholic content of the wine is not increased to more than 24 percent by volume.

(72 Stat. 1331, as amended; 26 U.S.C. 5041)

§ 27.45 Still wine containing carbon dioxide.

Still wine may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance

* Proof gallons by which distilled spirits derived from eligible flavors exceed 2½ percent of the total proof gallons in the batch (100.9–(2½%) × 3.371.8 = 16.6).

will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded. The carbon dioxide contained in wine will be determined in accordance with authorized test procedures approved by the Director. Penalties are provided in 26 U.S.C. 5662 for any person who, whether by manner of packaging or advertising or by any other form of representation, represents any still wine to be effervescent wine or a substitute for effervescent wine.

Liqueurs, Cordials, and Other Compounds and Preparations

§ 27.46 Liqueurs, cordials, and similar compounds.

A tax is imposed by 26 U.S.C. 5001 on all liqueurs, cordials, and similar compounds containing distilled spirits, in customs bonded warehouses or imported into the United States, at the rate prescribed in such section on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon. The tax shall be determined at the time of importation, or, if entered into customs bond, at the time of removal. Fortified or unfortified wine, containing not over 24 percent alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added are not classified as liqueurs, cordials, or similar compounds, but are considered to be flavored wine only, and are subject to internal revenue tax at the rates applicable to wine.

(Sec. 201, Pub.L. 85–859, 72 Stat. 1314, as amended, 1331, as amended (26 U.S.C. 5001, 5041))

§ 27.47 Other compounds and preparations.

Compounds and preparations, other than those specified in § 27.46, containing distilled spirits, which are fit for beverage purposes, in customs bonded warehouses or imported into the United States, are subject to internal revenue tax at the rates applicable to distilled spirits. Compounds and preparations containing fortified or unfortified wine, but no distilled spirits, which are fit for beverage purposes and which are sold as wine, are subject to internal revenue tax at the rates applicable to wine.

(68A Stat. 595, as amended, 609, as amended; 26 U.S.C. 5001, 5041)

Beer

§ 27.48 Rate of tax.

A tax is imposed by 26 U.S.C. 5051, on all beer imported into the United States, at the rate prescribed in such section, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for the fractional parts of a barrel. The tax on beer shall be determined at the time of importation, or, if entered into customs bond, at the time of removal.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5054))

§ 27.49 Computation of tax.

The tax on imported beer shall be computed on the basis of the actual quantity in a container, at the rate prescribed by law.

(72 Stat. 1333; 26 U.S.C. 5051)

Collection of Internal Revenue Taxes

§ 27.50 Imported distilled spirits, wine, and beer.

Internal revenue taxes payable on imported distilled spirits, wine, and beer, are collected, accounted for, and deposited as internal revenue collections by directors of customs in accordance with customs requirements. However, the taxes on distilled spirits withdrawn from customs custody without payment of tax under the provisions of subpart I of this part and thereafter withdrawn from the bonded premises of a distilled spirits plant subject to tax, shall be collected and paid under the provisions of part 19 of this chapter.

(72 Stat. 1314, 1366; 26 U.S.C. 5001, 5232)

§ 27.51 Payment of tax by electronic fund transfer (EFT).

(a) *General.* (1) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 250 of this chapter, a gross amount equal to exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 250 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (c) of this section, of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals from premises within the United States and importations (including products of the same tax class brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

(b) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except the words ''at least 80 percent'' shall be replaced by the words ''more than 50 percent'' in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ''controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50 percent control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(c) Electronic funds transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Fed Wire transfers, Automated Clearing House (ACH) transfers, transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals (to include use of the Government small purchase card), and other means of credit card transactions.

(d) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(e) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

Exemption of Certain Samples From Excise Taxes

§ 27.52 Commercial samples of alcoholic beverages.

Samples of distilled spirits, wine, and beer, to be used in the United States by persons importing alcoholic beverages in commercial quantities are, subject to the limitations in this section, exempt from the payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for products of foreign countries. In no case shall this exemption apply to more than one sample of each alcohol beverage product admitted during any calendar quarter for the use of each such person. No sample of beer shall contain more than 300 milliliters, no sample of wine shall contain more than 150 milliliters, and no sample of distilled spirits shall contain more than 100 milliliters.

(76 Stat. 72, as amended; 19 U.S.C. 1202)

§§ 27.53–27.60 [Reserved]

Subpart F—General Requirements

Permit for Importation of Distilled Spirits, Wine and Malt Beverages or Beer

§ 27.61 Federal Alcohol Administration Act permit.

Under the Federal Alcohol Administration Act and the regulations issued pursuant thereto, (27 CFR part 1) any person, except an agency of a State or political subdivision thereof, or any officer or employee of any such agency, intending to engage in the business of importing distilled spirits, wine or malt beverages (including beer and cereal beverages) for nonindustrial use is required to procure an importer's basic permit.

(49 Stat. 978, as amended; 27 U.S.C. 203)

Certificate of Origin

§ 27.62 Certificate of origin for distilled spirits and wine.

(a) Distilled spirits (for nonindustrial use) imported in bottles shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of age and origin when required by 27 CFR 5.52.

(b) Imported wine (which contains 7 percent or more alcohol by volume and not more than 24 percent alcohol by volume) shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin and identity when required by 27 CFR 4.45.

Packaging and Marking of Distilled Spirits

§ 27.63 Distilled spirits containers of a capacity of not more than 1 gallon (3.785 liters).

Except as provided in § 27.74, bottled distilled spirits imported into the United States for sale shall be in liquor bottles which conform to the requirements of subpart K of this part and part 5 of this chapter. Such liquor bottles shall bear closures as described in §§ 27.72 and 27.73. Empty bottles imported for the packaging of distilled spirits shall conform to the requirements of subpart K of this part. (For customs marking requirements, see 19 CFR parts 11 and 12.)

§ 27.64 Distilled spirits containers in excess of 1 gallon (3.785 liters).

Imported containers of distilled spirits in excess of 1 gallon are required to be marked in accordance with customs regulations (19 CFR parts 11 and 12).

Labeling of Distilled Spirits

§ 27.65 Containers of 1 gallon (3.785 liters) or less.

(a) All imported distilled spirits in bottles are required to be labeled in conformity with the Federal Alcohol Administration Act and regulations issued pursuant thereto (27 CFR part 5), before they are removed from customs custody. Labels on imported containers of distilled spirits, and on containers of distilled spirits bottled in customs custody, are required to be covered by a certificate of label approval, ATF Form 5100.31, issued pursuant to part 5 of this chapter.

(b) Containers of imported distilled spirits bottled after tax payment and removal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval, ATF Form 5100.31 issued pursuant to part 5 of this chapter.

(c) When imported distilled spirits are labeled under a certificate of exemption from label approval, the labels affixed to containers are required to conform to the provisions of part 19 of this chapter.

Labeling and Marking of Wine and Malt Beverages or Beer

§ 27.66 Wine containing from one-half of one percent to less than 7 percent alcohol by volume.

Wine containing from one-half of one percent to less than 7 percent alcohol by volume which is imported in bottles shall be labeled, prior to removal from customs custody, under regulations administered by the United States Food and Drug Administration. In addition, the IRC requires that the labels shall, as a minimum, reflect the kind of wine (class and type), alcoholic content, net content, and indicate whether effervescent wine is sparkling or carbonated. Imported containers of wine are also required to be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

§ 27.67 Wine containing 7 percent to 24 percent alcohol by volume.

''Wine,'' in this section, refers in all cases to wine containing not less than 7 percent and not more than 24 percent of alcohol by volume.

(a) All imported bottled or packaged wine is required to be packaged, marked, branded, and labeled in conformity with the Federal Alcohol Administration Act and regulations issued pursuant thereto in 27 CFR part 4 before they are removed from customs custody. Labels on imported containers of wine are required to be covered by a certificate of label approval, ATF Form 5100.31, issued pursuant to part 4 of this chapter.

(b) Containers of imported wine bottled or packaged after tax payment and removal from customs custody are required to be covered by a certificate of label approval, ATF Form 5100.31, or a certificate of exemption from label approval, ATF Form 5100.31, issued pursuant to the regulations in 27 CFR part 4. The label on such wine must conform with 27 CFR part 24.

(c) Imported containers of wine must also be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

§ 27.68 Mixtures of wine and distilled spirits.

(a) Imported wine which contains distilled spirits in accordance with the provisions of § 27.44(b) shall be labeled as wine.

(b) Imported wine which contains distilled spirits other than in accordance with § 27.44(b) shall be labeled as distilled spirits.

§ 27.69 Malt Beverages (Beer).

All imported malt beverages (including beer and cereal beverages) must conform with the provisions of the FederalAlcohol Administration Act and regulations issued pursuant thereto in 27 CFR part 7 upon release from customs custody. In addition, labels on containers of cereal beverages shall bear the phrase ''Nontaxable under Section 5051 I.R.C.''. Imported containers of malt beverages are also required to be marked and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

Alcoholic Beverage Health Warning Statement

§ 27.70 Containers of imported alcoholic beverages to bear health warning statement.

On and after November 18, 1989, no person shall import for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by part 16 of this chapter, in conformity with the requirements prescribed by that part. The alcoholic beverage health warning statement is required on the labels of all containers (as defined in § 16.10 of this chapter) of alcoholic beverages for sale or distribution. Sale and distribution includes sampling or any other distribution not for sale. This requirement does not apply to alcoholic beverages that were bottled in the foreign country prior to November 18, l989.

Use of Another Importer's Certificate of Label Approval

§ 27.71 Use of certificates of label approval by other importers.

(a) An importer may use certificates of label approval to release distilled spirits, wine or malt beverages or beer from customs custody only if such certificates are issued in that importer's name, except that such products may be released from customs custody upon presentation of a certificate of label approval by an importer who is not the owner of the certificate of label approval if all of the following 3 conditions are met:

(1) The certificate owner has authorized such use.

(2) Each bottle or individual container bears the name or trade name and address of the certificate owner.

(3) The certificate owner maintains records of the companies authorized by such owner to use the certificate.

(b) The certificate owner is considered to have granted authorization to use a label approval to another importer if either:

(1) The certificate owner's name or trade name appears in the sales-in-transit invoice required by 19 CFR 141.86(c) or other invoice such as the bill of lading or in other shipping documents, such as the bill of lading, pertaining to an importation; or

(2) The certificate owner has granted such authorization, by letter, to the importer.

Closures for Containers of Distilled Spirits

§ 27.72 Containers of distilled spirits to bear closures or other devices.

No person shall transport, buy, possess, sell, or transfer any imported distilled spirits in containers of 1 gallon (3.785 liters) or less, unless the immediate containers of distilled spirits withdrawn from bonded premises or customs custody, on determination of tax, bears a closure or other device affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98–369. 98 Stat. 494 (26 U.S.C. 5301))

§ 27.73 Criteria for closures or other devices, and marks appearing thereon.

(a) Closures or other devices on containers of imported distilled spirits which have been tax determined, having a capacity of 1 gallon (3.785 liters) or less shall be constructed so that such closures or other devices must be broken or torn in order to gain access to the contents in such a manner giving visual evidence to the consumer that the container has been opened and cannot be resealed again to appear unopened.

(b) Closures or other devices need bear no letter or design; however, if a closure or other device bears any lettering or design which was not approved for use on such closure or other device as part of the certificate of label approval, ATF Form 5100.31, or which does not appear on a label used in connection with a closure or device, then such lettering or design is required to be approved for use by the Director in response to a letterhead application from the importer. Such application shall contain a copy of the lettering or design which is to appear on the closure or other device and identify the label or labels with which such closures or other devices will be used.

Exemptions

§ 27.74 Exemption from requirements pertaining to marks, bottles, and labels.

(a) The provisions of this part pertaining to closures, the requirements for containers prescribed by subpart K of this part, and the labeling of containers as prescribed by part 5 of this chapter are not applicable to imported distilled spirits.

(1) Not for sale or for any other commercial purpose whatever;

(2) On which no internal revenue tax is required to be paid or determined on or before withdrawal from customs custody;

(3) For use as ship supplies; or

(4) For personal use.

(b) Distilled spirits or wine withdrawn from customs bond solely for the use of foreign embassy personnel, the foreign diplomatic corps, members of the armed forces of foreign countries on active duty in the United States or certain other persons are not subject to excise taxes, labeling, liquor bottle or closure regulations. The United States Customs Service determines whether a person is a qualified person entitled to tax-exempt withdrawal under this subsection.

(c) Exemptions from the requirement that imported distilled spirits, wine and malt beverages (beer) be marked to indicate the country of origin are set forth in customs regulations (19 CFR part 11.)

(d) The health warning statement in part 16 of this chapter is required on labels of all containers sold or distributed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5301)

§ 27.75 Imported samples of distilled spirits, wine and beer.

(a) Samples of distilled spirits, wine and beer in containers of not more than 1.75 liters, imported solely for organoleptic testing, quality control testing, research and product development testing, and not for sale or for use in the manufacture or production of any article for sale, shall be exempt from any requirements relating to marks, bottles, labels and standards of fill. However, the health warning statement in part 16 of this chapter is required on labels of all containers of imported samples.

(b) Samples imported for the purposes indicated above shall not be exempt from the payment of any internal revenue tax or duty imposed on, or by reason of, importation, or from the provisions in this part pertaining to closures.

(c) Samples of distilled spirits imported for any purposes not described above, with the exception of those samples of distilled spirits provided for in § 27.52 or § 27.74, are not exempt from the requirements pertaining to closures, marks, bottles and labels. Samples of wine, distilled spirits or beer brought into the United States pursuant to § 27.52 or § 27.74 are exempt from the labeling requirements of parts 4, 5 and 7 of this chapter, respectively.

(d) Samples of alcoholic beverages imported for display and taste testing at trade fairs (as defined in the Trade Fair Act of 1959, 19 U.S.C. Chapter 6) are exempt from any requirements relating to closures, marks, bottles, labels, and standards of fill.

Wine and Flavors Content of Distilled Spirits

§ 27.76 Approval and certification of wine and flavors content.

(a) Any person, who imports into the United States distilled spirits on which the tax is to be paid or determined at an effective tax rate based in whole, or in part, on the alcohol content derived from eligible wine or eligible flavors which have not been previously approved on ATF Form 5530.5 (1678) shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, Maryland 20850, the following:

(1) The kind (class and type) of the distilled spirits product to which the request applies;

(2) An 8-ounce sample of each distilled spirits, wine and flavor contained in the product; and

(3) A statement of composition for the wine and flavors listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume (if stated as a range, the entire range must be within one tax class); and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

§ 27.77 Certificate of effective tax rate computation.

(a) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States (unless a standard effective tax rate has been approved under § 27.78) the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 27.42 as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(4) The date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(b) The importer shall file the certificate of effective tax rate computation with the port director of customs at the port of entry, at the time of entry summary, or, for distilled spirits to be withdrawn from customs custody under the provisions of subpart K of this part, and attach it to the transfer record required by § 27.132.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§ 27.78 Standard effective tax rate.

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 27.77, an importer may have a standard effective tax rate established. The standard effective tax rate shall be equal to the highest effective tax rate that may be applicable to the product within the range of possible manufacturing variations.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples and information prescribed in § 27.76(b);

(2) An 8-ounce sample of the finished product;

(3) A statement of composition for the finished product listing the—

(i) Name of the product;

(ii) The least quantity, minimum alcohol content (percentage of alcohol by volume), and kind (class and type) of each eligible wine;

(iii) The least quantity, minimum alcohol content (percentage of alcohol by volume), and the name of each eligible flavor used in the manufacture of the product; and

(iv) Standard effective tax rate for the product computed in accordance with § 27.42, based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(c) Where a standard effective tax rate has been previously approved for a product, an importer, other than the person to whom the approval was issued, may use the approved rate in accordance with the following procedure: The importer shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration.

I declare under the penalties of perjury that this approval has been examined by me and, to the best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like products contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, Maryland 20850. At the time of importation, the importer shall file with the port Director of Customs, or attach a copy to the transfer record, a copy of the standard effective tax rate approval in the manner prescribed in 27.77(b). The use of a standard effective tax rate shall not relieve an importer from the payment of any tax found to be due. The Director may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control Number 1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

§§ 27.79–27.80 [Reserved]

Subpart G–H—[Reserved]

§§ 27.81–27.110 [Reserved]

Subpart I—Importation of Distilled Spirits, Wine and Beer in Bulk

§ 27.111 Distilled spirits containers.

Imported distilled spirits for nonindustrial use may be bottled only in containers conforming to the provisions of subpart M of this part.

(72 Stat. 1374; 26 U.S.C. 5301)

§ 27.112 Persons authorized to receive distilled spirits imported in bulk.

Distilled spirits for nonindustrial use which are imported in bulk (i.e., in containers having a capacity in excess of 1 gallon (3.785 liters)) may be entered into a class 8 Customs bonded warehouse for bottling, or may be withdrawn in bulk from Customs custody, only if entered for exportation or if withdrawn by a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk pursuant to the Federal Alcohol Administration Act and regulations issued pursuant thereto (27 CFR part 1). The importation and disposition of distilled spirits imported in bulk shall be reported as prescribed by §§ 27.121 and 27.122.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, 1361, 1374, 1395, (26 U.S.C. 5114. 5207, 5301, 5555))

§ 27.113 Persons authorized to receive wine imported in bulk.

Bulk wine for nonindustrial use may be imported in containers in accordance with the provisions of 27 CFR parts 4 and 24. The importation and disposition of wine imported in bulk shall be reported as prescribed by §§ 27.121 and 27.122.

§ 27.114 Persons authorized to receive beer imported in bulk.

Bulk beer may be imported in containers under the provisions of 27 CFR parts 7 and 25. The importation and disposition of beer imported in bulk shall be reported as prescribed by §§ 27.121 and 27.122.

§§ 27.115–27.120 [Reserved]

Subpart J—Importer's Record and Reports

Record and Report of Imported Liquors

§ 27.121 General requirements.

(a) Except as provided in § 27.122, every importer who imports distilled spirits, wine, or beer shall keep such records and render such reports of the physical receipt and disposition of such liquors as are required to be kept by a wholesale or retail dealer, depending upon whether the importer is selling as a wholesaler or retailer, under the provisions of part 194 of this chapter.

(b) Any importer who does not take physical possession of the liquors at the time of, but is responsible for, their release from customs custody shall keep commercial records reflecting such release. Such records shall identify the kind and quantity of the liquors released, the name and address of the person receiving the liquors from customs custody, and the date of release. These records may be maintained in any system of filing the importer chooses provided the required information is readily available for examination by ATF officers.

(c) Importers who have obtained certificates of label approval shall maintain the originals of such certificates, if in active use, on file at the premises covered by the importer's basic permit for a period of not less than 3 years following the last importation of products covered by such certificates.

(d) Importers who have obtained certifications of label approval and are no longer using such certificates shall, after 3 years following the last inportation using such certificate, submit the original certificate and any copies of such certificate should be submitted to the Product Compliance Branch, 650 Massachusetts Avenue, NW, Washington, DC 20226, for cancellation. A letter from the importer should accompany the certificates of label approval requesting that the attached certificates be cancelled.

(e) Records of receipt and disposition, as required under paragraphs (a) or (b) of this section, shall be filed at the premises covered by the importer's basic permit not later than one business day following the date of transaction.

(f) Records and reports will not be required under this part with respect to liquors while in customs custody.

(72 Stat. 1342, 1345, 1395; 26 U.S.C. 5114, 5124, 5555)

§ 27.122 Proprietors of qualified premises.

Importing operations conducted by proprietors of premises qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of each such premises.

(72 Stat. 1342, 1361, 1395; 26 U.S.C. 5114, 5207, 5555)

Filing and Retention of Records and Reports

§ 27.123 Filing.

(a) All records and reports required by this part shall be maintained separately, by transaction or reporting date, at the premises covered by the importer's basic permit. The regional director (compliance) may, pursuant to an application, authorize an importer to maintain files or an individual record at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or customs officers desiring to examine the files, or delay in the timely submission of documents.

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, they may maintain either loose-leaf or book records of the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

(e) Customs will release shipments to importers when the certificate of label approval (COLA), ATF F 5100.31, is presented by the responsible importer. Customs date stamps the COLA with the actual release date. When additional shipments of the same products arrive at the port of entry, importers shall exclusively either use the original COLAs or a copy of the COLA without the release date on it, in order to obtain release of such additional shipments.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

§ 27.124 Retention.

(a) All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part to be submitted to the regional director (compliance) or to the port director of customs, shall be retained for not less than three years.

(b) During this period the records shall be available, during business hours, for inspection and copying by ATF or customs officers. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

(c) The regional director (compliance) may require these records to be kept for an additional period of not more than three years in any case where he or she determines such retention necessary or advisable.

(72 Stat. 1342, 1345, 1361, 1395; 26 U.S.C. 5114, 5124, 5207, 5555)

Other Records

§ 27.125 Transfer record.

The transfer record for imported distilled spirits prescribed in § 27.132 shall show the following information:

(a) Date prepared;

(b) Serial number of the transfer record, beginning with ''1'' each January 1;

(c) Name and distilled spirits plant number of the proprietor who received the spirits from customs custody;

(d) Country of origin;

(e) Name of foreign producer;

(f) Class and type of spirits

(g) Age, in years, months and days of the spirits;

(h) Proof of the spirits;

(i) Type and number of containers; and

(j) Proof gallons of spirits in the shipment.

(Approved by the Office of Management and Budget under control number 1512–0250).

§ 27.126 Package gauge record.

When required in this part, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction record and its serial number; and

(c) For each package:

(1) Package identification or serial number;

(2) Class and type of spirits

(3) Gross weight;

(4) Proof;

(5) Proof gallons;

(6) Name of warehouseman who received the spirits from customs custody; and

(7) Name of importer.

(Approved by the Office of Management and Budget under control number 1512–0250)

§§ 27.127–27.130 [Reserved]

Subpart K—Transfer of Distilled Spirits From Customs Custody to Bonded Premises of Distilled Spirits Plant

§ 27.131 General provisions.

(a) Imported distilled spirits in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipelines to the bonded premises of the distilled spirits plant without payment of the internal revenue tax imposed on imported spirits by 26 U.S.C. 5001. Imported spirits so withdrawn and transferred to a distilled spirits plant:

(1) May be redistilled or denatured only if of 185 degrees or more of proof, and

(2) May be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic distilled spirits.

(b) Imported distilled spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the applicable provisions of 27 CFR part 19. The person operating the distilled spirits plant receiving the imported spirits shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232. Upon release of the spirits from customs custody, the importer shall then be relieved of liability for such tax.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended 26 U.S.C. 5232))

§ 27.132 Preparation of transfer record and package gauge record.

The person importing spirits under this subpart shall prepare a transfer record according to § 27.125. A separate transfer record shall be prepared for each conveyance. If the spirits are in packages he/she shall prepare a package gauge record according to § 27.126 and attach it to the transfer record. If the spirits are subject to an effective tax rate based on the alcohol content eligible for 5010 credit, either the certificate of effective tax rate computation prescribed by § 27.77 or a copy of the approved standard effective tax rate issued under § 27.78 shall be attached to the transfer record. The transfer record and appropriate attachments shall be prepared in triplicate and, upon release of the spirits from customs custody, dispersed in the following method:

(a) the original will be forwarded to the consignee;

(b) one copy will be given to the customs officer or proprietor of the customs bonded warehouse, whichever is appropriate;

(c) the final copy will be retained as part of the importer's records.

(Approved by the Office of Management and Budget control number 1512–0250)

§ 27.133 Inspection and release.

(a) *Transfer from customs custody without being deposited in a customs bonded warehouse.* Imported spirits shall be released from customs custody under procedures administered by the U.S. Customs Service. The transfer record presented to the proprietor of the distilled spirits plant shall reflect (in addition to the information required by § 27.125) the amount of spirits transferred to such plant, the port of entry, carrier identification, applicable rate of duty, and serial number of any customs seals affixed to bulk conveyances.

(b) *Transfer from customs bonded warehouse.* (1) The proprietor of the customs bonded warehouse shall not release distilled spirits under this subpart until the proprietor receives from the importer a transfer record, if the spirits are in a bulk conveyance, or a package gauge record and a transfer record, if the spirits are in packages. The proprietor will enter the elements of the gauge on the appropriate record and will also enter on the transfer record the port of entry, carrier identification, warehouse entry number, applicable rate of duty, and serial number of any customs seals affixed to bulk conveyances.

(2) When all customs requirements are complied with, the proprietor of the customs bonded warehouse shall release the spirits for transfer to the distilled spirits plant by dating and signing on the transfer record with his title and the statement:

"To the best of my knowledge the information herein is accurate and the spirits are released."

The original of the transfer record with any attachments shall be retained by the consignee.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

§ 27.134 Sealing of bulk conveyances.

Whenever a shipment of distilled spirits is made from customs custody to the distilled spirits plant in a tank car or tank truck, all openings affording access to the spirits shall be sealed under customs supervision in accordance with customs procedures in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

§ 27.135 Receipt by consignee.

Proprietors of distilled spirits plants who receive imported spirits under this subpart shall follow the requirements in 27 CFR part 19 for spirits received by transfer in bond.

§§ 27.136–27.140 [Reserved]

Subpart L—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States

§ 27.141 General.

The United States or any of its Government agencies may, upon filing proper customs entry, withdraw imported distilled spirits free of tax from customs custody, for non-beverage purposes as authorized by 26 U.S.C. 5313 and under the provisions of this subpart. Before any distilled spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency to procure and withdraw spirits free of tax under this subpart. The provisions of subpart N of part 22 of this chapter cover the withdrawal of domestically produced tax-free spirits for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended, 1375, as amended (26 U.S.C. 5273, 5313))

§ 27.142 Application and permit, Form 5150.33.

(a) *General.* All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart which refer to permits on Form 5150.33.

(b) *Application.* (1) A Government agency of the United States shall apply to the Director for a permit to procure and withdraw spirits free of tax on Form 5150.33. Upon approval by the Director, Form 5150.33 will be returned to the agency.

(2) If a Government agency intends to withdraw spirits free of tax under this part and part 22 of this chapter, Form 5150.33 may be annotated to cover both types of withdrawals.

(3) A separate permit is not required for each port of entry. The application, Form 5150.33, may be completed to indicate the applicable ports of entry in which spirits will be withdrawn from customs custody.

(4) A Government agency may specify on its application that it desires a single permit authorizing all sub-agencies under its control to procure and withdraw spirits free of tax under this subpart and subpart N of part 22 of this chapter; or, each Government location may individually file an application for a permit, Form 5150.33.

(5) Each application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign on behalf of the head of an agency or sub-agency shall be furnished with the application.

(c) *Use of spirits.* Spirits withdrawn under this subpart may not be used for non-Government purposes.

(d) *Cancellation of permit.* All permits on Form 5150.33 and previous editions on Form 1444 shall remain in force until surrendered or canceled. Upon surrender or cancellation, the Government agency shall obtain and destroy all photocopies of the permit furnished to district directors of customs, and forward the original to the Director for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 27.143 Use of permit, Form 5150.33.

Each Government agency shall retain the original of its permit, Form 5150.33, on file until such time as such permit is surrendered or cancelled. When filing an initial customs entry to withdraw spirits free of tax from a port of entry, the agency shall furnish a photocopy of its permit to the district director of customs for retention. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit shall list all locations authorized to withdraw spirits free of tax from customs custody. Any subsequent requests for customs entry from the same port shall refer to the permit number.

(Sec. 201 Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 27.144 Entry documents.

Entry documents for importation of tax-free spirits under this subpart shall record the serial numbers or other identifying numbers of the containers and the total quantity in proof gallons of the spirits to be entered.

§ 27.145 Customs release.

(a) Upon receipt of appropriate customs entry and a photocopy of a permit, Form 5150.33 or previous editions on Form 1444, the port director of customs shall, following an inspection of the shipment, release spirits free of tax to the Government agency named on the permit, or attachment thereto.

(b) Customs officers shall not release spirits for shipment until the shipment has been inspected for losses in transit. If it appears that a container or containers have sustained losses in transit, the customs officers shall gauge the damaged container and prepare a package gauge record for the entire shipment, according to § 27.126. A copy of the package gauge record will be retained for the customs files and the original forwarded to the consignee agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313)

§§ 27.146–27.150 [Reserved]

Subpart M—Requirements For Liquor Bottles

§ 27.151 Scope of subpart.

The provisions of this subpart shall apply only to liquor bottles having a capacity of 200 ml or more, except where expressly applied to liquor bottles of less than 200 ml capacity.

§ 27.152 Standards of fill.

Distilled spirits imported into the United States in containers of 1 gallon (3.785 liters) or less for sale shall be imported only in liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the applicable standards of fill provided in § 5.47a of this chapter. Empty liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the provisions of part 19, or subpart E of part 5 of this chapter, may be imported for packaging distilled spirits in the United States as provided in part 19 of this chapter.

§ 27.153 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be imported by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit Form 5100.31 to the Director for bottle approval prior to importation of such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on Form 5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph of the bottle (both front and back) to the front of each copy of Form 5100.31 along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval or Disapproval.* Properly submitted Form 5100.31 to import distinctive liquor bottles (filled or empty) which have been imported shall be approved provided such bottles are found by the Director to:

(1) Meet the requirements of 27 CFR part 5;

(2) Be other than a standard liquor bottle (distinctive);

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

If Form 5100.31 is disapproved, the applicant shall be notified by the Director of the reasons for disapproval.

(c) *Maintenance and Use of Approved Copy.* The applicant shall keep a copy of the approved Form 5100.31, including an approved photograph of the distinctive liquor bottle (both front and back), on file at the applicant's premises. The applicant importer is responsible for furnishing a copy of the approved Form 5100.31, including a photograph of the distinctive liquor bottle, to customs officials at each affected port of entry where the merchandise is examined.

(Sec 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 27.154 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml capacity, for use as a liquor bottle which is determined to be deceptive. The customs officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not an approved container for

distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 27.155 Bottles to be used for display purposes.

Empty liquor bottles may be imported and furnished to liquor dealers for display purposes, provided each bottled is marked to show that it is to be used for such purpose. The importer shall keep records of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of such bottles.

(Approved by the Office of Management and Budget under control number 1512–0352)

§ 27.156 Used liquor bottles.

The Director may, pursuant to letterhead application, authorize an importer to receive liquor bottles assembled for the importer as provided in § 194.263 of this chapter. Used liquor bottles so received may be stored at any suitable location pending exportation for reuse. The importer shall keep records of the receipt and disposition of used liquor bottles.

(Approved by the Office of Management and Budget under control number 1512–0352)

§§ 27.157–27.160 [Reserved]

PART 70—PROCEDURE AND ADMINISTRATION

Par. 29. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 30. Section 70.411(c)(27) is revised to read as follows:

§ 70.411 Imposition of taxes, qualification requirements, and regulations.

* * * * *

(c) * * *

(27) *Importation of liquors*. Part 27 of Title 27 CFR contains the substantive and procedural requirements relative to the importation of distilled spirits, wine, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling of containers and packages.

* * * * *

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 31. The authority citation for Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.112a [Amended]

Par. 32. In § 250.112a remove the number ''251'' and add in its place the number ''27'' in the following places.

(a) Section 250.112a(a)(1)

(b) Section 250.112a(b)(1)

(c) Section 250.112a(b)(3)

Par. 33. In § 250.136, the undesignated paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 250.136 Affixing closures.

(a) * * *

(b) Closures or other devices need bear no letter of design; however, if a closure or other device bears any lettering or design which was not approved for use on such closure or other device as part of the certificate of label approval (COLA), ATF Form 5100.31, or which does not appear on a label used in connection with a closure or device, then such lettering or design is required to be approved for use by the Director in response to a letterhead application from the importer. Such application shall contain a copy of the lettering or design which is to appear on the closure or other device and identify the label or labels with which such closures or other devices will be used as provided in section 27.73(b).

Par. 34. In § 250.231, the undesignated paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 250.231 Affixing closures.

(a) * * *

(b) Closures or other devices need bear no letter or design; however, if a closure or other device bears any lettering or design which was not approved for use on such closure or other device as part of the certificate of label approval (COLA), ATF Form 5100.31, or which does not appear on a label used in connection with a closure or device, then such lettering or design is required to be approved for use by the Director in response to a letterhead application from the importer. Such application shall contain a copy of the lettering or design which is to appear on the closure or other device and identify the label or labels with which such closures or other devices will be used as provided in § 27.73(b).

§ 250.267 [Amended]

Par. 35. In § 250.267(a) is amended by removing the number ''251'' and adding the number ''27'' wherever it appears.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER [REMOVED AND RESERVED]

Par. 29. Part 251 is removed and reserved.

Dated: June 10, 1996.

John W. Magaw,

Director.

Approved: July 3, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–19427 Filed 8–2–96; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–96–072]

RIN 2121–AA97

Safety Zone: New York Super Boat Race, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the lower Hudson River, for the New York Super Boat Race. The temporary safety zone would be in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m. unless extended on terminated sooner by the Captain of the Port, New York. The proposed safety zone would close the entire Lower Hudson River between Battery Park and Pier 76 in Manhattan.

DATES: Comments must be received on or before August 20, 1996.

ADDRESSES: Comments should be mailed to lieutenant John W. Green, Waterways Oversight Branch, Coast Guard Activities New York, Bldg. 108, Governors Island, New York 10004–5096.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Waterways Oversight Branch, Coast Guard Activities New York (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Good cause exists for providing a comment period of less than 30 days. Due to the date final information concerning the event was received, a comment period of greater than 15 days would not allow sufficient time to publish a final rule prior to the scheduled date of the event. Since this proposal is neither complex nor technical, a 15 day comment period is sufficient to provide reasonable notice of the proposed regulation. A longer comment period would be impracticable, unnecessary, and contrary to the public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–072) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Background and Purpose

Super Boat Racing Inc. has submitted an Application for Approval of Marine Event for a Super Boat Race in the waters of the Lower Hudson River. This regulation would establish a temporary safety zone in the waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan and a point in Weehawken, New Jersey at 40°45′52″N latitude, 074°01°01″W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16.0″N	074°01′09.0″W, then south to
40°41′55.0″N	074°01′16.0″W, then west to
40°41′47.0″N	074°01′36.0″W, then northwest to
40°41′55.0″N	074°01′59.0″W, then to shore at
40°42′20.5″N (NAD 83)	074°02′06.0″W

The safety zone would be effective on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would close all waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point located directly opposite on the New Jersey shoreline and north of a line drawn between Battery Park in Manhattan and the southern most point of Ellis Island in the Upper New York Bay. This safety zone is needed to protect mariners from the hazards associated with a boat race in which the participants transit at high speeds.

This event will include up to 45 powerboats, 40 to 50 feet in length, racing on an 8 mile oval course at speeds in excess of 100 mph. No more than 100 spectator craft are expected for the event.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close all waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point located directly opposite of the New Jersey shoreline and north of a line drawn between Battery Park in Manhattan and the southern most point of Ellis Island in the Upper New York Bay on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons: the volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to four hours; the extensive advisories which will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (21 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–072, is added to read as follows:

§ 165.T01–072 Safety Zone; New York Super Boat Race, Hudson River, New York and New Jersey.

(a) *Location.* All waters of the Lower Hudson River between Pier 76 in Manhattan and a point of the New Jersey shore in Weehawken, New Jersey at 40°45′52″N latitude, 074°01′01″W longitude and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16,0″ N	074°01′09.0″ W, then south to
40°41′55,0″ N	074°01′16.0″ W, then west to
40°41′47.0″ N	074°01′36.0″ W, then northwest to
40°41′55.0″ N	074°01′59.0″ W, then to shore at
40°42′20.5″ N (NAD 83)	074°02′06.0″ W

(b) *Effective period.* This safety zone is in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in § 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 18, 1996.

Richard C. Vlaun,

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

[FR Doc. 96–19746 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AF29

Reduction of Debt Through the Performance of Work-Study Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its general regulations to provide that the money payable for performance of work-study services may be offset against an individual's outstanding debt to the United States arising from participation in educational and vocational rehabilitation programs VA administers. This would help veterans pay outstanding debts to the United States.

DATES: Comments must be received on or before October 4, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AF29.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Participants in some VA education programs and in the VA vocational rehabilitation program have been able to supplement their educational assistance by performing VA-related work services. An eligible individual contracts with VA to perform work and receives payment for that work.

In 1991 the governing statute, 38 U.S.C. 3485, was amended to allow VA to adopt a method by which individuals who are indebted to VA for overpayments of education or rehabilitation benefits may reduce their debt by entering into an agreement to provide work-study services. The money otherwise payable for the performance of these services would be used to eliminate their outstanding indebtedness. VA is authorized by the statute to waive certain requirements of law which normally would apply to individuals participating in a work-study program, and to waive various provisions of law which apply to payment or offset of a debt owed to VA. VA is proposing to exercise this authority as described in the proposed rule.

The statute gives VA authority to waive, in whole or in part, the limitations otherwise contained in 38 U.S.C. 3485(a) concerning the number of hours and periods during which work-study services can be performed. Section 3485(a) permits work-study performance during or between enrollment periods, but limits the number of hours to be worked to 25 times the number of weeks in the enrollment period. For those performing work-study services in order to liquidate a debt, but who currently may not be enrolled in school, VA finds no reason to limit those work-study contracts by the number of weeks in a school term. Thus, VA proposes to waive that restriction. The Department proposes to allow maximum flexibility for the debtor while at the same time facilitating collection and program administration. Accordingly, proposed § 1.929(d) would allow the hours worked to be as much as 40 times the number of weeks in the contract, while limiting the contract period in which the work-study services are to be performed to the lesser of the number of weeks needed to liquidate the debt or 52 weeks.

When an individual is performing work-study services to liquidate a debt, VA also is permitted by 38 U.S.C. 3485 to waive its usual practice of collection of the debt by offset of other benefits to which the individual may be entitled. In order to simplify administration and encourage individuals who may have limited cash resources to liquidate debt through performance of work-study services, VA has chosen to exercise the waiver. This issue is addressed in proposed § 1.929(f).

The primary purpose of the work-study program is to provide eligible persons a means of obtaining additional subsistence or educational assistance funds to enable them to continue their programs of education. Therefore, VA proposes that in localities where only a limited number of work-study positions are available, those individuals actually in school will be given preference over those who are not in school. This ensures that the granting of work-study contracts to debtors to liquidate their debts will not deny deserving persons in school who have not defaulted on their obligations to VA the economic

assistance of the work-study benefit, as originally intended by the law.

VA interprets the authorizing statute as permitting it to approve only those types of work-study services that are VA-related such as working in a VA regional office, working on a school campus with veteran's records or in a VA hospital.

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if promulgated, would not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and would not directly affect small entities. Pursuant to 5 U.S.C. 605(b), the proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This proposed rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

The Catalog of Federal Domestic Assistance numbers for the programs affected by the proposed rule are 64.111, 64.117, 64.120 and 64.124.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Employment, Flags, Freedom of information, Government contracts, Government employees, Government property, Inventions and patents, Investigations, Privacy, Seals and insignia.

Approved: April 24, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

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

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1, §§ 1.910 to 1.921 continues to read as follows:

Authority: Sections 1.910 to 1.921 issued under 72 Stat. 1114; 38 U.S.C. 501.

2. Section 1.929 is added to read as follows:

§ 1.929 Reduction of debt through performance of work-study services.

(a) *Scope.* (1) Subject to the provisions of this section VA may allow an individual to reduce an indebtedness to the United States through offset of benefits to which the individual becomes entitled by performance of work-study services under 38 U.S.C. 3485 and 3537 when the debt arose by virtue of the individual's participation in a benefits program provided under any of the following:

(i) 38 U.S.C. chapter 30;

(ii) 38 U.S.C. chapter 31;

(iii) 38 U.S.C. chapter 32;

(iv) 38 U.S.C. chapter 34;

(v) 38 U.S.C. chapter 35;

(vi) 38 U.S.C. chapter 36 (other than an education loan provided under subpart F, part 21 of this title); or

(vii) 10 U.S.C. chapter 1606 (other than an indebtedness arising from a refund penalty imposed under 10 U.S.C. 16135).

(2) This section shall not apply in any case in which the individual has a pending request for waiver of the debt under §§ 1.950 through 1.970.

(Authority: 38 U.S.C. 3485(e)(1); Pub. L. 102–16)

(b) *Selection criteria.* If there are more candidates for a work-study allowance than there are work-study positions available in the area in which the services are to be performed:

(1) VA will give priority to the candidates who are pursuing a program of education or rehabilitation.

(2) Only after all candidates in the area described in paragraph (b)(1) of this section either have been given work-study contracts or have withdrawn their request for contracts will VA offer contracts to those who are not pursuing a program of education or rehabilitation and who wish to reduce their indebtedness through performance of work-study services.

(3) VA shall not offer a contract to an individual who is receiving compensation from another source for the work-study services the individual wishes to perform.

(4) VA shall not offer a contract to an individual if VA determines that the debt can be collected through other means such as collection in a lump sum, collection in installments as provided in § 1.917 or compromise as provided in § 1.918.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(c) *Utilization.* The work-study services to be performed under a debt-liquidation contract will be limited as follows:

(1) If the individual is concurrently receiving educational assistance in a program administered by VA, work-study services are limited to those allowed in the educational program under which the individual is receiving benefits.

(2) If the individual is not concurrently receiving educational assistance in a program administered by VA, the individual may perform only those work-study services and activities which are or were open to those students receiving a work-study allowance while pursuing a program of education pursuant to the chapter under which the debt was incurred.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(d) *Contract to perform services.* (1) The work-study services performed to reduce indebtedness shall be performed pursuant to a contract between the individual and VA.

(2) The individual shall perform the work-study services required by the contract at the place or places designated by VA.

(3) The number of hours of services to be performed under the contract must be sufficient to enable the individual to become entitled to a sum large enough to liquidate the debt by offset.

(4) The number of weeks in the contract will not exceed the lesser of—

(i) The number of weeks of services the individual needs to perform to liquidate his or her debt; or

(ii) 52.

(5) In determining the number of hours per week and the number of weeks under paragraphs (d)(3) and (d)(4) of this section necessary to liquidate the debt, VA will use the amount of the account receivable, including all accrued interest, administrative costs and marshall fees outstanding on the date the contract is offered to the individual and all accrued interest, administrative costs and marshall fees VA estimates will have become outstanding on the debt on the date the debt is to be liquidated.

(6) The contract will automatically terminate after the total amount of the individual's indebtedness described in paragraph (d)(5) of this section has been recouped, waived, or otherwise liquidated. An individual performing work-study services under a contract to liquidate a debt is released from the contract if the debt is liquidated by other means.

(7) The contract to perform work-study services for the purpose of liquidating indebtedness will be terminated if:

(i) The individual is liquidating his or her debt under this section while receiving either an educational assistance allowance for further pursuit of a program of education or a subsistence allowance for further pursuit of a program of rehabilitation;

(ii) The individual terminates or reduces the rate of pursuit of his or her program of education or rehabilitation; and

(iii) The termination or reduction causes an account receivable as a debt owed by the individual.

(8) VA may terminate the contract at any time the individual fails to perform the services required by the contract in a satisfactory manner.

(Authority: 38 U.S.C. 3485(e), 7104(a); Pub. L. 102–16)

(e) *Reduction of indebtedness.* (1) In return for the individual's agreement to perform hours of services totaling not more than 40 times the number of weeks in the contract, VA will reduce the eligible person's outstanding indebtedness by an amount equal to the higher of—

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the individual works; or

(ii) The hourly minimum wage under comparable law of the State in which the services are performed times the number of hours the individual works.

(2) VA will reduce the individual's debt by the amount of the money earned for the performance of work-study services after the completion of each 50 hours of services (or in the case of any remaining hours required by the contract, the amount for those hours).

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(f) *Suspension of collections by offset.* Notwithstanding the provisions of § 1.912a, during the period covered by the work-study debt-liquidation contract with the individual, VA will ordinarily suspend the collection by offset of a debt described in paragraph (a)(1) of this section. However, the individual may voluntarily permit VA to collect part of the debt through offset against other benefits payable while the individual is performing work-study services. If the contract is terminated before its scheduled completion date, and the debt has not been liquidated, collection through offset against other benefits payable will resume on the date the contract terminates.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

(g) *Payment for additional hours.* (1) If an individual, without fault on his or her part, performs work-study services for which payment may not be authorized, including services performed after termination of the contract, VA will pay the individual at the applicable hourly minimum wage for such services as the Director of the VA field station of jurisdiction determines were satisfactorily performed.

(2) The Director of the VA field station of jurisdiction shall determine whether the individual was without fault. In making this decision he or she shall consider all evidence of record and any additional evidence which the individual wishes to submit.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102–16)

[FR Doc. 96–19780 Filed 8–2–96; 8:45 am]

BILLING CODE 8520–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 007–1007; FRL–5547–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve new Missouri rule 10 CSR 10–2.360, ''Emission Restrictions for Bakeries,'' as a revision to the Missouri State Implementation Plan (SIP). This rule restricts volatile organic compound (VOC) emissions from large commercial bakery operations in the Kansas City area.

DATES: Comments must be received on or before September 4, 1996.

ADDRESSES: Comments may be mailed to Mr. Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mr. Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires states to apply reasonably available control technology (RACT) to major sources (sources emitting greater than 100 tons per year) of VOCs to reduce such emissions in ozone nonattainment areas. RACT is defined as the lowest emissions limit that a particular source is capable of meeting by the application of control technology that is both reasonably available, as well as technologically and economically feasible.

Kansas City was designated as an ozone nonattainment area in 1978. The Missouri Department of Natural Resources (MDNR) submitted a Part D ozone attainment SIP in 1979. This SIP was fully approved by the EPA; however, violations of the ozone national ambient air quality standards were recorded after the attainment date, causing the EPA to notify Kansas and Missouri that the Kansas City SIP was substantially inadequate to meet the standard in February 1985 (50 FR 26198, June 25, 1985). The effect of the SIP call, as stated in the EPA guidance dated January 1984 entitled ''Guidance Document for the Correction of Part D SIPs for Nonattainment Areas,'' and the November 24, 1987, ''Post-1987 Policy,'' is that Kansas City and other such areas were required to have RACT in place for *all* major sources, whether or not they belonged to a control technique guideline (CTG) source category.

Kansas City was redesignated to attainment on June 23, 1992, with the assumption that all existing major sources had RACT controls. Recently, MDNR discovered a large, uncontrolled commercial bakery located in Kansas City. Since bakery operations emit significant amounts of ethanol, which is a VOC, this source should have been addressed prior to redesignation.

The EPA recently developed an Alternative Control Technology (ACT) document which is designed to provide states with background information to assist them in developing RACT rules for this source category. This ACT document examines the baking process and the feasibility of various VOC control strategies. Unlike a CTG document, however, this document does not identify a presumptive norm for RACT. An achievable control level is identified, and states are given the flexibility to select controls strategies.

Region VII has determined that Missouri rule 10 CSR 10–2.360 meets Federal requirements for RACT for commercial bakeries because it requires achievable control levels consistent with the EPA's ACT document. Specifically, Missouri's rule requires a minimum of 80 percent VOC destruction and contains provisions addressing compliance determinations and recordkeeping.

EPA ACTION

The EPA is proposing to approve rule 10 CSR 10–2.360 as a revision to the Missouri SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for 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. 600 *et seq.*, the 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, the 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 populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (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, the EPA certifies that it does not have a significant impact on any small entities affected. 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 the 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)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP revision, the state and any affected local governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal governments.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 17, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–19843 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MI45–01–7240b; FRL–5545–3]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes to approve the State's request to redesignate the Wayne County, Michigan, particulate matter nonattainment area to attainment. The State Implementation Plan (SIP) submittal is complete and satisfies the redesignation requirements specified in the Clean Air Act. In the final rules section of this Federal Register, EPA is approving the 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 detailed rationale for the approval 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 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 action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by September 4, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401–7671q.

Dated: July 16, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–19786 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 281

[FRL–5546–8]

Delaware; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on Delaware's application for approval of underground storage tank program, public hearing and public comment period.

SUMMARY: The State of Delaware has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Delaware's application and has made the tentative decision that the State of Delaware's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The State of Delaware's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on September 17, 1996. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by September 9, 1996. EPA will determine by September 13, 1996, whether there is significant interest to

hold the public hearing. The State of Delaware will participate in any public hearing held by EPA on this subject. All written comments on the State of Delaware's application for program approval must be received by 4:30 p.m. on September 9, 1996.

ADDRESSES: Copies of the State of Delaware's application for program approval are available between 8:30 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 89 King Highway, Dover, Delaware 19903; Contact: Dave Small (302) 739–4506

Delaware Department of Natural Resources and Environmental Control, Underground Storage Tank Branch, 715 Grantham Avenue, New Castle, Delaware 19720; Contact: Kathleen Calloway (302) 323–4588

Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, 317 North Dupont Highway, Georgetown, Delaware 19947; Contact: Lisa Wood (302) 856–4561

United States Environmental Protection Agency, Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway, Arlington, VA 22202, (703) 603–9231

United States Environmental Protection Agency, Region III Library, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Contact: Diane McCreary, (215) 566–5353

Written comments should be sent to: Joanne T. Cassidy, Program Manager, State Programs Branch, (3HW60), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–3381.

Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone after September 13, 1996, the EPA Program Manager listed above or telephone Kathleen Calloway, Chief, UST Branch, Department of Natural Resources and Environmental Control, 715 Grantham Avenue, New Castle, Delaware 19720, (302) 323–4588.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State's application for program approval on September 17, 1996, at 7:00 p.m. at the Ommelanden Hunter Safety Training Range Complex, 1205 River Road, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Joanne T. Cassidy, State Programs Branch (3HW60), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–3381.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. EPA may approve a State program if the Agency finds pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the State program: is ''no less stringent'' than the Federal program in all seven elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7), includes the notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8) and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

B. State of Delaware

The Delaware Department of Natural Resources and Environmental Control (DNREC), is the implementing agency for UST activities in the State. The Underground Storage Tank Branch of DNREC is dedicating a substantial effort to remediate, prevent and control UST-related groundwater contamination. The Underground Storage Tank Branch maintains a strong field presence and works closely with the regulated community to ensure compliance with the regulatory requirements.

The scope of the Delaware UST Program extends beyond the scope of the Federal UST Program as follows:

(1) In addition to the approximately 7,427 USTs covered by both the Federal and Delaware programs, Delaware also regulates an estimated additional 1,360 USTs containing heating fuel. Heating fuel tanks greater than 1100 gallons were required to be registered with the State within 180 days of July 20, 1988.

(2) Delaware requires payment of an annual tank registration fee. Delaware also requires the display of a registration certification at all covered UST facilities at all times.

(3) Delaware's regulations forbid fuel distributors from depositing regulated substances into unregistered UST systems.

(4) Delaware requires that UST contractors be certified to install, retrofit, remove, or reline UST systems used to store regulated substances.

(5) Delaware requires submission and approval of a site plan before any new tank installation can take place. A site survey is required prior to installation, and every stage of the installation must be documented with photographs. Delaware prohibits the installation of asphalt-coated tanks. If a new UST system is installed near an old tank field, the number of release detection options may be limited by the Department.

(6) Delaware requires a 10-day notice in advance of all UST retrofits/upgrades.

(7) The Delaware Underground Storage Tank Response Fund may be used by the Department for the investigation and remediation of petroleum underground storage tank releases. Delaware may recover expenditures from the Fund for corrective action.

(8) Delaware allows for limited reimbursement of expenses associated with the rehabilitation of certain contaminated sites.

(9) The Small Retail Gasoline Station Assistance Loan Fund offers low-interest loans to small retail gasoline station owners and operators to assist in financing upgrades to their UST systems.

Delaware's requirements which exceed the stringency of the Federal regulations include the following:

(1) Delaware allows for civil penalties up to $25,000 for each day of violation.

(2) Delaware prohibits installation of an UST system unprotected from corrosion at any site.

(3) Delaware requires tanks installed after July 12, 1985, to meet the new tank performance standards.

(4) Delaware requires notification of the National Response Center in the event of a release of petroleum that causes a visible sheen on surface waters.

(5) Inventory control must be performed in combination with another approved leak detection method for UST systems, with the exception of heating oil tanks. A weekly water check must be performed with the result made part of the inventory record. The monthly throughput reconciliation standard is the same as the Federal standard; however, daily losses of five percent or more of the daily product dispensed must be investigated.

(6) If tank testing is selected as a method of leak detection, the tank must be tested yearly regardless of the age of the tank.

(7) With the exception of used oil tanks less than 2,000 gallons, Delaware does not allow manual tank gauging as an alternate leak detection method.

(8) Delaware requires secondary containment tank systems or continuous electronic leak detection in areas where the protection of specific water resources has been deemed necessary.

(9) Existing USTs were required to be retrofitted with a spill containment

device, an overfill protection method, fill line protection and to have leak detection performed depending on tank age over a four-year period ending December 31, 1990.

(10) Fill line protection is required on all USTs. Delaware requires all fill lines to be clearly identified by type of product stored and the size of the tank.

(11) Delaware requires the Corrective Action Work Plan to be signed by a professional geologist and/or engineer registered in the State.

(12) Delaware requires either site closure or active corrective action after two years of passive corrective action.

(13) Delaware requires existing hazardous substance USTs to meet secondary containment standards by January 1, 1998.

The Delaware Department of Natural Resources and Environmental Control submitted an official application for approval on November 20, 1995. Prior to its submission, the State of Delaware provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed Delaware's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely public comments prior to making a final decision on whether to grant approval to the State of Delaware to operate its program in lieu of the Federal program.

In accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative decision on September 17, 1996, at 7:00 p.m. at the Ommelanden Hunter Range Complex, 1205 River Road, New Castle, Delaware 19720, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 9, 1996. Copies of Delaware's application are available for inspection and copying at the locations indicated in the **ADDRESS** section of this notice.

EPA will consider all public comments on its tentative determination received at the public hearing, if a hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State of Delaware. EPA will give notice of its final decision in the Federal Register; the notice will include a summary of the reasons for the final determination and a response to all significant comments.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. Delaware's request for approval of an underground storage tank program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its underground storage tank program approved, the State will gain the authority to implement a federally authorized program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of an underground storage tank program under RCRA Subtitle I, RCRA underground storage tank regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Delaware's underground storage tank program referenced in today's notice will result in annual costs of $100 million or more. EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement for those regulations for which they have been authorized. Hence, owners and operators of underground storage tanks generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate underground storage tanks or that will become subject to the requirements of an approved State underground storage tank program. However, such small governments which own and/or operate underground storage tanks are already subject to the requirements in 40 CFR part 280 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own underground storage tank program and any revisions to that program, these same small governments will be able to own and operate their underground storage tanks under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant

economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate USTs that will become subject to the requirements of an approved state UST program. However, since such small entities which own and/or operate USTs are already subject to the requirements in 40 CFR Part 280, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the state administers the UST program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own UST program and any revisions to that program, these same small entities will be able to own and operate their USTs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of USTs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Delaware program to operate in lieu of the federal program, thereby eliminating duplicative requirements for owners and operators of USTs in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative Practice and Procedure, Hazardous Materials, State Program Approval, Underground Storage Tanks.

Authority: This notice is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: July 26, 1996.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 96–19845 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7188]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Santa Cruz County (Unincorporated Areas).	Santa Cruz River	At Santa Cruz-Pima County limits	*3,028	*3,029
			At confluence with Sopori Wash	*3,032	*3,035
			Approximately 600 feet upstream of confluence with Sopori Wash.	*3,034	*3,037
			Approximately 800 feet downstream of convergence with flow east of Southern Pacific Railroad.	*3,039	*3,040
			At convergence with flow east of Southern Pacific Railroad.	*3,042	*3,042
		Sopori Wash	At confluence with Santa Cruz River	*3,032	*3,036
			Approximately 250 feet upstream of Santa Cruz River.	*3,034	*3,036
			Approximately 530 feet upstream of Santa Cruz River.	*3,036	*3,036

Maps are available for inspection at the Santa Cruz County Flood Control District and Flood Plain Administration, 2150 North Congress Drive, Nogales, Arizona.

Send comments to The Honorable Ronald R. Morriss, Chairman, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, Arizona 85621.

California	Alameda County (Unincorporated Areas).	Arroyo Mocho	At corporate limit with City of Pleasanton (500 feet upstream of confluence of Arroyo Las Positas).	*353	*351
			Just upstream of El Charro Road	*356	*357
		Arroyo Las Positas	At confluence with Arroyo Mocho	*352	*345
			Just downstream of El Charro Road	*356	*355
		Collier Canyon Creek	At confluence of Collier Canyon Tributary at Las Positas College Road.	None	*443
			Approximately 5,000 feet upstream of Las Positas College Road.	None	*490
		Collier Canyon Tributary	Approximately 1,000 feet upstream of confluence with Collier Canyon Creek.	None	*455
			Approximately 500 feet south of bend in Hartman Road.	None	*534

Maps are available for inspection at the Public Works Agency, Alameda County, 399 Elmhurst Street, Hayward, California.

Send comments to The Honorable Susan S. Muranisha, County Administrator, Alameda County, 1221 Oak Street, Suite 555, Oakland, California 94612.

California	Dublin (City) Alameda County.	Dublin Creek	Just west of Interstate Highway 580 and Interstate Highway 680 Interchange.	None	*332
			Just upstream of Donlon Way	None	*380
			Approximately 1,000 feet upstream of Donlon Way.	None	*382
		Line J–1	At confluence with Alamo Canal	None	*328
			Approximately 300 feet upstream of Bellina Street.	None	*405
		Line J–3	At confluence with Line J–1 (just north of Amador Valley Boulevard).	*338	*339
			Just upstream of Silvergate Drive	None	*420
		Line J–4	At confluence with Line J–3	*359	*359
			At Silvergate Drive (extended)	None	*362
		Line J–5	Just west of Ramon Road	None	*386

Maps are available for inspection at the Building Department, City of Dublin, City Hall, 100 Civic Plaza, Dublin, California.

Send comments to The Honorable Guy S. Houston, Mayor, City of Dublin, P.O. Box 2340, Dublin, California 94568.

California	Livermore (City) Alameda County.	Collier Canyon Creek	Just north of Interstate Highway 580 frontage road.	*417	*412
			Just downstream of Collier Canyon Road	*432	*437
			At confluence of Collier Canyon Tributary	None	*443

Maps are available for inspection at the Planning Department, City of Livermore, 1052 South Livermore Avenue, Livermore, California.

Send comments to The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550.

California	Santa Clara County (Unincorporated Areas).	Berryessa Creek	At confluence with Penitencia Creek	*12	*12

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,000 feet upstream of confluence with Penitencia Creek.	*12	*13
			Just upstream of Los Coches Street	*29	*30
			Just upstream of confluence of Piedmont Creek.	*34	*34
		Arroyo De Los Coches	At confluence with Berryessa Creek	None	*30
			Appeoximately 200 feet upstream of Old Piedmont Road.	None	*145
		Calera Creek	At confluence with Berryessa Creek	None	*13
			Approximately 800 feet upstream of Interstate Highway 680.	None	*120
Maps are available for inspection at the Office of the City Engineer, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California.					
Send comments to The Honorable Lawrence M. Moore, City Manager, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.					
California	Mountain View (City) Santa Clara County.	Permanente Creek	Approximately 1,400 feet downstream of Shoreline Parkway.	*8	*8
			Approximately 1,100 feet upstream of Shoreline Parkway.	*8	*9
			At U.S. Route 101 (Bayshore Freeway)	*18	*14
		Permanente Creek-East Overbank.	Just downstream of Amphitheater Parkway.	None	*8
			Approximately 850 feet upstream of Amphitheater Parkway.	None	*9
		Permanente Creek-West Overbank.	Approximately 500 feet downstream of Amphitheater Parkway.	None	*8
			Approximately 850 feet upstream of Amphitheater Parkway.	None	*9
Maps are available for inspection at the Department of Public Works, 500 Castro Street, Mountain View, California.					
Send comments to The Honorable Ralph Faravelli, Mayor, City of Mountain View, P.O. Box 7540, Mountain View, California 94039–7540.					
California	Sunnyvale (City) Santa Clara County.	Sunnyvale East Channel	At confluence with Guadalupe Slough	None	*8
			Approximately 1,900 feet upstream of Tasman Drive.	None	*18
		Sunnyvale West Channel	At confluence with Moffett Channel	None	*8
			Approximately 300 feet upstream of Orbit Court.	None	*25
		San Francisco Bay	At Sunnyvale	*7	*8
Maps are available for inspection at the Department of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California.					
Send comments to The Honorable Robin Parker, Mayor, City of Sunnyvale, P.O. Box 3707, Sunnyvale, California 94088–3707.					
Colorado	El Paso County (Unincorporated Areas).	Bear Creek	At confluence with Fountain Creek	*5,932	*5,939
			Just above Eighth Street	*5,979	*5,978
			Approximately 570 feet upstream of Eighth Street.	*5,985	*5,985
		Black Forest Creek	Approximately 160 feet upstream of confluence with Monument Creek.	None	*6,657
			Approximately 1,840 feet upstream of Gleneagle Drive.	None	*7,036
	Black Forest Creek-Baptist Road Tributary	At confluence with Black Forest Creek.	None	*6,955	
			Approximately 250 feet upstream of Celtic Court.	None	*7,160
		Black Forest Creek-Middle Tributary.	Just upstream of Interstate Highway 25	None	*6,725
			Approximately 100 feet upstream of Westchester Drive.	None	*6,808
		Camp Creek	At confluence with Fountain Creek	*6,110	*6,110
			Just upstream of 31st Street	*6,262	*6,266
			Just upstream of Gateway Road	*6,314	*6,314

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1.5 miles upstream of Gateway Road.	*6,521	*6,524
		Crystal Creek	At confluence with Monument Lake	*6,920	*6,922
			Approximately 800 feet upstream of Deer Creek Road.	None	*7,138
		Crystal Creek-Split Flow Channel.	At confluence with Dirty Woman Creek	None	*7,000
			Approximately 1,000 feet upstream of frontage road.	None	*7,061
		Dirty Woman Creek	At confluence with Monument Creek	None	*6,869
			Approximately 2,150 feet upstream of Furrow Road.	None	*7,320
		Dirty Woman Creek-Lake Fork.	At convergence with Dirty Woman Creek	None	*7,006
			Approximately 340 feet upstream of Woodmoor Drive.	None	*7,270
		Dirty Woman Creek-Middle Fork.	At confluence with Dirty Woman Creek	None	*7,142
			Approximately 1,050 feet upstream of Furrow Road.	None	*7,336
		Dirty Woman Creek-North Fork.	At confluence with Dirty Woman Creek-Middle Fork.	None	*7,156
			Approximately 1.3 miles upstream of Augusta Drive.	None	*7,385
		Dirty Woman Creek-South Fork.	At confluence with Dirty Woman Creek	None	*7,153
			Approximately 975 feet upstream of Furrow Road.	None	*7,320
		Douglas Creek South	Approximately 4,250 feet upstream of confluence with Monument Creek.	*6,212	*6,212
			Just upstream of Holland Park Boulevard	*6,251	*6,254
			1,620 feet upstream of Arrowswest Drive	None	*6,428
		Fisher's Canyon-Above Loomis Avenue.	Approximately 3,650 feet upstream of Loomis Avenue.	None	*5,913
			Approximately 600 feet upstream of Cheyenne Meadows Road.	None	*5,938
		Fisher's Canyon-South Branch.	At confluence with Fisher's Canyon-Above Loomis Avenue.	None	*5,930
			Approximately 140 feet upstream of Wycliffe Drive.	None	*5,955
		Pine Creek	At confluence with Pine Creek	*6,282	*6,282
			Just upstream of Interstate Highway 25	*6,302	*6,296
			Approximately 600 feet upstream of Academy Boulevard.	None	*6,441
		Pine Creek Tributary	At confluence with Pine Creek	None	*6,367
			Approximately 1 mile upstream of confluence with Pine Creek.	None	*6,467
		Sutherland Creek	Approximately 0.25 mile upstream of confluence with Fountain Creek.	*6,275	*6,277
			Approximately 1,250 feet upstream of Crystal Hills Boulevard.	*6,502	*6,505

Maps are available for inspection at the El Paso County Regional Building Office, 101 West Costilla, Colorado Springs, Colorado.

Send comments to The Honorable Loren Whittemore, Chairman, El Paso County Commissioners, 27 East Vermijo, Colorado Springs, Colorado 80903.

Idaho	Bellevue (City) Blaine County.	Big Wood River	Approximately 0.38 mile downstream of corporate limits.	*5,126	*5,126
			At Chestnut Street Extension	*5,141	*5,141
			At Broadford Road	*5,164	*5,162
			Approximately 1,050 feet upstream of Broadford Road.	*5,170	*5,167

Maps are available for inspection at 117 Pine, Bellevue, Idaho.

Send comments to The Honorable Dennis Wright, Mayor, City of Bellevue, P.O. Box 449, Bellevue, Idaho 83313.

Idaho	Blaine County (Unincorporated Areas).	Big Wood River	At Broadford Road	*5,164	*5,164

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 60 feet upstream of Star Bridge.	*5,237	*5,238
			At Croy Creek Road	*5,306	*5,303
			At Deer Creek Road (new road)	*5,412	*5,411
			At Starweather Drive	*5,496	*5,494
			At East Fork Road	*5,547	*5,546
			Just upstream of Hulen Meadows Road	*5,933	*5,933
			Approximately 50 feet upstream of State Highway 75.	*6,153	*6,152
			Approximately 270 feet downstream of U.S. Highway 93.	*6,225	*6,219
		Big Wood River Overflow Channel.	Just downstream of Broadford Road	*5,169	*5,169
			Just downstream of Broadford Road (second crossing).	*5,196	*5,193
			At an unnamed road located just downstream of Mammoth Gulch.	*5,211	*5,205
			At divergence from Big Wood River just upstream of Star Bridge.	*5,237	*5,238
		Aspen Lakes Drive Overflow Channel.	At Aspen Lakes Drive	*5,352	*5,352
			Approximately 2,400 feet upstream of Aspen Lakes Drive.	*5,365	*5,365
			At confluence with Big Wood River	*5,377	*5,378
		Little Wood River	Approximately 100 feet upstream of downstream limit of detailed study.	none	*5,001
			Approximately 13,900 feet upstream of downstream limit of detailed study.	None	*5,093
Maps are available for inspection at 206 First Avenue South, Hailey, Idaho.					
Send comments to The Honorable Leonard Hartlig, Chairman, Blaine County Board of Commissioners, P.O. Box 400, Hailey, Idaho 83333.					
Idaho	Hailey (City) Blaine County.	Big Wood River	At the downstream corporate limits	*5,276	*5,272
			At the Chestnut Street Extension	*5,294	*5,293
			At the Walnut Street Extension	*5,301	*5,300
Maps are available for inspection at the City of Hailey, 115 South Main, Hailey, Idaho.					
Send comments to The Honorable Steve Kearns, Mayor, City of Hailey, P.O. Box 945, Hailey, Idaho 83333.					
Idaho	Ketchum (City) Blaine County.	Big Wood River	Approximately 940 feet downstream of Koa Bridge.	*5,719	*5,717
			Approximately 80 feet upstream of Springs Road.	*5,813	*5,811
			Approximately 50 feet upstream of Adams Gulch Road.	*5,874	5,872
			Approximately 2,190 feet upstream of Adams Gulch Road.	*5,872	*5,892
Maps are available for inspection at 480 East Avenue North, Ketchum, Idaho.					
Send comments to The Honorable Guy Coles, Mayor, City of Ketchum, P.O. Box 2315, Ketchum, Idaho 83340.					
Texas	Denton County (Unincorporated Areas).	Graveyard Branch	Approximately 1.43 miles downstream of U.S. Highway 377.	None	*615
			Approximately 2,700 feet downstream of U.S. Highway 377.	None	*629
		Loving Branch	Approximately 1,700 feet downstream of Post Oak Lane.	None	*625
			Just upstream of Post Oak Lane	None	*635
		Ray Roberts Lake	Along entire shoreline of Ray Roberts Lake above Ray Roberts Dam.	*643	*646
		Stream WB–1	Approximately 3,300 feet downstream of Jetter Road.	None	*594
			Approximately 1.23 miles downstream of Jetter Road.	None	*614
		Whites Branch	Approximately 2,100 feet downstream of Stock Tank Dam.	None	*596
			Approximately 100 feet downstream of Stock Tank Dam.	None	*607

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 50 feet upstream of private drive.	None	*621
			Approximately 150 feet downstream of Glenview Road N.	None	*632
			Approximately 1,100 feet upstream of Glenview Road.	None	*637
			Approximately 4,600 feet upstream of Glenview Road.	None	*651
Maps are available for inspection at the Denton County Government Center, 306 North Loop 288, Suite 115, Denton, Texas.					
Send comments to The Honorable Jeff A. Moseley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.					
Texas	Denton (City)Denton County.	Graveyard Branch	Approximately 4,400 feet downstream of U.S. Highway 377.	None	*623
			Approximately 1,800 feet downstream of U.S. Highway 377.	None	*633
			Approximately 200 feet upstream of Missouri-Pacific Railroad.	None	*643
Maps are available for inspection at the City of Denton, City Hall, 215 East McKinney, Denton, Texas.					
Send comments to The Honorable Bob Castleberry, Mayor, City of Denton, City Hall, 215 East McKinney, Denton, Texas 76201.					
Texas	Hickory Creek (Town) Denton County.	Lewisville Lake	Along entire shoreline of Lewisville Lake within the Town of Hickory Creek.	None	*537
Maps are available for inspection at the Town of Hickory Creek, 8696 Stemmons Freeway, Hickory Creek, Texas.					
Send comments to The Honorable Marvourene Matthews, Mayor, Town of Hickory Creek, P.O. Box 453, Lake Dallas, Texas 75065.					
Texas	Highland Village (City) Denton County.	Copperas Branch	Approximately 1,500 feet downstream of Brazos Boulevard.	*537	*537
			Approximately 100 feet downstream of Brazos Boulevard.	None	*547
			Approximately 125 feet upstream of Brazos Boulevard.	None	*556
			Approximately 75 feet upstream of Cripple Creek Lane.	None	*568
			Approximately 75 feet upstream of Cuero Place.	None	*576
Maps are available for inspection at the City of Highland Village, City Hall, 1800 F.M. 407, Highland Village, Texas.					
Send comments to The Honorable Charles Turner, Mayor, City of Highland Village, City Hall, 1800 F.M. 407, Highland Village, Texas 75067.					
Texas	Little Elm (Town) Denton County.	Cottonwood Branch	Approximately 2,200 feet downstream of State Route 423.	None	*539
			Approximately 150 feet downstream of State Route 423.	None	*544
			Approximately 400 feet upstream of State Route 423.	None	*552
Maps are available for inspection at the Town of Little Elm, City Hall, 109 Hardwicke, Little Elm, Texas.					
Send comments to The Honorable Jim Pelley, Mayor, Town of Little Elm, P.O. Box 129, Little Elm, Texas 75068.					
Texas	Sanger (City) Denton County.	Clear Creek	Approximately 400 feet upstream of Old U.S. Highway 77.	None	*618
			Approximately 300 feet upstream of Interstate Highway 35.	None	*620
Maps are available for inspection at the City of Sanger, City Hall, 201 Bolivar Street, Sanger, Texas.					
Send comments to The Honorable Nel Armstrong, Mayor, City of Sanger, P.O. Box 578, Sanger, Texas 76266.					
Texas	The Colony (City) Denton County.	Indian Creek	At McKamy Road	*561	*561
			Approximately 200 feet downstream of Burlington Northern Railroad.	None	*566
			Just upstream of Burlington Northern Railroad.	*567	*567

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the City of The Colony, City Hall, 5151 North Colony Boulevard, The Colony, Texas.

Send comments to The Honorable William W. Manning, Mayor, City of The Colony, City Hall, 5151 North Colony Boulevard, The Colony, Texas 75056.

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

Dated: July 26, 1966.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–19816 Filed 8–2–96; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 61, No. 151
Monday, August 5, 1996

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

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Certain Timber Sale Contracts; Finding of Substantial Public Interest

AGENCY: Forest Service, USDA.

ACTION: Notice of additional extension.

SUMMARY: Government indices indicate a major downtown in the lumber market during 1994 and 1995. While many National Forest System timber sale contracts contain provisions to extend termination dates during severely declining markets, the mechanisms used in some areas of the country to measure severely declining markets do not appear to measure the softwood lumber market. Accordingly, on April 2, 1996, the Under Secretary of Agriculture determined that it was in the substantial overriding public interest to extend for 120 days certain National Forest System timber sale contracts which were awarded prior to January 1, 1995j, in order to evaluate alternatives to existing market-related contract term addition rules for both existing and new contracts. The study indicates that contract extension is the best alternative to address existing contracts. Accordingly, the Chief of the Forest Service is now granting an additional extension of 1 year for contracts awarded prior to January 1, 1995, except for salvage sales and sales in western Washington and western Oregon. The intended effect is to minimize contract defaults, mill closures, and company bankruptcies.

DATES: The Chief's new determination was made on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Management Staff, Forest Service, USDA, (202) 205–0855.

SUPPLEMENTARY INFORMATION: The Forest Service sells timber from National Forest System lands to individuals or companies. Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract sets forth the explicit terms and provisions of the sale, including such matters as the estimated volume of timber to be removed, period for removal, price to be paid to the Government, road construction and logging requirements, and environmental protection measures to be taken. The average contract period is approximately 3 years, while a few contracts have terms of 7 or 8 years.

The National Forest Management Act of 1976 (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more, unless the purchaser has diligently performed in accordance with an approved plan of operations or the ''substantial overriding public interest'' justifies the extension. The authority to make this determination has been delegated to the Chief of the Forest Service (7 CFR 2.60).

Government indices indicate a major downturn in the softwood lumber market occurred during 1994 and 1995. During this period, price indices have declined approximately 25 percent. Rules at 36 CFR 223.52 permit extensions when Forest Service officials determine that adverse wood product market conditions have resulted in a drastic decline in wood product prices. Under contract procedures, the Douglas fir dressed lumber price index (commodity code 081101) used to measure severe market declines in western Oregon and western Washington has reflected the market decrease. Timber sale purchasers in this area have received 1 year of additional contract time, if requested. However, the indices used to measure severe market declines in other parts of the country do not appear to be as predictable an indicator of market declines as the index used in the Pacific Northwest. As a result, timer sale purchasers outside of the Pacific Northwest have not received any additional time to complete their contracts, and some of these purchasers are facing contract default, mill closure, and bankruptcy. It has been determined that additional contract time will assist these purchasers by giving them more time in which the market may improve or in which they can mix their high-priced sales with lower priced sales.

Accordingly, based on a study of alternatives and current rules at 36 CFR 223.115, the Chief of the Forest Service has made a finding that there is a substantial overriding public interest in extending sales for 1 year. This determination does not apply to contracts that were previously extended under market-related contract term addition contract provisions or to salvage sale contracts that were sold with the objective of harvesting deteriorating timber. In addition to extending contracts pursuant to the Chief's finding, periodic payments will be deferred for 1 year on the extended sales. To receive the extension and periodic payment deferral, purchasers must request the extension in writing and agree to release the Forest Service from damages for the replacement cost of timber if the contract is canceled in the future. The text of the finding, as signed by the Chief, is set out at the end of this notice.

Dated: July 31, 1996.

Gray F. Reynolds,
Acting Chief.

Determination of Substantial Overriding Public Interest for Extending Certain Timber Sale Contracts

Government indices indicate a major downturn in the lumber market has occurred during 1994 and 1995. While many Forest Service timber sale contracts contain provisions to extend termination dates during severely declining markets, the mechanisms used in some areas of the country to measure severely declining markets do not appear to measure the softwood lumber market.

Periodically, lumber markets may experience severe declines in prices. Based on Bureau of Labor Statistics producer price indices, the lumber market peaked in January 1994. During 1994 and 1995, price indices have declined approximately 25 percent. The Douglas fir dressed lumber price index (commodity code 081101) used to measure severe market declines in western Oregon and western Washington has reflected the market decrease. Timber sale purchasers in this area have received 1 year of additional contract time, if requested. However, the indices used to measure severe market declines in other parts of the country do not appear to measure the softwood

lumber market as well as the index used in the Pacific Northwest.

Until April 2, when the Under Secretary of Agriculture extended their contracts for 120 days, timber sale purchasers outside of the Pacific Northwest had not received any additional time to complete their contracts. Some of these timber sale purchasers are still facing contract default, mill closure, and bankruptcy. A contract extension would assist these purchasers by giving additional time in which the market may improve or in which they could mix their high-priced sales with lower-priced sales.

The Government benefits if defaulted timber sale contracts, mill closures, and bankruptcies can be avoided by granting contract extensions, because having numerous, economically viable timber sale purchasers both maintains market opportunities and increases competition for National Forest System timber sales. These factors result in higher prices paid for such timber. In addition, the Government would avoid the difficult and expensive process of collection contract default damages.

Therefore, pursuant to 16 U.S.C. 472a, 36 CFR 223.115, and the authority delegated to the Chief at 7 CFR 2.60, I have determined that it is in the substantial overriding public interest to extend for 1 year National Forest System timber sale contracts that were awarded prior to January 1, 1995. This finding does not apply to contracts in western Washington and western Oregon that have been previously extended under market-related contract term addition contract provisions or to salvage sale contracts that were sold with the objective of harvesting deteriorating timber. For those contracts extended pursuant to this finding, periodic payments also will be deferred for 1 year. To receive the extension and periodic payment deferral, purchasers must make written request and agree to release the Forest Service from damages for the replacement cost of timber if the contract is canceled in the future.

Dated: July 31, 1996.

Gray F. Reynolds,

Acting Chief.

[FR Doc. 96–19915 Filed 8–1–96; 2:36 pm]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and location of the meetings of the ADAAG Review Advisory Committee.

DATES: The ADAAG Review Advisory Committee will meet on August 26, 27, and 28, 1996. The August 26 meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. The August 27 and 28 meetings will begin at 8:30 a.m. and end no later than 5:00 p.m.

ADDRESSES: The meetings will be held in the lower level board room at the National Association of Home Builders, 1201 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: In September 1994, the Access Board established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The advisory committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-art document which is generally consistent with technological developments and changes in national standards and model codes, and continue to meet the needs of individuals with disabilities. The advisory committee is scheduled to complete its work in September 1996.

The advisory committee will meet on the dates and at the location announced in this notice to review a draft of its final report and to discuss recommendations regarding future harmonization or coordination of ADAAG with other codes and standards.

The meetings are open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Marsha Mazz by August 19, 1996, by calling (202) 272–5434 ext. 21 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–19789 Filed 8–2–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe From Mexico

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

EFFECTIVE DATE: August 5, 1996.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary and final results of the antidumping duty administrative review for the antidumping order on circular welded non-alloy steel pipe from Mexico, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or John Drury, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3833 or 482–0414, respectively.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Paul L. Joffe (May 17, 1996).

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date*
Circular Welded Non-Alloy Pipe (A–201–805)	Mexico	11/01/94 10/31/95	12/15/95	12/23/96	06/30/97

*The Department shall issue the final determination 180 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

The extension includes an additional 22 days attributable to the Federal Government furlough which began in January, 1996.

Dated: July 19, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary.

[FR Doc. 96–19858 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–047]

Elemental Sulphur From Canada; Extension of Time Limits of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limits of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the administrative review of the antidumping finding on elemental sulphur from Canada, covering the period December 1, 1994 through November 30, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1996, the Department published in the Federal Register (61 FR 3670) a notice of initiation of administrative review of the antidumping finding on elemental sulphur from Canada. The review covers the period December 1, 1994 through November 30, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see Decision Memorandum to Robert S. LaRussa, Acting Assistant Secretary for Import Administration,* dated July 26, 1996, ''Extension of Time Limits for 1994–95 Antidumping Duty Administrative Review of Elemental Sulphur from Canada''). Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to December 30, 1996. We will issue our final results by April 29, 1997.

Dated: July 30, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 96–19860 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–601]

Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On September 26, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The period of review is April 1, 1993 through March 31, 1994.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, and due to the correction of a clerical error, we have made certain changes for the final results.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1995, the Department published in the Federal Register (60 FR 49567) the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491 (April 23, 1987)). The preliminary results indicated that no dumping margins existed for three of the respondents in this review: Rancho Guacatay (Guacatay), Rancho el Toro (Toro), and Rancho del Pacifico (Pacifico). Rancho el Aguaje (Aguaje) received a margin of 1.54 percent. Moreover, we applied dumping margins based on the best information available (BIA) to Mexipel, S.A. de CV, Tzitzic Tareta, Rancho Mision el Descanso, Rancho Alisitos, and Las Flores de Mexico, because they failed to answer the antidumping questionnaire. Two producers, Visaflor F. de P.R. (Visaflor) and Rancho Daisy (Daisy), made no shipments to the United States during the period of review.

Applicable Statutes and Regulations

The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review (POR), such merchandise was classifiable under Harmonized Tariff Schedule of the United States (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and U.S. Customs Service (Customs) purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise entered into the United

States during the period April 1, 1993 through March 31, 1994.

Analysis of the Comments Received

The Floral Trade Council, the petitioner, and Aguaje submitted case briefs and rebuttal comments on October 26, 1995, and November 6, 1995, respectively. We received no other comments on the preliminary results.

Comment 1

Aguaje requests that the Department reallocate its reported indirect selling expenses for the final results. Aguaje claims that its reported methodology improperly allocated its indirect selling expenses solely to the month in which such expenses were incurred. Aguaje argues that since certain of its indirect selling expenses were unevenly distributed on a monthly basis, their allocation methodology distorted the per unit amount reported for one month for which it had unusually high indirect selling expenses. Aguaje argues further that indirect selling expenses are general selling expenses which are not related only to the sales in the particular month in which the expenses were incurred, but cover the activity over a longer period. Therefore, Aguaje asserts that its indirect selling expenses should be reallocated by summing up its total expense amount for the entire POR and allocating over total sales volume, in order to establish an even distribution.

The petitioner contends that Aguaje is attempting to reallocate its expenses due to the realization that its allocation methodology resulted in unfavorable results for a particular month. The petitioner asserts that the Department is not obliged to reallocate Aguaje's indirect selling expenses, because Aguaje had already allocated those expenses in a manner consistent with our questionnaire, and had ample opportunity to revise its methodology prior to the preliminary determination. The petitioner stated that should the Department decide to reallocate Aguaje's indirect selling expenses, we should be sure to reallocate those selling expenses based on resale prices to unrelated parties, rather than transfer prices between Aguaje and its U.S. subsidiary.

The Department's Position

We agree with Aguaje and therefore have reallocated its total indirect selling expenses incurred during the POR over total quantity of sales made to unrelated parties during the POR. We agree with Aguaje's contention that indirect selling expenses are period costs which help maintain sales operations over the entire POR. Aguaje's revised methodology is in line with this reasoning and previous determinations made by the Department. See *e.g.,* Canned Pineapple Fruit from Thailand (Final Determination), 60 FR 29553, 29567, June 5, 1995; and Certain Electrical Conductor Aluminum Redraw Rod from Venezuela (Preliminary Determination), 53 FR 3614, February 8, 1988.

We agree with petitioners that we are not obliged to accept Aguaje's reallocation methodology. However, because the revised methodology uses previously submitted data, provides for a more representative distribution of indirect selling expenses, and is consistent with previous determinations made by the Department (see above), we have accepted the revised methodology and allocated total POR indirect selling expenses over total quantity of sales made to unrelated parties for these final results.

Comment 2

The petitioner claims that the Department overstated exporter's sales prices (ESP) by failing to deduct commissions paid to related parties. The petitioner states that the statute and the Department's regulations require the Department to deduct U.S. commissions and indirect selling expenses, regardless of whether the consignment agent is a related party. For this reason, the petitioner argues, the Department should reconsider its treatment of related party commissions in this case and as articulated in Fresh Cut Roses from Colombia and Fresh Cut Roses from Ecuador, 60 FR 6980, 7019 (Feb. 6, 1995) (Roses).

The petitioner argues that, in Roses, the Department erroneously distinguished between commissions paid to related and unrelated parties, while the statute, which makes no such distinction, simply requires that commissions be deducted from ESP. The petitioner states that the Department's treatment of related party commissions in Roses is irrational, and it is inconsistent with *Timken Co.* v. *United States,* 630 F. Supp. 1327, 1341 (CIT 1986) (Timken). The petitioner asserts that, in *Timken,* the Court supported the Department's rationale for not deducting related party profits because they were not commissions, while, in Roses, the Department refused to deduct commissions because they are profits. The petitioner points out that, in the 1989–1990 administrative review of Certain Fresh Cut Flowers from Mexico, the Department deducted related party commissions found to be at arm's length (57 FR 7732 (March 4, 1992)).

Finally, the petitioner states that, even assuming that commissions need not always be deducted under section 772(e)(1) of the Act, the Department must deduct from ESP all direct selling expenses incurred at arm's length as circumstance-of-sale adjustments.

The Department's Position

We disagree with the petitioner. Since the Department published its final results in the 1989–1990 administrative review of this order, we have established the practice of collapsing exporters and their related consignment agents in ESP situations. 57 FR at 7732. The petitioner's arguments do not persuade us to deviate from this practice. As fully explained in Roses, the Department considers commissions paid to related parties to be intracompany transfers of funds, which are not deductible from ESP. See also Furfuryl Alcohol From South Africa; Final Determination of Sales at Less Than Fair Value 60 FR 22551 (May 8, 1995). Further, we do not consider such a transfer of funds to be a direct selling expense. Instead of making a deduction for commissions, the Department deducts the amount of the related importer's U.S. direct and indirect selling expenses pursuant to section 772(e)(2) of the Act. This methodology avoids double-counting the direct and indirect selling expense component of the related party commission, and avoids deducting any of the related importer's profit, as the Court affirmed in *Timken Co.* v. *United States,* 630 F. Supp. 1327, 1341 (CIT 1986) (Timken).

Comment 3

The petitioner claims that the Department should confirm that the respondents' reported credit costs account for the time between receipt of payment and deposit into the respondents' bank accounts, as the Department did in the 1989–1990 administrative review.

The Department's Position

We disagree with the petitioner. For the purposes of calculating imputed credit costs, it is our practice to calculate the number of credit days based on the number of days between the date of shipment and the date of payment. If actual payment dates are not readily accessible, we normally allow respondents to base the number of credit days on the average age of accounts receivables. See, *e.g.,* Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 56 FR 12701, 12708 (Comment 28)(March 27, 1991).

The Department calculated respondents' credit expenses for the

1989–1990 review period based on observations made during verification of that review. However, the Department more recently verified the 1992–1993 review which immediately precedes this review. Based on the findings of this more recent verification, the Department determined that respondents' use of the average age of accounts receivables to calculate credit expenses is reasonable (Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (Comment 2) (February 22, 1996)). Although no verification was conducted for this review period, we have determined, consistent with the final results of the 1992–1993 review, to rely on respondents' use of their average age of accounts receivables to calculate credit expenses. We therefore have accepted respondents' reported credit expenses for these final results.

Comment 4

The petitioner contends that since Lizebeth (Aguaje's subsidiary) does not track sales of the subject merchandise by country of origin, Lizebeth is indiscriminately allocating a portion of its box and freight revenue to Aguaje's sales. The petitioner also contends that, absent evidence that box and freight revenue has been remitted to Aguaje, the Department should reduce Aguaje's U.S. price accordingly.

The Department's Position

We disagree with petitioner and accept Aguaje's addition of freight and box revenue to U.S. price. As Aguaje and Lizebeth are related parties, it is unnecessary to trace the disposition of the freight and box revenue, because such a remission merely represents a transfer of intercorporate funds. Since Lizebeth's accounting system does not track particular sales of the subject merchandise by country of origin, we accept Aguaje's methodology of allocating its box and freight revenue based on the ratio of Lizebeth's acquisition cost of Aguaje flowers sold to the total acquisition cost of all flowers sold.

The Department maintains that box and freight revenue earned by a related party represents additional revenue. Therefore, it is the Department's determination to add box charges and freight revenues earned by Lizebeth to U.S. price. See, *e.g.*, Certain Fresh Cut Flowers from Ecuador, 52 FR 2128 (January 20, 1987).

Comment 5

The petitioner contends that Aguaje incorrectly classified its U.S. repacking costs as an indirect selling expense. Although Aguaje claims that Lizebeth's accounting system does not permit a precise segregation of repacking expenses, the petitioner argues that packing expenses are not selling expenses and cannot be included in the ESP offset cap. Therefore, the petitioner requests that the Department reduce Aguaje's U.S. price for U.S. repacking expenses.

The Department's Position

It is the Department's policy to deduct U.S. repacking expenses from the U.S. price. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia, 60 FR 6980 (February 6, 1995). However, given the fact that Aguaje's subsidiary does not maintain records which precisely quantify the cost incurred for U.S. packing, we determine that it is sufficient to deduct from U.S. price Aguaje's indirect selling expenses which included the cost of U.S. repacking.

Aguaje's indirect selling expenses consist of numerous expense categories, a small increase or decrease in a particular category would not produce a noticeable effect in total indirect selling expenses for the POR. Therefore, we are making no deductions from the ESP offset cap for U.S. repacking costs.

Comment 6

The petitioner states that the Department should describe the manner in which it confirmed that Visaflor and Daisy made no shipments of the subject merchandise during the review period.

The Department's Position

To determine whether Visaflor and Daisy made shipments of the subject merchandise to the United States during the review period, the Department followed its standard practice of issuing a request to Customs field personnel to notify the Department whether any subject merchandise exported by Visaflor or Daisy entered the United States during the review period. A copy of this message is on file in Room B099 of the Commerce Department. We received no information from Customs that Visaflor and Daisy had shipments of the subject merchandise during the POR.

Comment 7

The petitioner agrees with the Department's decision to assign non-responding companies a margin based on BIA; however, the petitioner states that the Department should not have assigned these companies the second-highest rate found for any respondent. By doing so, the petitioner argues, the Department unnecessarily and unfairly departed from its practice of assigning non-responding companies the highest available margin.

The petitioner states that, although the Department did not use the highest rate as BIA in prior reviews, the respondents in those reviews had, at least, submitted partial or complete questionnaire responses. The petitioner argues that the Department has no evidence that the highest margin is unrepresentative, since the parties failed to respond to the questionnaire. Furthermore, the petitioner states, the respondents are presumed to be aware of the highest possible margin when they decided not to respond to the antidumping questionnaire, citing *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990).

The Department's Position

We disagree with the petitioner. Prior to 1993 and the CIT's decisions in *The Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *United States,* 839 F.Supp. 864 (CIT 1993), the Department determined an ''all others'' or ''new shippers'' rate during the course of each administrative review. In the 1989–1990 review of this order, the Department did not include Florex's rate of 264.43 percent in its determination of the updated ''all others'' rate. The CIT supported the Department's position, stating that, ''Florex's accumulated interest expenses from a separate line of business that never began operations skewed its cost of production figures and should not have been included in the review analysis.'' *The Floral Trade Council* v. *the United States,* 799 F. Supp. 116 (CIT 1992).

The Court recognized that Florex's rate was unrepresentative of the other companies in that review, and by extension, of the entire flower industry because: (1) it was an out of proportion rate explained by factors unassociated with the overall industry, and (2) Florex represented only a small fraction of the industry. The Court concluded that ''ITA did not err in finding it would be punitive to maintain Florex's rate as the ''all other'' rate. Id. at 119. Although we received no information from the non-responding companies, we maintain that the Florex rate is unrepresentative of the Mexican fresh cut flower industry, and unsuitable to be applied to the non-responding companies as BIA. Therefore, we assigned Tzitzic Tareta, Rancho Mision el Descanso, Rancho Alisitos, Las Flores de Mexico, and Mexipel, S.A. de CV a BIA rate of 39.95 percent, which is the highest

representative rate of the Mexican fresh cut flower industry.

Final Results of Review

We determine that the following dumping margins exist for the period April 1, 1993, through March 31, 1994:

Manufacturer/exporter	Margin (percent)
Rancho el Aguaje	0.00
Rancho Guacatay	0.00
Rancho el Toro	0.00
Rancho del Pacifico	0.00
Rancho Daisy	*0.00
Visaflor	*0.00
Tzitzic Tareta	39.95
Rancho Mision el Descanso	39.95
Rancho Alisitos	39.95
Las Flores de Mexico	39.95
Mexipel, S.A. de CV	39.95
All others	18.20

*No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies shall be the above rates; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.28 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19862 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–820]

Notice of Postponement of Preliminary Antidumping Duty Determination: Fresh Tomatoes From Mexico

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

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Rudman (202–482–0192) or Jennifer Katt (202–482–0498), Office of AD/CVD Enforcement, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On April 18, 1996, the Department of Commerce (the Department) initiated an antidumping duty investigation of fresh tomatoes from Mexico (61 FR 18377, April 25, 1996). The notice of initiation stated that if this investigation proceeds normally, the Department would issue its preliminary determination by September 5, 1996.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), on July 26, 1996, the petitioners [1] made a timely request for an extension of no more than 30 days of the period within which the preliminary determination must be made. Under section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations if, not later than 25 days before the scheduled date for the preliminary determination, the Department receives a request for postponement of the preliminary determination from the petitioners, the Department will, absent compelling reasons for denial, grant the request. Given that there are no compelling reasons to deny this request, we are postponing our preliminary determination in this investigation until no later than October 7, 1996.

This notice is published pursuant to section 733(c)(2) of the Act, and 19 CFR 353.15(d).

Dated: July 30, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary Import Administration.

[FR Doc. 96–19864 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners in this investigation are: The Florida Tomato Growers Exchange; the Florida Tomato Exchange; the Tomato Committee of the Florida Fruit and Vegetable Association; the South Carolina Tomato Association; the Gadsden County Tomato Growers Association; and an Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, and Virginia Tomato Growers.

[A–588–815]

Gray Portland Cement and Clinker From Japan: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request from Surecrete, Inc., (Surecrete), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing an intent to revoke in part the antidumping duty order on gray portland cement and clinker from Japan. Surecrete requested that the Department revoke the order in part with regard to imports of New Super Fine Cement from Nittetsu Cement Company, Ltd., of Japan (New Super Fine Cement). Based on the fact that the Ad Hoc Committee of Southern California Producers of Gray Portland Cement (petitioner) has expressed no interest in the importation of New Super Fine Cement as described by Surecrete, we intend to partially revoke this order.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

THE APPLICABLE STATUTE AND REGULATIONS

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On April 9, 1996, Surecrete requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to New Super Fine Cement. In addition, the petitioner informed the Department that it does not object to the changed circumstances review and has no interest in the importation or sale of New Super Fine Cement as described by Nittetsu. The order with regard to imports of other cements is not affected by this request.

Scope of Review

The merchandise covered by this changed circumstances review is New Super Fine Cement from Japan. This changed circumstance administrative review covers all manufacturers/exporters of cement meeting the following specifications of New Super Fine Cement: (1) a median grain size of less than three microns; and (2) a maximum grain size of approximately ten microns. This cement is not feasible for use in concrete production.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Tariff Act of 1930, as amended (the Act), the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 353.25(d)(2) permit the Department to conduct a changed circumstances administrative review under section 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. Section 353.25(d)(1)(i) further provides that the Department may revoke an order or revoke an order in part if it determines that the order under review is no longer of interest to interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 353.22(f)(4) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(b)(1) and 751(d) of the Act, 19 CFR 353.25(d), and 353.22(f), we are initiating this changed circumstances administrative review and have determined that expedited action is warranted. Based on an affirmative statement of no interest in the proceeding by petitioner, we have preliminarily determined that the order in so far as it applies to New Super Fine Cement, as described in Surecrete's request for a changed circumstances review, no longer is of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as to imports of this type of New Super Fine Cement from Japan.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties and to refund any estimated antidumping duties collected for all unliquidated entries of the subject merchandise made on or after August 18, 1995. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first working day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed no later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b)(1) and (d) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19859 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–822]

Helical Spring Lock Washers From the People's Republic of China; Extension of Time Limit of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the administrative review of the antidumping duty order on helical spring lock washers (lock washers) from the People's Republic of China (PRC), covering the period October 1, 1994, through September 30, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1995, in response to requests from interested parties, the Department initiated an administrative review of the antidumping duty order on lock washers from the PRC (60 FR 57573), covering the period October 1, 1994 through September 31, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Memorandum for Robert LaRussa from Roland L. MacDonald, Extension of Time Limits for 1994–95 Antidumping Duty Administrative Review of Helical Spring Lock Washers from the People's Republic of China, July 29, 1996). Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 6, 1996. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 30, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–19856 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–078]

Sugar From France: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Finding

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

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty finding.

SUMMARY: In response to a request made on March 12, 1996, by Boiron-Borneman, Inc. (Boiron), the Department of Commerce (the Department) simultaneously initiated a changed circumstances antidumping duty administrative review and issued the preliminary results of this review expressing an intent to revoke in part the finding on sugar from France. The scope of the finding currently includes sugar, both raw and refined, with the exception of specialty sugars. See Sugar From Belgium, France, and the Federal Republic of Germany; Finding of Dumping, 44 FR 33878 (June 13, 1979), and Memorandum For Dick Moreland From Frank R. Brennan (June 1, 1982). In accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930 (the Act), and 19 CFR 353.25(d)(1)(i), we are now revoking in part this finding, with regard to homeopathic sugar pellets, based on the fact that domestic parties have expressed no interest in maintaining the finding on homeopathic sugar pellets produced in France.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1996, Boiron-Borneman, Inc. (Boiron), requested that the Department conduct a changed circumstances administrative review to determine whether to revoke the finding with regard to sugar pellets. The finding with regard to imports of other sugar products is not affected by this request. In addition, on February 26, 1996, the Florida Sugar Marketing and Terminal Association, Inc. (the petitioner) informed the Department in writing that it did not object to the changed circumstances review and had no interest in maintaining the finding on homeopathic sugar pellets produced in France.

We preliminarily determined that petitioner's affirmative statement of no interest constituted good cause for conducting a changed circumstances review. Consequently, on May 6, 1996, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review to determine whether to revoke this finding in part (61 FR 20236). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review.

The Applicable Statute

Unless otherwise indicated, all citations to the Act, as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of Review

The final antidumping finding on sugar from France covers raw and refined sugar (44 FR 8949 (February 12, 1979)). The petition, filed by the Florida Sugar Marketing & Terminal Assn., Inc., on July 3, 1978, states that ''[t]he product being imported and which is the subject of this petition, is raw and refined, semi-refined or ''off-white'' sugar produced from sugar beets. Raw beet sugar and raw cane sugar are very similar chemically and nutritionally, with the result that they are interchangeable in terms of meeting refiners' needs for raw sugar.'' See Petition of Florida Sugar Marketing & Terminal Assn., Inc., July 3, 1978, at 7. Excluded from the finding are specialty sugars. Imports of the merchandise subject to the finding are currently classifiable under various subprovisions of item number 1701.91 of the Harmonized Tariff Schedule of the United States (HTS). HTS item numbers are provided for convenience and for Customs purposes. This written description remains dispositive.

The merchandise covered by this changed circumstances review includes homeopathic sugar pellets meeting the following criteria: (1) Composed of 85 percent sucrose and 15 percent lactose; (2) have a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 mm and 3.8 mm in diameter. According to a May 1990 letter ruling from Customs and a September 1990 Presidential Decree, imports of homeopathic sugar pellets enter under HTS item number 1701.99.02.

Final Results of Review; Partial Revocation of Antidumping Duty Finding

On May 20, 1996, the United States Cane Sugar Refiners' Association (USCSRA), an interested party in this review objected to the relief requested by Boiron in its request for a changed circumstances administrative review. The USCSRA claimed that there was a strong likelihood that Boiron would circumvent the antidumping finding and, thereby, U.S. refiners of cane sugar would face injury in the U.S. market. See the USCSRA's letter of May 20, 1996, at 2. Upon further consideration, the USCSRA withdrew its opposition to revocation of the antidumping finding with respect to homeopathic sugar pellets. We received no other comments objecting to revocation of the finding with regard to Boiron's sugar pellets.

The affirmative statement of no interest by petitioners in this case constitutes changed circumstances sufficient to warrant partial revocation of this finding. Therefore, the Department is partially revoking this

finding on sugar from France, with regard to homeopathic sugar pellets, in accordance with sections 751(b) and (d) and 782(h) of the Act, and 19 CFR 353.25(d)(1)(i). This partial revocation applies to all entries of the merchandise subject to this changed circumstances review entered or withdrawn from warehouse, for consumption on or after June 1, 1994.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of homeopathic sugar pellets from France entered, or withdrawn from warehouse, for consumption on or after June 1, 1994. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of homeopathic sugar pellets from France entered, or withdrawn from warehouse, for consumption on or after June 1, 1994, in accordance with Section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty finding and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19863 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Administrative Review and Intent To Revoke Antidumping Duty Order in Part

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China and Intent to Revoke Antidumping Duty Order in Part.

SUMMARY: In response to a request by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). The period of review (POR) is June 1, 1994, through May 31, 1995. The review indicates the existence of dumping margins during this period.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price (USP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Hermes Pinilla, Andrea Chu or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On June 6, 1995, the Department published in the Federal Register (60 FR 29821) a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC (52 FR 19748 (May 27, 1987)). In accordance with 19 CFR 353.22(a), the petitioner, The Timken Company, requested that we conduct an administrative review. In addition, respondent Shanghai General Bearing Company (Shanghai) requested revocation pursuant to 19 CFR 353.25(b) (revocation based on not selling subject merchandise at less than normal value for three consecutive years). Shanghai stated that it was making this request solely because the Department had not yet ruled on its revocation request made with respect to the 1993–1994 review (the 7th review period). We published a notice of initiation of this antidumping duty administrative review on August 16, 1995 (60 FR 42500), covering the period June 1, 1994, through May 31, 1995 (the 8th review period).

On September 18, 1995, we sent questionnaires directly to the PRC companies for which we had addresses on the record. We also sent questionnaires to the Hong Kong companies listed in our initiation notice, using addresses supplied in the petitioner's initiation request as well as information from the Hong Kong branch of the U.S. & Foreign Commercial Service.

On the same date, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics (CCCME) and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice for which we did not have addresses. We also requested information relevant to the issue of whether the companies named in the initiation request are independent from government control. *See Separate Rates, infra.* Finally, we notified the PRC government, through its embassy in Washington, that we were conducting this review and requested that the PRC government notify us if it did not wish to have the Secretary General of the Basic Machinery Division of CCCME act as the contact person for this review.

We received responses to our questionnaire from thirteen of the companies named in the initiation notice: China National Machinery Import & Export Corporation (CMC), Liaoning Machinery Import & Export Corporation (Liaoning), China National Automotive Industry Import & Export Guizhou Corporation (Guizhou Automotive), Luoyang Bearing Factory (Luoyang), Jilin Province Machinery Import & Export Corporation (Jilin), Tianshui Hailin Import & Export Corporation, also known as Tianshui Hailin Bearing Factory (Tianshui), Wafangdian Bearing Industry Import & Export Corporation (Wafangdian), Guizhou Machinery Import & Export Corporation (Guizhou), Zhejiang Machinery Import & Export Corporation (Zhejiang), Xiangfan International Trade Corporation (Xiangfan), East Sea Bearing Co., Ltd., also know as Zhejiang East Sea

Bearing Company, Ltd. (East Sea), Shanghai, and Premier Bearing and Equipment Company, Ltd. (Premier), a Hong Kong reseller.

We also received responses to the Separate Rates section of the questionnaire from two companies that were not named in the initiation notice and that we therefore consider to be voluntary respondents: Shandong Machinery and Equipment Import & Export Corporation (Shandong) and Wanxiang Group Corporation (Wanxiang).

Scope of Review

Imports covered by this review are shipments of TRBs and parts thereof, finished and unfinished, from the PRC. This merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

In accordance with section 782(i) of the Act, we conducted verification of the information submitted by Premier, Jilin, and Zhejiang at these companies' headquarters from March 25–April 5, 1996.

Separate Rates

1. Background and Summary of Findings

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589. Evidence relevant to a *de facto* analysis of absence of government control over exports is based on four factors, whether the respondent: 1) sets its own export prices independent from the government and other exporters; 2) can retain the proceeds from its export sales; 3) has the authority to negotiate and sign contracts; and 4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *see also Sparklers* at 20589.

We preliminarily determined that Guizhou, Jilin, Luoyang, Liaoning, Wafangdian, Guizhou Automotive, Shanghai, CMC, Tianshui, Zhejiang, and Xiangfan were entitled to separate rates for the administrative review of the June 1993–May 1994 period. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Administrative Reviews,* 60 FR 49572, 49572–74 (September 26, 1995). Information submitted by these companies for the record in the current review is consistent with these findings. Further, there have been no allegations regarding changes in control of these companies in this review. Therefore, we preliminarily determine that the government does not exercise control over the export activities of these firms. East Sea, Shandong, and Wanxiang also meet both the *de jure* and *de facto* criteria and are entitled, therefore, to separate rates (*see De Jure Analysis* and *De Facto Analysis, infra*). Accordingly, we preliminarily determine to apply rates separate from the PRC rate to each of the above companies.

Finally, with respect to Premier, no separate rates analysis is required because this company is a privately owned trading company located in Hong Kong.

2. De Jure Analysis: East Sea, Shandong, Wanxiang

Information submitted during this review indicates that East Sea, Shandong, and Wanxiang are owned ''by all of the people.'' In *Silicon Carbide* (at 22586), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises owned ''by all of the people.'' As a result, we determined that companies owned ''by all of the people'' were eligible for individual rates, if they met the criteria developed in *Sparklers* and *Silicon Carbide*.

The following laws, which have been placed on the record in this case, indicate a lack of *de jure* government control over these companies, and establish that the responsibility for managing companies owned by ''all of the people'' has been transferred from the government to the enterprises themselves. These laws include: ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (1988 Law); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (1992 Regulations); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (Export Provisions). The 1988 Law states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the 1992 Regulations (*see* Article IX). Finally, the 1992 ''Temporary Provisions for Administration of Export Commodities'' list those products subject to direct government control. TRBs do not appear on this list and are not subject, therefore, to the constraints of these provisions.

Consistent with *Silicon Carbide*, we preliminarily determine that the existence of these laws demonstrates that East Sea, Shandong, and Wanxiang, companies owned by ''all of the people,'' are not subject to *de jure* government control with respect to export activities. In light of reports [1] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to government control with respect to export activities.

3. De Facto Analysis: East Sea, Shandong, and Wanxiang

The following record evidence, which is contained in the questionnaire responses, indicates a lack of *de facto* government control over the export activities of East Sea, Shandong, and Wanxiang. We have found that these respondents' pricing and export strategy decisions are not subject to any entity's review or approval and that there are no government policy directives that affect

[1] *See* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess.).

these decisions. There are no restrictions on the use of respondents' revenues or profits, including export earnings.

Each company's general manager or chairman of the board has the right to negotiate and enter into contracts, and may delegate this authority to other employees within the company. There is no evidence that this authority is subject to any level of governmental approval.

The general manager is elected by the board of directors for each of these companies. The results of Wanxiang's management elections are not required to be submitted to any government agency. For Shandong and East Sea, the election results are recorded with the relevant provincial or municipal bureau (*e.g.*, the Shandong Machinery Industry Commission in the case of Shandong). There is no evidence that these bureaus control the selection process or that they have rejected a general manager selected through the election process.

Decisions made by respondents concerning purchases of subject merchandise from other suppliers are not subject to government approval. Finally, respondents' sources of funds are their own savings or bank loans, and they have sole control over, and access to, their bank accounts, which are held in each company's name.

Based on the foregoing analysis of the evidence of record, we find no evidence of either *de jure* or *de facto* government control over the export activities of East Sea, Shandong, and Wanxiang. Accordingly, we preliminarily determine that each of these exporters will receive a separate rate.

Because we have preliminarily determined that the voluntary respondents Shandong and Wanxiang are entitled to separate rates, and no review was requested for these companies, we have not reviewed their entries during the 94–95 review period (*see Background* section, above). Therefore, the current cash deposit rate established for these companies in the 1989–90 review of this case (*i.e.*, the 1989–90 PRC rate) will continue to apply for future cash deposits unless this rate is replaced by a more recent PRC rate (*i.e.*, from the concurrent 1990–91, 1991–92, and 1992–93 reviews) before the publication of these final results. The assessment rate for entries from these companies during the 1994–95 POR will be the rate required at the time of entry.

4. Separate Rate Determinations for Non-responsive Companies

For those companies for which we initiated a review and which did not respond to the questionnaires, as the facts otherwise available, we have determined that these companies do not merit separate rates. *See Use of Facts Otherwise Available*, below.

United States Price

For sales made by Luoyang, Zhejiang, Tianshui, Wafangdian, Liaoning, Guizhou, Guizhou Automotive, Xiangfan, East Sea and Premier, we based the USP on export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States, and because the constructed export price (CEP) methodology was not indicated by other circumstances. For sales made by Shanghai, we based USP on CEP, in accordance with section 772(b) of the Act, because sales to the first unrelated purchaser took place after importation into the United States. CMC had a combination of export price and CEP sales subject to review.

We calculated export price based on, as appropriate, the FOB, CIF or C&F port price to unrelated purchasers. We made deductions for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. When marine insurance and ocean freight were provided by PRC-owned companies, we based the deduction on surrogate values. *See Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, 58825 (November 15, 1994). We valued foreign inland freight deductions using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.

We calculated CEP based on the packed, ex-warehouse price from the U.S. subsidiary to unrelated customers. We made deductions from CEP for U.S. packing in the United States, ocean freight, foreign brokerage & handling, foreign inland freight, marine insurance, customs duty, U.S. brokerage, U.S. inland freight insurance and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted from CEP the following selling expenses that related to economic activity in the United States: commissions, direct selling expenses, including advertising, warranties, and credit expenses, and indirect selling expenses, including inventory carrying costs.

Normal Value

Section 773(c) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home market prices, third-country prices, or constructed value (CV) under section 773(a). In such cases, the factors include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation.

The Department has treated the PRC as an NME country in all previous cases. In accordance with section 771(18)(C)(i), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a). Therefore, except as noted below, we calculated NV based on factors of production in accordance with section 773(c) of the Act and section 353.52 of our regulations.

In its questionnaire response, Shanghai requested that the Department accept its actual costs, claiming that those costs were market-driven. However, in order to accept the costs of a company in an NME country, the Department must determine that the *industry* in which that company operates, not just a particular company, is market-oriented. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure and Alloy Magnesium from the Russian Federation*, 59 FR 55427, 55430 (November 7, 1994) (''an NME-country respondent may argue that market-driven prices characterize its particular *industry* and, therefore, despite NME status, that [normal] value should be calculated using actual home market prices or costs'') (emphasis added).

Because neither Shanghai nor any other company in this review has argued that the TRB industry in the PRC is market-oriented, we continue to consider that industry to be non-market-oriented and, therefore, we have applied our standard NME methodology and surrogate values to Shanghai's factors of production to determine NV and movement costs.

Although Premier is a Hong Kong company, we calculated NV for Premier based on factors of production data. We were unable to use home market sales as a basis for NV because Premier had no sales in Hong Kong during the POR. We did not use Premier's third-country sales in calculating NV because Premier's PRC-based suppliers had

knowledge that the merchandise in question was exported to an intermediate country (Hong Kong). *See* section 773(a)(3)(A) of the Act. Accordingly, we calculated NV for Premier on the basis of PRC production inputs and surrogate country factor prices. We calculated NV using these factors of production data based on the facts available in this review. *See Use of Facts Otherwise Available, infra.*

In accordance with section 773(c)(4), we valued PRC factors of production, to the extent possible, using the prices or costs of factors of production in a market-economy country that is: (1) at a level of economic development comparable to that of the non-market-economy country, and (2) a significant producer of comparable merchandise.

We chose India as the most comparable surrogate on the basis of the criteria set out in section 353.52(b). *See* Memorandum from Director, Office of Policy to Director, Division II, Office of Antidumping Compliance, dated March 15, 1996. Further, information on the record indicates that India is a significant producer of TRBs. *See* Memorandum from the analyst to the file, dated July 22, 1996. We used publicly available information relating to India to value the various factors of production.

We valued the factors of production as follows:

- For hot-rolled alloy steel bars and rods, and irregular coils, used in the production of rollers, hot-rolled alloy steel bars and rods, used in the production of cups and cones, cold-rolled strip and sheet, used in the production of cages, and bearing quality and non-bearing quality steel scrap, we used import prices obtained from *Monthly Statistics of the Foreign Trade of India, Volume II—Imports.* We used data from the annual issue of this source, which covers the period April 1994–March 1995, and also factored in the remaining POR months of April–May 1995. We made further adjustments to include freight costs incurred between the steel supplier and the TRB factory.

We used actual costs for certain steel inputs because they were purchased directly from a market-economy country. *See Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC,* 56 FR 55271, 55275 (October 25, 1991).

- For direct labor, we used 1994 data from *Investing, Licensing & Trading Conditions Abroad, India,* published in November 1994 by the Economist Intelligence Unit. We then adjusted the 1994 labor value to the POR to reflect inflation using consumer price indices (CPI) of India as published in the *International Financial Statistics* by the International Monetary Fund (IMF). We calculated the labor cost for each component by multiplying the labor time requirement by the surrogate labor rate. Indirect labor is reflected in the selling, general and administrative (SG&A) and overhead rates.
- For factory overhead, we used information obtained from the 1994–95 annual report of a producer of similar merchandise in India. *See SKF Bearings India, Ltd. Annual Report 1994–95.* From this source, we were able to calculate factory overhead as a percentage of total cost of manufacture.
- For SG&A expenses, we used information obtained from the same financial report used to obtain factory overhead. This information showed SG&A expenses as a percentage of the cost of manufacture.
- For profit, we used the profit rate of the same Indian producer of similar merchandise from which we derived a rate for factory overhead.
- For export packing, we used the facts available because the respondents did not supply sufficient factor information by which to calculate packing costs. We used one percent of the total ex-factory cost and SG&A expenses combined. This percentage, obtained from publicly available data, was used in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from Italy,* 52 FR 24198 (June 29, 1987). This methodology is consistent with the Department's valuation of packing in the *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from the People's Republic of China,* 56 FR 67590 (December 31, 1991). We used this percentage because there was no publicly available information from a comparable surrogate country.
- For foreign inland freight, as the most recent publicly available published source, we used a rate derived from a newspaper article in the April 20, 1994 issue of *The Times of India,* as submitted in the antidumping duty investigation on honey from the PRC. We adjusted the value of freight to the POR using a WPI published by the IMF.

We made no adjustments for selling expenses because the surrogate SG&A information we used did not allow a breakout of selling expenses.

Intent to Revoke

Shanghai requested, pursuant to 19 CFR 353.25(b), revocation of the order with respect to its sales of the merchandise in question and submitted the certification required by 19 CFR 353.25(b)(1). In addition, in accordance with 19 CFR 353.25(a)(2)(iii), Shanghai has agreed in writing to its immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that Shanghai, subsequent to revocation, sold merchandise at less than NV. Based on the preliminary results in this review and the two preceding reviews (see *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Reviews,* 60 FR 44302 (August 25, 1995) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Reviews,* 60 FR 49572 (September 26, 1995)), Shanghai has demonstrated three consecutive years of sales at not less than NV.

If the final results of this and the two preceding reviews demonstrate that Shanghai sold the merchandise at not less than NV, and if the Department determines that it is not likely that Shanghai will sell the subject merchandise at less than NV in the future, we intend to revoke the order with respect to merchandise produced and exported by Shanghai.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Currency conversions were made at the rates certified by the Federal Reserve Bank. Section 773A(a) directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a ''fluctuation.'' It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the rolling average of the rates for the past 40 business days. Because we found no fluctuation in this case, we believe it is appropriate to use a daily exchange rate for currency conversion purposes.

Use of Facts Otherwise Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Premier, Jilin, and all companies named in the Notice of Initiation that did not respond to our

requests for information. Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make inferences adverse to the interests of the non-responding companies because they failed to cooperate by not responding to our questionnaire.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

Companies that did not respond to the questionaire

We have preliminarily assigned 129.97 percent as facts available to those companies for which we initiated a review and which did not respond to the questionnaires. As noted in the separate rates section above, we have also determined that the non-responsive companies do not merit separate rates. Therefore, the facts available for these companies form the basis for the PRC rate. The PRC rate is 129.97 percent for this review.

1. *Jilin:* Because Jilin withheld information requested by the Department (*see Memorandum from Analyst to File: Verification Report for Jilin Machinery Import & Export Corporation,* dated July 22, 1996), section 776(a) of the Act requires us to use the facts otherwise available. At verification, we discovered that Jilin failed to report certain U.S. sales during the POR. Because Jilin's unreported sales represented a large portion of its total U.S. sales during the POR (and because these unreported sales would have escaped dumping duties if undiscovered), we find that Jilin failed to cooperate by not complying with our request for information, and we have rejected Jilin's submissions in accordance with section 782(e)(4) of the Act. Section 776(b) of the Act allows us to use an adverse inference in selecting from the facts otherwise available. As adverse facts available, we have selected 129.97 percent, the highest rate calculated in this review, as the margin for Jilin.

2. *Premier:* We determined that Premier, a Hong Kong-based reseller of TRBs from the PRC, responded to the best of its ability to the Department's supplemental questionnaire which requested factors-of-production data. Premier was able to provide factors data from its suppliers for models which represented most of Premier's U.S. sales by value. For models which Premier purchased from multiple suppliers, it provided factors data from only one of its PRC suppliers. For a significant amount of its U.S. sales by value, Premier was unable to provide factors data from any of its PRC suppliers. However, for models involved in those sales, Premier was able to provide factors data from other PRC suppliers of the same models. For the remainder of its U.S. sales, Premier was unable to report factors data.

We determined that there is, however, little variation in factor utilization rates among the TRB producers from whom we have received factors-of-production data. For this reason, and because Premier made every attempt to respond fully to the Department's supplemental questionnaire regarding factors data, we are using as facts available the factors data provided by Premier in order to calculate CV. For Premier's U.S. sales of models for which Premier was unable to provide any factors data, we have applied 23.31 percent, the average of the calculated margins for other companies in this review, to those U.S. sales. We did not apply an adverse margin to these sales because we determined that Premier had cooperated to the best of its ability. Furthermore, because we had no information with which to calculate NV for the models represented by these sales, we determined that a simple average of the calculated margins for other companies in this review, for which we were able to calculate NV, is a reasonable rate to apply, as facts available, for these sales by Premier. See *Memorandum to Deputy Assistant Secretary for AD/CVD Enforcement from Office Director for AD/CVD Enforcement* dated July 29, 1996.

Preliminary Results of the Review

As a result of our comparison of the USP to NV, we preliminarily determine that the following dumping margins exist for the period June 1, 1994, through May 31, 1995:

Manufacturer/exporter	Margin (percent)
Premier Bearing and Equipment, Limited	5.37
Guizhou Machinery Import and Export Corporation	23.87
Luoyang Bearing Factory	2.46
Shanghai General Bearing Company, Ltd	0.00
Jilin Machinery Import and Export Corporation	129.97
Wafangdian Bearing Factory	129.97
Liaoning Machinery Import & Export Corporation	16.67
China National Machinery Import and Export Corporation	0.00
China Nat'l Automotive Industry Import and Export Guizhou Corporation	9.34
Tianshui Hailin Import and Export Corporation	54.71
Zhejiang Machinery Import & Export Corporation	5.77
Xiangfan International Trade Corp.	0.38
East Sea Bearing Co., Ltd.	13.20
Shandong Machinery and Equipment Import & Export Corporation	129.97
Wanxiang Group Corporation	129.97

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 180 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the companies named above that have separate rates and were reviewed (Premier, Guizhou Machinery, Luoyang, Shanghai, Jilin, Wafangdian, Liaoning, CMC, Guizhou Automotive, Tianshui, Zhejiang, Xiangfan, East Sea), the cash deposit rates will be the rates for these firms established in the final results of this review; (2) for Shandong and Wanxiang, which we preliminarily determine to be entitled to a separate rate, the rate will continue be that which currently applies to this company unless modified by a more recent PRC rate (*e.g.,* from the concurrent 90–91, 91–92, or 92–93 reviews); (3) for all remaining PRC exporters, all of which were found to not be entitled to separate rates, the cash deposit will be 129.97 percent; and (4) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19857 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–100–002, A–834–802, A–835–802, A–821–802, A–844–802]

Uranium From Kazakhstan, Kyrgyzstan, the Russian Federation, and Uzbekistan; Termination of Administrative Reviews of Suspension Agreements

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

ACTION: Notice of termination of suspension agreements administrative reviews.

SUMMARY: On November 16, 1995, the Department of Commerce (the Department) initiated administrative reviews of the suspension agreements on uranium from Kazakhstan, Kyrgyzstan, the Russian Federation, and Uzbekistan. The review period was October 1, 1994, through September 30, 1995. We are now terminating these reviews.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: James Doyle or Alexander Braier, Office of Antidumping Countervailing Duty Enforcement—Group III, Room 7866, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0172 or (202) 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1995, the Ad Hoc Committee of Domestic Uranium Producers (the Ad Hoc Committee) and the Oil, Chemical and Atomic Workers International Union (OCAW), petitioners in the above-referenced investigations and interested parties in these proceedings, requested that the Department conduct administrative reviews of the above-referenced suspension agreements for the period from October 1, 1994, through September 30, 1995.

On November 16, 1995, the Department published in the Federal Register (60 FR 57573) a notice of initiation for these administrative reviews for the period from October 1, 1994, through September 30, 1995.

On July 23, 1996, the Ad Hoc Committee withdrew its request for a review and requested that the review be terminated. The Ad Hoc Committee request to terminate the review indicates that it consulted with current counsel for the OCAW who indicated that the OCAW consents to the withdrawal of these administrative review requests.

The Department's regulations at 19 CFR 353.22(a)(5) (1995) state that ''the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request no later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.'' Although the withdrawal of the request for review was made later than 90 days after the publication of the notice of initiation, the Secretary has decided that it is reasonable to do so due to resolution of major outstanding issues, recent amendments and continuing consultations under the suspension agreements. Because there were no requests for review from other interested parties, we are terminating these reviews.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: July 29, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–19861 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

SUNSHINE ACT MEETING

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, August 8, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–20027 Filed 8–1–96; 3:16 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:30 p.m., Thursday, August 8, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–20028 Filed 8–1–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Avionics and Communications will meet on 4–8 November 1996 at Wright Patterson AFB, OH & Eglin AFB, FL between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19824 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Vehicles and Power will meet on 12–15 November 1996 at Wright Patterson AFB, OH between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19825 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Geophysics will meet on 18–22 November 1996 at Hanscom AFB, MA between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19826 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Human Centered Technology will meet on 2–6 Dec 96 at Brooks AFB, TX between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19827 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Materials & Materials Processing will meet on 9–13 December 1996 at Wright Patterson AFB, OH between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19828 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Advanced Weapons will meet on 16–20 December 1996 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to fulfill the yearly SAB Science and Technology Review in the area of Advanced Weapons.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19829 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Electronics will meet on 6–9 January 1997 at Hanscom AFB, MA between 8:00 a.m. and 5:00 p.m.

The purpose of the meeting is to review the quality and long-range relevance of the science and technology base.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19830 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Science & Technology Review of Ordnance & Propulsion will meet on 13–17 January 1997 at Wright-Patterson AFB, OH at 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to fulfill the yearly SAB Science and Technology Review in the area of Propulsion.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19831 Filed 8–2–96; 8:45 am]

BILLING CODE 3910–01–W

Department of the Army

Record of Decision (ROD) For the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the BRAC Parcel at the U.S. Army Materials Technology Laboratory, Watertown, Massachusetts

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announced its Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) on the disposal and reuse of the 37-acre BRAC parcel at the U.S. Army Materials Technology Laboratory, Watertown, Massachusetts, in accordance with the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Public Law 100–526, as amended (the ''Act'').

Under the Act, the Secretary of the Army has been delegated the authority to dispose of excess real property and facilities located at a military installation being closed or realigned. The Army is required to comply with the National Environmental Policy Act of 1969 during the process of property disposal and must prepare appropriate analyses of the impacts of disposal and, secondarily reuse of the property on the environment. The ROD and the FEIS satisfy requirements of the law to examine the environmental impacts of disposal and reuse of the U.S. Army Materials Technology Laboratory BRAC parcel.

Encumbered disposal involves the transfer of property to others with use restrictions imposed by the Army. The ROD concluded that surplus property will be conveyed in encumbered parcels, subject to the following restrictions identified in the FEIS: Historic District, Remedial Action, Groundwater Contamination, Limited Ingress and Egress, Utilities interdependence is, and Southeastern Corner Park Values. The Army will impose reservations or deed restrictions, as necessary and appropriate, to protect human health, the environment, and public safety.

The Army has taken all practicable measures to avoid or minimize significant adverse impacts associated with its preferred alternative of encumbered property disposal. The Army will continue to work with individual future owners to avoid, reduce, or compensate for significant adverse impacts that might occur as a result of disposal. Mitigation measures for reuse activities are identified in the FEIS.

ADDRESSES: A copy of the ROD may be obtained by writing Mr. James Davidson, U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001 or by calling (703) 617–5510.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 96–19807 Filed 8–2–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 4, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and

frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 30, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Gun-Free Schools Act Report.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 456.
Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from weapons violations. The GFSA requires the Secretary to report to Congress if any State is not in compliance with the GFSA, and requires the Secretary to collect data on the incidence of children with disabilities and violent behaviors.

[FR Doc. 96–19787 Filed 8–2–96; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Dockets No. PP–118 and EA–118]

Application for Presidential Permit and Electricity Export Authorization Hill County Electric Cooperative, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Hill County Electric Cooperative, Inc. (Hill County) has applied for a Presidential permit in order to construct a new transmission facility at the U.S. border with Canada. In addition Hill County has requested authorization to export electric energy to Canada using the proposed facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 4, 1996.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electric energy is prohibited in the absence of a Presidential permit issued pursuant to Executive Order No. 12038. Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

In an application filed on July 12, 1996, and amended on July 25, 1996, (FE Docket PP–118), Hill County filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. In its application, Hill County proposes two routing alternatives to construct, operate, and maintain a 69–kV transmission line. The first alternative would tap Hill county's facilities at the North Gildford Substation in Montana and extend north (crossing the Milk River adjacent to the Express Pipeline right-of-way on lands owned by the Bureau of Reclamation (BOR)) approximately 17.5 miles to the United States border with Canada. The second alternative would tap Hill County's facilities five (5) miles west of the North Gildford Substation in Montana and extend 22 miles north (crossing the Milk River on private and state-owned lands to the west of the BOR right-of-way). Both alternatives would cross the international border at the same point.

In FE Docket EA–118, Hill County proposes to export electric energy to Canada using these proposed facilities. The purpose of the proposed line and electricity export is to supply electric energy to a pump station in Canada owned by Express Pipeline Ltd. (Express Pipeline). The pump station will serve a crude oil pipeline that will transport Canadian-produced oil from Hardisty, Alberta, Canada, to Casper, Wyoming. The pipeline is scheduled to begin operation in January 1997, and will supply crude oil to refineries in Wyoming and the midwest.

Procedural Matters

Any persons desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Mr. Burl Miner, General Manager, Hill County Electric Cooperative, Inc., P.O. Box 2330, Havre, Montana 59501–2330.

Before a Presidential permit or electricity export authorization may be issued or amended, a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system and the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 30, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–19800 Filed 8–02–96; 8:45 am]

BILLING CODE 6450–01–P

Notice Extending the Public Scoping Period and Rescheduling the Public Scoping Meeting for the Plutonium Interim Storage Environmental Impact Statement for the Rocky Flats Environmental Technology Site

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department extends the public scoping period and reschedules the public scoping meeting for the Plutonium Interim Storage Environmental Impact Statement for the Rocky Flats Environmental Technology Site (RFETS).

DATES: The Department extends the public scoping period on the environmental impact statement until August 23, 1996, and reschedules the public scoping meeting to Tuesday, August 13, 1996, from 6:00 p.m. to 9:00 p.m., at the RFETS, Building 60 (located immediately off State Highway 93 near Golden, Colorado, at the RFETS west entrance).

ADDRESSES: Written questions and comments should be submitted to: Dorothy M. Newell, NEPA Document Manager, Office of Material Stabilization and Disposition, Rocky Flats Field Office, Department of Energy, Post Office Box 928, Golden, Colorado 80402–0928 (Facsimile: 303–966–4589).

Envelopes should be marked ''Rocky Flats Plutonium Storage EIS''.

For general information on the Department's NEPA process, please

contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION: On July 17, 1996, the Department published a notice in the Federal Register (61 FR 37247) announcing its intent to prepare an environmental impact statement for interim storage of plutonium at the RFETS and the commencement of a public scoping period that was to continue until August 16, 1996. The July 17, 1996, notice also announced a public scoping meeting scheduled for August 6, 1996. In response to a stakeholder's request, the Department is rescheduling the public scoping meeting to August 13, 1996, and, to ensure that the public has ample opportunity to provide comments after the public scoping meeting, extending the public scoping period to August 23, 1996. The Department has separately notified interested and affected stakeholders of the change in dates. Comments postmarked after August 23, 1996, will be considered to the extent practicable. Further information on the alternatives regarding interim storage of plutonium at the RFETS and on the environmental impact statement is contained in the Notice of Intent.

Issued in Washington, D.C., this 31st day of July, 1996.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–19868 Filed 8–2–96; 8:45 am]

BILLING CODE 6450–01–P

Record of Decision for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Record of Decision

SUMMARY: The Department of Energy (DOE) has decided to implement a program to make surplus highly enriched uranium (HEU) non-weapons-usable by blending it down to low-enriched uranium (LEU), as specified in the Preferred Alternative in the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (HEU Final EIS, DOE/EIS–0240, June 1996). DOE will gradually sell up to 85 percent of the resulting LEU over time for commercial use as fuel feed for nuclear power plants to generate electricity (including 50 metric tons of HEU and 7,000 tons of natural uranium that will be transferred to the United States Enrichment Corporation), and will dispose of the remaining LEU as low-level radioactive waste. This program applies to a nominal 200 metric tons of United States-origin HEU that the President has declared, or may declare, surplus to defense needs. The purposes of this program are to support the United States' nuclear weapons nonproliferation policy by reducing global stockpiles of excess weapons-usable fissile materials, and to recover the economic value of the materials to the extent feasible.

EFFECTIVE DATE: The decisions set forth in this Record of Decision (ROD) are effective upon being made public July 29, 1996 in accordance with DOE's National Environmental Policy Act (NEPA) Implementing Procedures and Guidelines (10 CFR Part 1021) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR Parts 1500–1508).

ADDRESSES: Copies of the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, the separate Cost Comparison for Highly Enriched Uranium Disposition Alternatives, and this ROD are available in the public reading rooms identified at the end of this Federal Register notice (section VIII of the Supplementary Information). Copies of these documents may be obtained by writing to the U.S. Department of Energy, Office of Fissile Materials Disposition, MD–4, 1000 Independence Avenue, SW., Washington, D.C. 20585, or by calling (202) 586–4513. The 72-page Summary of the HEU Final EIS, the Cost Comparison for Highly Enriched Uranium Disposition Alternatives, and this ROD are also available on the Fissile Materials Disposition Electronic Bulletin Board/World Wide Web Page at: http://web.fie.com/htdoc/fed/doe/fsl/pub/menu/any/

FOR FURTHER INFORMATION CONTACT: For information on the HEU disposition program or this ROD contact: Mr. J. David Nulton, Director, NEPA Compliance and Outreach, Office of Fissile Materials Disposition (MD–4), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4513.

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, telephone (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Synopsis of Decision

DOE issued the HEU Final EIS (DOE/EIS–0240) on June 28, 1996. In the HEU Final EIS, DOE considered the potential environmental impacts of alternatives for a program to reduce global nuclear proliferation risks by blending up to 200 metric tons of United States-origin surplus HEU down to LEU to make it non-weapons-usable. The resulting LEU could either be sold for commercial use as fuel feed for non-defense nuclear power plants, or disposed of as low-level radioactive waste (LLW). After consideration of the HEU Final EIS, public comments received on the Draft EIS, and the conclusions of a Cost Comparison for Highly Enriched Uranium Disposition Alternatives, DOE has decided to implement the proposed program as identified in the Preferred Alternative contained in the HEU Final EIS. This implementation will involve gradually blending up to 85 percent of the surplus HEU to a U–235 enrichment level of approximately 4 percent for eventual sale and commercial use over time as reactor fuel feed, and blending the remaining surplus HEU down to an enrichment level of about 0.9 percent for disposal as LLW. This would take place over an estimated 15- to 20-year period.

Three possible blending technologies may be used: uranyl nitrate hexahydrate (liquid) blending, uranium hexafluoride (gas) blending, or molten metal blending. Four potential blending facilities may be used: DOE's Y–12 Plant at the Oak Ridge Reservation in Oak Ridge, Tennessee; DOE's Savannah River Site in Aiken, South Carolina; the Babcock & Wilcox Naval Nuclear Fuel Division Facility in Lynchburg, Virginia; and the Nuclear Fuel Services, Inc. Plant in Erwin, Tennessee. As a first concrete disposition action consistent with these programmatic decisions, DOE will transfer title to 50 metric tons of its surplus HEU and 7,000 metric tons of natural uranium from its stockpiles to the United States Enrichment Corporation (USEC), for eventual sale and commercial use. This will comply with legislative directions contained in the USEC Privatization Act (Public Law 104–134, § 3112(c)).

II. Background

The end of the Cold War has created a legacy of weapons-usable fissile materials both in the United States and the former Soviet Union. Further agreements on disarmament may increase the surplus quantities of these materials. The global stockpiles of weapons-usable fissile materials pose a

danger to national and international security in the form of potential proliferation of nuclear weapons and the potential for environmental, safety, and health consequences if the materials are not properly safeguarded and managed.

In September 1993, President Clinton issued a Nonproliferation and Export Control Policy in response to the growing threat of nuclear proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a joint statement between the United States and Russia on nonproliferation of weapons of mass destruction and the means of their delivery. In accordance with these policies, the focus of the U.S. nonproliferation efforts in this regard is five-fold: to secure nuclear materials in the former Soviet Union; to assure safe, secure, long-term storage and disposition of surplus weapons-usable fissile materials; to establish transparent and irreversible nuclear reductions; to strengthen the nuclear nonproliferation regime; and to control nuclear exports.

To demonstrate the United States' commitment to these objectives, President Clinton announced on March 1, 1995, that approximately 200 metric tons of U.S.-origin weapons-usable fissile materials, of which 165 metric tons are HEU, had been declared surplus to the United States' defense needs.[1]

The disposition of surplus HEU, consistent with the Preferred Alternative in the Draft and Final HEU Disposition EIS and the decisions described in section VI of this ROD, is consistent with the President's policies and complies with the recently enacted USEC Privatization Act (Public Law 104–134). The sale of LEU derived from surplus HEU is also consistent with the Vice President's Reinventing Government initiatives pertaining to sales of unneeded government assets.

[1] The Secretary of Energy's Openness Initiative announcement of February 6, 1996, declared that the United States has about 213 metric tons of surplus fissile materials, including the 200 metric tons the President announced in March, 1995. Of the 213 metric tons of surplus materials, the Openness Initiative indicated that about 174.3 metric tons (hereafter referred to as approximately 175 metric tons) are HEU, including 10 metric tons previously placed under International Atomic Energy Agency (IAEA) safeguards in Oak Ridge, Tennessee. The February 1996 Openness Initiative announcement released additional details about the forms and quantities of surplus HEU at various locations, and that information is presented in Figure 1.3–1 of the HEU Final EIS.

III. National Environmental Policy Act Process

A. HEU Draft EIS

On June 21, 1994, DOE published a Notice of Intent (NOI) in the Federal Register (59 FR 31985) to prepare a Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement (Storage and Disposition PEIS), including both surplus and nonsurplus HEU. DOE subsequently concluded that a separate EIS on surplus HEU disposition would be appropriate. Accordingly, DOE published a notice in the Federal Register (60 FR 17344) on April 5, 1995, to inform the public of the proposed plan to prepare a separate EIS for the disposition of surplus HEU.

In accordance with a then-applicable DOE regulation implementing NEPA, 10 CFR 1021.312, DOE published an implementation plan (IP) for the HEU EIS in June 1995. The IP recorded the issues identified during the scoping process, indicated how they would be addressed in the HEU EIS, and provided guidance for the preparation of the HEU EIS. DOE issued the Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement (HEU Draft EIS, DOE/EIS–0240–D) for public comment in October 1995. On October 26, 1995, DOE published a Notice of Availability of the HEU Draft EIS in the Federal Register (60 FR 54867). The Environmental Protection Agency's Notice of Availability of the HEU Draft EIS appeared in the Federal Register (60 FR 55021) on October 27, 1995, announcing a public comment period from October 27, 1995 until December 11, 1995. In response to requests from the public, DOE on November 24, 1995 published another Notice in the Federal Register (60 FR 58056) announcing an extension of the comment period until January 12, 1996. Public workshops on the HEU Draft EIS were held in Knoxville, Tennessee, on November 14, 1995, and in Augusta, Georgia, on November 16, 1995.

During the public comment period, the public was encouraged to provide comments via mail, toll-free fax, electronic bulletin board (Internet), and toll-free telephone recording device. By these means, a total of 72 organizations and 125 individuals submitted a total of 464 comments for consideration. In addition, 224 comments were recorded from some of the 134 individuals who attended the two public workshops. All of the comments received, and the Department's responses to them, are presented in Volume II of the HEU Final EIS, the Comment Analysis and Response Document. All of the comments were considered in preparation of the HEU Final EIS, and in some cases, resulted in changes to the document.

B. Alternatives Considered

The HEU Final EIS analyzed the No Action Alternative and four reasonable alternatives for blending a nominal 200 metric tons of surplus HEU down to LEU to make it non-weapons-usable. The surplus HEU consists of numerous material forms, including metal (pure and alloyed), oxides, unirradiated fuel (including aluminum alloy fuel), nitrate solutions, and other forms. The inventory of material declared surplus also includes irradiated HEU fuel (the total quantity of which remains classified). As discussed in section VI.A of this ROD, below, the irradiated fuel is not directly weapons-usable. Thus, the irradiated fuel is not within the scope of the HEU Final EIS or this ROD unless the HEU is separated from the fission products pursuant to other DOE programs (such as stabilization for materials management).

There are two possible end products from the action alternatives considered in the HEU Final EIS: (1) LEU that can be used as commercial nuclear reactor fuel feed (at a U-235 enrichment level of about 4 percent), and (2) LEU that can be disposed of as low-level radioactive waste (at a U-235 enrichment level of about 0.9 percent). The HEU Final EIS analyzed down-blending of HEU using one or more of three blending technologies: uranyl nitrate hexahydrate (UNH) blending, molten metal blending, and uranium hexafluoride (UF_6) blending.

The HEU Final EIS analyzed the blending of HEU to LEU at four existing U.S. facilities that presently have the capability to undertake such activities. Two of them, the Y–12 Plant at the Oak Ridge Reservation in Oak Ridge, Tennessee, and the Savannah River Site (SRS) in Aiken, South Carolina, are DOE facilities that have conducted extensive HEU operations in support of nuclear weapons and other DOE programs in the past. The other two analyzed facilities are the only commercial enterprises in the United States that have licenses from the Nuclear Regulatory Commission to engage in HEU operations: the Babcock & Wilcox (B&W) facility in Lynchburg, Virginia, and the Nuclear Fuel Services, Inc. (NFS) facility in Erwin, Tennessee.

Each of the analyzed facilities presently has the capability to engage in UNH blending, which could be used either for blending for commercial use or for blending to waste. Only DOE's Y–12 Plant has the capability to conduct

molten metal blending, which would only be used for blending to waste, since the metal product could not be used directly by the commercial fuel fabrication industry. The capability to conduct UF_6 conversion and blending does not currently exist at any of the facilities. It is nonetheless analyzed in the EIS as a possible blending technology that may be added at one or both of the commercial facilities, since UF_6 is the form in which commercial fuel fabricators prefer to receive LEU product, and the two commercial facilities have indicated that they may decide to add UF_6 capability by modifying existing facilities.

Because there are many possible combinations of end-products, blending technologies, and blending sites, DOE has formulated several representative, reasonable alternatives that are described and assessed in Chapters 2 and 4 of the HEU Final EIS. In addition to the No Action Alternative (continued storage of surplus HEU), there are four alternatives that represent blending different proportions of the surplus HEU for commercial use or for disposal as waste, in some cases with variations on number and locations of blending sites:

- Alternative 1—No Action (continued storage)
- Alternative 2 (No Commercial Use)—Blend 100% to waste (at all 4 sites)
- Alternative 3 (Limited Commercial Use)—Blend 75% to waste (at all 4 sites), 25% to fuel (at 2 commercial sites)
- Alternative 4 (Substantial Commercial Use)—Blend 35% to waste, 65% to fuel (at any 1 site, the 2 commercial sites, the 2 DOE sites, or all 4 sites)
- Alternative 5 (Maximum Commercial Use)—Blend 15% to waste, 85% to fuel (at any 1 site, the 2 commercial sites, the 2 DOE sites, or all 4 sites)

Each of the alternatives involving commercial use of LEU derived from surplus HEU (Alternatives 3, 4, and 5) include within them the transfer of 50 metric tons of surplus HEU and 7,000 metric tons of natural uranium from DOE stockpiles to USEC. The alternatives, which were formulated to represent reasonable choices within the matrix of possible combinations, were unchanged from the HEU Draft EIS to the HEU Final EIS.

C. Results of Environmental Analyses

The environmental analyses in sections 4.3, 4.4, and 4.5 of the HEU Final EIS estimated that incremental radiological and several other impacts for HEU disposition during normal, accident- free operations would be low for workers, the public or the environment, and well within regulatory requirements, for all alternatives, technologies, and sites. Because no new construction would be required, and the blending activities that would be conducted for this proposed action are either the same as or very similar to operations that have occurred at the analyzed facilities in the past, most of the incremental impacts from this action at the blending sites would be low. There would be increases in electrical energy consumption, fuel needs, and waste generation, depending on the site and the alternative. Section III.D, below, discusses potential floodplains impacts.

The transportation analyses in section 4.4 and Appendix G of the HEU Final EIS indicate that radiological impacts to the public and workers from transportation of materials, under both accident-free and accident conditions, would be low. Approximately one to three fatalities, depending on the alternative, could occur over the 20-year duration of the program, primarily as a result of non-radiological impacts from traffic accidents. The facility accident analyses in section 4.3 and Appendix E.5 of the HEU Final EIS indicate that the maximum credible accident from HEU blending operations, using conservative assumptions, could result in latent cancer fatalities to workers and members of the public surrounding the facility. However, the estimated likelihood of occurrence of such accidents is low, so total accident risk (consequences if the accident occurs times probability of occurrence) to the public is low.

An environmental justice analysis was performed (section 4.10 of the HEU Final EIS) to assess whether the proposed action or alternatives could cause disproportionate adverse health impacts on minority or low-income populations residing in communities around the candidate blending sites. First, a demographic analysis was performed for all of the 1990 Census tracts located within an 80-km (50-mi) radius of the candidate sites. Then public health impact analyses were performed to assess whether minority or low-income populations would be disproportionately affected by facility operations through routine and accidental releases of radiation and toxic emissions. Analyses of public and occupational health impacts from normal operations showed that air emissions and releases would be low and within regulatory limits at all candidate sites. The analyses also showed that cumulative effects of continuous operation over time would result in low levels of exposure to workers and the public. As just discussed, the overall risk from maximum postulated accidents is also low. Thus, there would not be any disproportionate risk of significant adverse impacts to particular populations, including low-income or minority populations, from accidents.

Although the EIS indicates that the projected accident-free radiological impacts and overall accident radiological risk from all alternatives would be low, section 2.4 of the HEU Final EIS, Comparison of Alternatives, shows that there would be some differences in impacts among the alternatives, depending on the extent of commercial use vs. disposal as waste of the product LEU material. Table 2.4–2 of the EIS, *Summary Comparison of Total Campaign Incremental Environmental Impacts for the Disposition of Surplus HEU for Each Alternative*, indicates that the Preferred Alternative (85 percent fuel/15 percent waste at four sites) generally would result in somewhat lower impacts from accident-free blending and transportation than would the No Commercial Use Alternative (100 percent waste). Blending for commercial use under the Preferred Alternative would result in lower impacts than blending to waste in the following resource areas: diesel/fuel oil, natural gas, coal, and steam consumption; water use and wastewater; radiological exposure from normal operations; most waste streams; and transportation (under both accident and accident-free conditions). The Maximum Commercial Use Alternative would result in higher total impacts than the No Commercial Use Alternative for the following resources areas: electricity consumed; facility accident consequences (estimated accident probability is low); and mixed low-level and hazardous wastes generated. The differences among the alternatives are negligible for air quality and noise, socioeconomics, and chemical exposure.

As discussed in section 4.7 of the HEU Final EIS, the avoided adverse impacts from displaced uranium mining, milling, conversion, and enrichment over time increase the environmental advantage of commercial use of LEU derived from surplus HEU. Because LEU fuel feed derived from surplus HEU would displace LEU fuel feed derived from virgin uranium, the environmental impacts that normally result from the front end of the nuclear fuel cycle (mining, milling, conversion, and enrichment) would be avoided by using the HEU-derived material instead.

In actuality, those front-end environmental impacts have already been incurred for the HEU. By making beneficial use of the material rather than wasting it, the Department would derive both environmental and economic benefit from those sunk costs. The analysis in section 4.7 of the HEU Final EIS indicates that the total avoided impacts in terms of radiological exposure, nonradiological air quality impacts, and waste generation would be greater than those that are projected to result from the HEU blending program.

An unavoidable corollary to the physical environmental advantages of commercial use of surplus HEU is the potential socioeconomic disadvantage: displacing the front end of the nuclear fuel cycle could impact employment in the domestic uranium mining, conversion, and enrichment sectors. The analysis in section 4.8 of the HEU Final EIS concludes that DOE will be able to avoid causing adverse material impacts on those industry sectors, as required by provisions of the USEC Privatization Act.

D. Floodplains Impacts

1. Floodplain Assessment

As required by DOE—s regulations on protection of floodplains and wetlands (10 CFR Part 1022), the HEU Final EIS assesses whether the proposed action would impact or be impacted by the floodplains at the involved sites. The proposed action in the HEU Final EIS involves blending activities that would be accommodated within existing facilities at Y–12, SRS, B&W, and NFS. The locations of facilities at the candidate sites with respect to delineated floodplains are presented in the maps shown in Figures 3.3.4–2, 3.4.4–2, 3.5.1–2, and 3.6.4–1 of the HEU Final EIS, respectively.

Because HEU blending activities associated with the proposed action and its alternatives could be accommodated in existing facilities, no positive or negative impacts on floodplains would be expected at any of the candidate sites. Similarly, since no new construction activity is proposed at any of the candidate sites and blending facilities are not located in the vicinity of wetlands, no impacts to wetlands are anticipated.

As discussed in sections 3.3.4 and 3.5.4 of the HEU Final EIS, and shown in Figures 3.3.4–2 and 3.5.1–2, blending operations at the Y–12 Plant and B&W, respectively, would be accommodated in facilities located outside the 100- and 500-year floodplains. At SRS, the F- or H-Canyons that could be used for blending also fall outside the 100-year floodplains of the Fourmile Branch and the Upper Three Runs Creek (EIS Section 3.4.4). The 500-year floodplain limits at SRS are not currently delineated. However, the blending alternatives at SRS would not likely affect, or be affected by, the 500-year floodplain of either the Fourmile Branch or Upper Three Runs Creek because the F- and H-Canyons are located at an elevation of about 91 m (300 ft) above mean sea level and are approximately 33 m (107 ft) and 64 m (210 ft) above these streams and at distances from these streams of 0.8 km (0.5 mi) to 1.5 km (0.94 mi), respectively. The maximum flow that has occurred on the Upper Three Runs Creek was in 1990, with a flow rate of about 58 m^3/s (2,040 ft^3/s). At that time the creek reached an elevation of almost 30 m (98 ft) above mean sea level. The elevations of the buildings in F- and H-Canyons are located more than 62 m (202 ft) above the highest flow elevation of the Upper Three Runs Creek. The maximum flow that has occurred on the Fourmile Branch was in 1991 with a rate of approximately 5 m^3/s (186 ft^3/s), and an elevation of about 61 m (199 ft) above mean sea level. Elevations of the buildings in F- and H-Areas are located more than approximately 30 m (101 ft) higher than the maximum flow level that has occurred.

The NFS site is partially located on the 100- and 500- year floodplains of the Nolichucky River and Martin Creek (as determined by the Federal Emergency Management Agency (FEMA), Flood Insurance Rate Map, January 3, 1985). However, as described in section 3.6.4 of the EIS and below, mitigation measures have been and would continue to be implemented to reduce potential flooding of the site and the likelihood of adverse impacts to site operations.

2. Final Floodplain Statement Of Findings

The HEU Final EIS includes, in section 4.13.1, a Proposed Floodplain Statement of Findings. The Federal Register Notice of Availability for the Final EIS (61 FR 33719) stated that DOE would accept comments on the proposed statement of findings during a 15-day period. The Department received no comments in response to that notice. This section of the ROD constitutes the Final Floodplain Statement of Findings, as required by 10 CFR 1022.15.

Four candidate sites, two DOE (Y–12 and SRS) and two commercial (B&W and NFS), were considered in the HEU Final EIS as potential sites where the proposed action could be implemented. These candidate sites were selected for evaluation because they currently have technically viable HEU conversion and blending capabilities and could blend surplus HEU to LEU for commercial fuel or waste. In addition, the commercial sites considered are the only ones in the United States presently licensed for the processing of HEU.

As described above, all facilities except NFS that are proposed to be used for this proposed action at the candidate sites would be outside the limits of the 100-year floodplain and are at least one foot above the 100-year floodplain elevation and, therefore would conform to both State and local floodplain requirements.

The floodplains of the Nolichucky River and Martin Creek at NFS, as presented in Figure 3.6.4–1 of the HEU Final EIS, cover approximately one-third and two-thirds of the NFS site's northern portion under 100-year and 500-year floodplain conditions, respectively. Based on the Flood Insurance Rate Map and the flood profiles, both published by FEMA, floodplain elevations at the NFS site are determined to be 499.5 m (1639 ft) and 500 m (1640 ft) above mean sea level for the 100-year and 500-years floods, respectively. As stated in the Nuclear Regulatory Commission's (NRC) Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–124, Nuclear Fuel Services, Inc., Erwin Plant, Erwin, Tennessee (August 1991), elevations of the building floors are between 500 m (1640 ft) and 510 m (1660 ft) above mean sea level. At the time of construction of the plant (1956), there were no local, State, or NRC requirements prohibiting construction or operation of nuclear facilities in 100- or 500-year floodplains. Presently, the State of Tennessee has no requirements pertaining to building in 100- or 500-year floodplains. Local standards require that any new construction or substantial improvement of any commercial, industrial, or non-residential structure should have the lowest floor, including basement, elevated no lower than one foot above the level of base flood (100-year flood) elevation. Because NFS was built prior to 1974, site operations are grandfathered, and this local requirement does not apply to existing facilities at NFS. NRC, which regulates the NFS site, also has no regulations against building or operating nuclear facilities in floodplains. Nevertheless, with the widening of the site's culvert, upgraded drainage system, rechanneling of the Nolichucky River, and rerouting of Martin Creek to enter the Nolichucky River farther downstream, the chance of flood levels at the site has been lowered.

In addition, warning devices and systems have been placed by the State of Tennessee along the river to warn the public and the NFS plant of the chance of possible flooding. In addition, NFS and the State of Tennessee have emergency action plans to mitigate potential flood impacts and protect the public water supply from any possible contamination.

There are two alternatives in addition to no action that could be considered to remediate potential flooding of facilities at NFS. One would be to use the facilities in the 300 Area at NFS, which is outside both the 100- and 500-year floodplain limits, for blending activities. Facilities in the 300 Area have building floor elevations of at least 500.5 m (1642 ft) above mean sea level, which would conform to the local requirement of at least one foot above the 100-year floodplain and would also fall outside of the 500-year floodplain. The second alternative is to eliminate NFS as a candidate blending site. Based on the analyses in the HEU Final EIS and on the information in the Floodplains Assessment and this Statement of Findings, DOE will, for any blending done at NFS on the Department's behalf pursuant to this ROD, specify that the work should be done in the 300 Area, and/or that measures to mitigate potential flood impacts at NFS will continue.

E. Preferred Alternative

The Preferred Alternative is identified in the HEU Final EIS as Alternative 5, Maximum Commercial Use (four sites), which is:

- To gradually blend down surplus HEU and sell as much as possible (up to 85 percent) of the resulting commercially usable LEU for use as reactor fuel over time (including 50 metric tons of HEU that are to be transferred to USEC over a 6-year period, along with 7,000 metric tons of natural uranium), using a combination of four sites (Y–12, SRS, B&W, and NFS) and two possible blending technologies (blending as UF_6 and UNH); implemented over an approximate 15- to 20-year period; with continued storage of the HEU until blend-down occurs; and
- To blend down surplus HEU that has no commercial value using a combination of four sites (Y–12, SRS, B&W, and NFS) and two blending technologies (blending as UNH and metal); to dispose of the resulting LEU as low-level radioactive waste (LLW) pursuant to the Programmatic Environmental Impact Statement for Managing, Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS–0200–D, draft issued in August 1995) (Waste Management PEIS) and associated RODs, and any subsequent NEPA documents tiered from or supplementing the Waste Management PEIS; implemented over an approximate 15- to 20-year period; with continued storage of the HEU until blend-down occurs.

Because some material is in difficult-to-access forms, only about 65–70% of the nominal 200 metric tons of surplus HEU could be blended and made available for commercial use over the next 10–15 years. The Department expects that 15–20 years would be needed to bring about the disposition of the entire nominal 200 metric tons of surplus HEU analyzed in the EIS.

F. Notice of Availability for HEU Final EIS / Basis for Record of Decision

On June 28, 1996, the U.S. Environmental Protection Agency published in the Federal Register (61 FR 33735) a Notice of Availability of the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (DOE/EIS–0240), after DOE had disseminated approximately 750 copies of the EIS and/or the EIS Summary to government officials, states, Indian tribes, and interested groups and individuals. A separate DOE Notice of Availability, summarizing the HEU Final EIS, appeared in the Federal Register that same day (61 FR 33719).

DOE has prepared this ROD in accordance with the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). This ROD is based on DOE's Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (the HEU Final EIS). In making the decisions announced in this ROD, DOE considered environmental impacts and other factors, such as cost considerations and public comments received on the HEU Draft EIS.

IV. Cost Analysis

To assist the Department in reaching a decision on the HEU disposition program, a study comparing the expected costs of the various disposition alternatives was conducted. The Cost Comparison was completed in April 1996, and was disseminated at the beginning of May 1996 to over 200 individuals who either expressed an interest in the cost issue in comments, or attended one of the public workshops on the HEU Draft EIS, or requested the study. In addition, the availability of the Cost Comparison was noted in the June 28, 1996 Notice of Availability for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement (61 FR 33719), along with notification that the Department would entertain comments on it during a 15-day period. No comments were received.

The *Cost Comparison* provides estimates of the potential costs for blending HEU by using each of the blending technologies analyzed in the HEU EIS (UNH, UF_6, and metal blending). It compares the economic impact for disposition of the surplus HEU according to the various action alternatives (Alternatives 2 through 5) defined in the EIS, which are based on different proportions of the material being blended for commercial use or for disposal as waste. The report derives the following estimated unit costs for the various blending technologies and end-products:

Metal blending to 0.9-percent LEU for disposal—$13,900/kg of HEU

UNH blending to 0.9-percent LEU for disposal—$22,900/kg of HEU

UF_6 blending to 4-percent LEU for commercial use—$3,200/kg of HEU

UNH blending to 4-percent LEU for commercial use—$5,700/kg of HEU

Unit costs for blending to waste include estimated disposal costs as well as blending costs. The report estimates that the potential sales revenue for each kilogram of HEU blended for commercial use is $11,700, which is substantially greater than the costs for blending it. The cost of ultimate disposal of spent nuclear fuel derived from down-blended HEU that is used commercially would be borne by the utility purchasers of the fuel pursuant to the Nuclear Waste Policy Act.

Based on these unit costs and revenues from commercial sales, the Cost Comparison concludes that disposition of the entire nominal 200 metric tons of surplus HEU under the waste option (Alternative 2) would cost approximately $3.4 billion. In contrast, disposition of 170 metric tons of surplus HEU for commercial use, and disposition of the remaining 30 metric tons as waste (the Preferred Alternative) would result in a net return of about $340 to $770 million. The analyses indicate that, on average, each metric ton of surplus HEU that is blended to LEU fuel and sold, rather than blended for disposal as waste, would save taxpayers $21 million to $26 million (depending on the mix of blending technologies used). The report concludes that it is economically attractive to pursue the commercial fuel option to the maximum extent possible

rather than to pursue the waste option exclusively.

V. Environmentally Preferable Alternative

CEQ regulations (40 CFR 1505.2) require that a Record of Decision identify the environmentally preferred alternative(s). The analysis of alternatives presented in Chapter 4 and section 2.4 of the HEU Final EIS indicates that, even using conservative assumptions (that is, assumptions that tend to overestimate risks), all of the action alternatives (Alternatives 2 through 5) would have low radiological impacts on the human environment in or around the analyzed blending sites during accident-free operations or on workers or the populations near the potential transportation routes. However, there are differences among the estimated impacts for the various action alternatives. As discussed in section III.C. of this ROD, above, except for the No Action Alternative, the analyses in the HEU Final EIS indicate that the Preferred Alternative (Alternative 5, blend 85 percent to fuel/15 percent to waste at four sites) would generally result in the somewhat lower total environmental impacts for many resources, including radiological impacts, during accident-free operations, and that the risk of accidents would also be low. Thus, the environmentally preferable alternative is the Preferred Alternative identified in the HEU Final EIS, which, as discussed above, also best serves the economic recovery objective, and fully serves the nonproliferation objective, of the HEU disposition program.

The environmental analyses in the HEU Final EIS indicate that the radiological, air, hazardous chemical, and socioeconomic impacts on the environment during accident-free operations would be low and within regulatory standards for all blending technologies. There would be a choice of two technologies for each of the two end-products (fuel or waste). For surplus HEU that is blended to waste for disposal, either UNH blending or molten metal blending could be used. On the whole, the data in section 2.2.2 and the analyses in section 4.3 of the HEU Final EIS show that molten metal blending would be the environmentally preferable blending technology for most resources for blending surplus HEU to waste, although molten metal blending would generate more *process* LLW (as opposed to the LEU end-product waste) than would UNH blending.

For surplus HEU that is blended for commercial use as reactor fuel feed, either UNH blending or UF_6 blending could be used. The data in section 2.2.2 and the analyses in section 4.3 of the HEU Final EIS show that, on the whole, at the commercial sites, UNH blending would be the environmentally preferable blending technology for blending surplus HEU for commercial use, although UNH blending would produce greater impacts in three resource areas: liquid hazardous waste generated, solid nonhazardous waste after treatment, and transportation. In the area of potential facility accidents, in particular, UF_6 blending would result in higher accident consequences because of the possibility of a UF_6 cylinder breach accident that could release gaseous UF_6 (both radiologically and chemically toxic) into the environment. However, as discussed in section III.C, above, the probability of accidents that would release significant quantities of material into the environment is estimated to be low. DOE concludes that these differences in impacts would not dictate against the use of UF_6 blending technology for blending surplus HEU for commercial use.

The analyses in section 4.3 of the HEU Final EIS indicate that all four of the analyzed blending facilities (Y–12, SRS, B&W, and NFS) have the capacity to process surplus HEU with low impacts to workers, the public, and, for many parameters, the environment during normal operations. For the two DOE sites, the generation of waste based on an increased usage of utilities represents small increases—less than 5 percent over current operations. For the two commercial sites, the generation of waste based on an increased usage of utilities represents increases of over 20 percent, but both facilities have adequate capacities to accommodate the increases since neither site is currently operating at full capacity. Because the NFS site has not been operating recently, it would require a large increase in water usage (166 percent) and fuel requirements (933 percent) relative to the current baseline. However, because the quantity of water and fuel used in the past for similar operations is comparable to that which would be used for the proposed action, it is anticipated that the increase in these requirements can easily be accommodated at NFS. As discussed in section III.D, above, the potential for flooding at NFS is another relative disadvantage of that facility.

For postulated facility accidents, there are also differences among the sites based on different proximities and concentrations of workers and nearby populations, as well as meteorological factors. The analyses in section 4.3 of the HEU Final EIS indicate that accident impacts to the maximally exposed individual member of the public and to the population within 80 kilometers (50 miles) would be lowest at SRS, where the involved facilities are in the middle of a very large, limited-access, rural site, so the distances to members of the public are large. The greatest impacts to the public from accidents would be experienced at Y–12 and NFS, at both of which the involved facilities are relatively close to site boundaries (in the case of NFS, the site is small) and population centers. The postulated accident impacts to on-site non-involved workers would be lowest at SRS (because the workers are fairly widely dispersed) and NFS (because there are relatively few workers on the site). The non-involved worker impacts would be highest at B&W, which has a relatively large workforce in close proximity to the blending facility. However, as noted in section III.C, above, the probabilities of serious accidents at all sites are low.

The environmental justice analysis shows that the SRS site has a substantial minority and low-income population in surrounding census tracts (more than 25 percent minority and low-income in most census tracts, and more than 50 percent minority in several). However, the impacts to surrounding populations are projected to be low for all sites, and lowest for SRS, so there would be no disproportionate adverse impacts on minority populations.

In summary, the analyses in the HEU Final EIS indicate that the environmentally preferable blending facility would be SRS. However, since the impacts at all sites are expected to be low during normal operations for many parameters (including radiological impacts), well within regulatory limits, and since overall risks associated with potential accidents are low, DOE concludes that environmental differences among the sites would not serve as a basis for choosing among them. Each of the facilities would be capable of blending up to the entire inventory of surplus HEU without significant adverse environmental impacts, and use of a combination of facilities can facilitate mission accomplishment.

VI. Decisions

A. Programmatic Decisions

DOE has decided to implement a program to make surplus HEU non-weapons-usable by blending it down to LEU, as specified in the Preferred Alternative (Alternative 5, site variation c [all four sites]) in the HEU Final EIS.

As defined in section 1.4.2 of the HEU Final EIS, the Preferred Alternative is:

• To gradually blend down surplus HEU and sell over time as much as possible (up to 85 percent) of the resulting commercially usable LEU for use as reactor fuel feed, (including 50 metric tons of HEU to be transferred to USEC over a 6-year period [2]); using a combination of four sites (Y–12, SRS, B&W, and NFS), and two possible blending technologies (blending as UF_6 and UNH); over an approximate 15-to 20-year period; with continued storage of the surplus HEU until blend-down occurs; and

• To blend down surplus HEU that has no potential commercial value; using a combination of four sites (Y–12, SRS, B&W, and NFS), and two blending technologies (blending as UNH and metal); to dispose of the resulting LEU as LLW pursuant to Record(s) of Decision associated with the Waste Management PEIS and any other relevant site- or project-specific NEPA reviews [3]; over an approximate 15-to 20-year period; with continued storage of the surplus HEU until blend-down occurs.

Because a portion of the surplus HEU is in forms, such as weapons components, that would require considerable time to make available for blending, it is anticipated that no more than 70 percent of the current surplus HEU could be blended down and commercialized in the near term (over the next 10-to 15-year period).

The preferred site variation is to use all four of the analyzed sites. For purposes of analysis in the EIS, it was assumed that the blending operations would be divided evenly among the four facilities (25 percent to each) under this site variation. However, as noted in section 2.1.2 of the HEU Final EIS, the defined alternatives and site variations were not intended to represent exclusive choices among which the decisionmaker must choose, but rather were proffered to define a spectrum of reasonable alternatives. While the Department considers it likely that each of the four analyzed blending facilities will be used for part of the surplus HEU disposition program, it is highly unlikely that the work would be so evenly divided, and there is no intent to seek such a distribution. Section 4.5.6 of the HEU Final EIS explains how impacts would change over the life of the campaign if the exact fuel/waste ratio or division among sites were different. Because the HEU Final EIS analyzes the impacts of site variations for the Preferred Alternative that would involve blending 0, 25, 50, and 100 percent of the surplus HEU at each of the sites, and concludes that expected impacts would be low for many parameters (including radiological impacts) during normal operations and within regulatory limits for each site even if that site were to blend 100 percent of the inventory, the impacts at any site from any possible distribution of the blending work among the facilities would be low for many parameters (including radiological impacts) during normal operations, and would be bounded by the analyses in the EIS.

As noted in sections 1.3 and 1.4.2 of the HEU Final EIS, decisions about the timing and details of specific disposition actions (which facility or process to use) might be made in part by DOE, by other government agencies, by USEC, by a private successor to USEC, or by other private entities acting as marketing agents for DOE. In the case of the 50 metric tons of surplus HEU that is being transferred to USEC as part of this decision (see below), the choice of blending sites for that work will be made by USEC or its private, corporate successor. The quantities and other characteristics of additional specific ''batches'' of surplus HEU and the exact time and blending sites at which such batches would be subject to disposition are unknown at this time, and would depend on a number of factors, including the rate of weapons dismantlement; the timing and rate at which any additional HEU may be declared surplus; market conditions; legislative restrictions on delivery to commercial end users (see Public Law 104–134); and available throughput capacities and unrelated workloads at the blending facilities. (See section VI.B.2, below, for a discussion of a possible transfer of ''off-spec'' surplus HEU material to the Tennessee Valley Authority.) Competitive bidding procedures—including both the commercial and DOE facilities (the latter under their ''Work for Others'' programs)—as well as facility availability and other business considerations are likely to be key components of disposition actions. DOE is preparing an HEU Disposition Plan, which will be available shortly following publication of this ROD, that will provide additional information concerning specific disposition actions that are expected to commence during the next several years, as well as describe an approach to other future, specific actions. The ultimate distribution of blending work among the four facilities will be determined in multiple individual decisions by multiple decisionmakers, based largely on business and facility availability considerations, over a period of up to 15–20 years.

This programmatic decision does not include within it the choice of blending technologies for specific batches of HEU. The HEU Final EIS analyses indicate that all three of the analyzed technologies (UNH, UF_6, and metal blending) could be used. As in the case of facility selection, the choices of blending technologies are expected to be made largely on the basis of business and technical considerations, and may be made by DOE, USEC, USEC's corporate successor, or other entities.[4]

A portion of DOE's surplus HEU inventory is in various forms of irradiated HEU fuel (the total quantity of which remains classified) from the Department's nuclear weapons, naval nuclear propulsion, or nuclear energy research programs. The irradiated fuel is not directly weapons- usable, is under safeguards and security, and poses no proliferation threat. DOE is not proposing to process the irradiated fuel to separate the HEU for down-blending as part of this decision. There are no current or anticipated DOE plans to process irradiated fuel solely for the purposes of extracting HEU. However, activities associated with the irradiated fuel for purposes of stabilization, facility cleanup, treatment, waste management, safe disposal, or environment, safety, and health reasons could result in the separation of HEU in weapons-usable form that could pose a proliferation threat and thus be within the scope of this EIS. Under the Preferred Alternative

[2] The transfer of 50 metric tons of HEU and 7,000 metric tons of natural uranium from DOE stockpiles to USEC is specifically mandated by section 3112(c) of Public Law 104–134. Both of those transfers are components of the Preferred Alternative and this decision. The delivery to commercial end users of the surplus uranium transferred to USEC could not begin before 1998 pursuant to the statute. Although the transfer of 7,000 metric tons of natural uranium from DOE to USEC is not part of the HEU disposition program, it is part of the same transaction as the transfer of 50 metric tons of HEU, so the environmental impacts of that transfer are assessed in section 4.9 of the HEU Final EIS.

[3] For purposes of analysis of transportation impacts in the HEU EIS, the LLW facility at DOE's Nevada Test Site (NTS) was assessed as a representative site for disposal of LLW from the HEU disposition program. The possibility that this material may be received at the NTS facility is also reflected in the NTS Site-Wide EIS (DOE/EIS–0243, draft published January 1996).

[4] The UF_6 blending technology will not even be available unless the potential commercial blenders make the business decisions to deploy it. If UF_6 blending capability is not developed, all blending for commercial use would use the UNH process. If new blending facilities or processes are proposed in the future, additional NEPA review would be conducted, as appropriate, either by DOE or in connection with NRC licensing proceedings for a commercial facility.

and this decision, DOE would blend such recovered HEU to LEU.[5] To provide a conservative analysis presenting maximum potential impacts, the HEU Final EIS includes such HEU (currently in the form of irradiated fuel) in the material to be blended to LEU, as if such HEU had been separated from the irradiated fuel pursuant to health and safety, stabilization, or other non-defense activities. However, such HEU may actually remain in its present form (without the HEU ever being separated) and be disposed of as high level waste in a repository or alternative pursuant to the Nuclear Waste Policy Act.[6]

B. Basis for Decisions

DOE has concluded that the Preferred Alternative identified in the HEU Final EIS would best serve the purpose and need for the HEU disposition program for several reasons. In terms of the fundamental nonproliferation objective, DOE considers all of the action alternatives (2 through 5) to be roughly equivalent in terms of serving that objective. Both 4-percent LEU in the form of commercial spent nuclear fuel and 0.9-percent LEU oxide for disposal as LLW—and any allocation between them—are considered highly proliferation-resistant material forms, because both reprocessing of commercial spent fuel (to separate the roughly 1 percent of plutonium it contains), and re-enrichment of the 0.9-percent LEU to make HEU again, are technologically difficult, time-consuming, and expensive.

In terms of the economic recovery objective of the program, that objective is best served by the Maximum Commercial Use Alternative. Commercial use would reduce the amount of blending that would be required for disposition (a 14 to 1 blending ratio of blendstock to HEU as opposed to 70 to 1 for waste) and minimize Government waste disposal costs that would be incurred if all (or a greater portion of) the material were blended to waste. The sale of LEU derived from surplus HEU would yield returns on prior investments to the Federal Treasury. As noted in section IV of this ROD, the Cost Comparison for Highly Enriched Uranium Disposition Alternatives indicates that the Preferred Alternative could save as much as $4 billion compared to the blend-to-waste alternative. Under the best case, the proceeds from commercial sales of 85 percent of the inventory could actually more than pay for the entire HEU disposition program, including the blending and disposal of the 15 percent that would still need to be disposed of as waste, and yield $340 million to $770 million in net revenues. (As noted above, however, this degree of commercialization may not ultimately be achieved.)

Finally, as discussed in section III.C of this ROD, the analyses in the EIS indicate that the Preferred Alternative would have somewhat lower overall environmental impacts than the other action alternatives. The Maximum Commercial Use Alternative would generate smaller quantities of radioactive waste requiring disposal than would the No Commercial Use Alternative. Adverse environmental impacts from uranium mining, milling, conversion, and enrichment would be avoided by using this material rather than virgin uranium to produce nuclear fuel. Making beneficial use of the LEU derived from surplus HEU would derive some environmental benefit (when compared to the blend-100-percent-to-waste alternative) in return for the environmental costs that were expended in making the HEU in the first place, thus conserving non-renewable natural resources.

The Maximum Commercial Use Alternative would, as discussed in section 4.8 of the HEU Final EIS, displace some uranium mining, milling, conversion, and enrichment. However, in light of the provision in the USEC Privatization Act that requires DOE to determine that its sales of uranium would not have adverse material impacts on those industries, and the rate at which DOE expects to be able to make surplus HEU available for disposition, serious, long-lasting impacts on those industry sectors is not anticipated. Mitigation of any such impacts, as required by the USEC Privatization Act, is discussed in section VII of this ROD, below.

An indirect impact of the Preferred Alternative would be the creation of spent nuclear fuel (through the use of commercial LEU fuel derived from surplus HEU in power reactors). However, since the LEU nuclear fuel derived from surplus HEU would replace nuclear fuel that would have been created from newly mined uranium without this action, there would be no additional spent fuel that would not otherwise be generated. The domestic spent fuel would be stored, and potentially disposed of in a repository or other alternative, pursuant to the Nuclear Waste Policy Act, as amended (42 U.S.C. 10101 et seq.), with appropriate associated NEPA review.

With respect to the ultimate disposal of LLW material, certain DOE LLW is currently disposed of at commercial facilities, and other DOE LLW is stored or disposed of at DOE sites. A location where LLW derived from DOE s surplus HEU can be disposed of has not been designated. Disposal of DOE LLW would be pursuant to DOE's Programmatic Environmental Impact Statement for Managing, Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS–0200–D, draft issued in August 1995) (Waste Management PEIS) and associated ROD(s), any subsequent NEPA documents tiered from or supplementing the Waste Management PEIS, and any applicable project- or site-specific NEPA reviews (such as the NTS Site-Wide EIS, currently in preparation). Waste material derived from surplus HEU would be required to meet LLW acceptance criteria of DOE's Office of Environmental Management. No LLW would be transferred to any LLW facility until completion of the Waste Management PEIS (or other applicable project or site-specific NEPA documentation) and would be in accordance with decisions in the associated RODs. Additional options for disposal of LLW may be identified in other documents.

Continued storage of surplus HEU prior to blending may be required for some time. The storage, pending disposition (for up to 10 years) of surplus HEU at the Y–12 Plant (where most of the HEU is stored or destined to be stored), is analyzed in the Environmental Assessment for the Proposed Interim Storage of Enriched Uranium Above the Maximum Historical Storage Level at the Y–12 Plant, Oak Ridge, Tennessee (DOE/EA–0929, September 1994) (Y–12 EA). Impacts from storage, as analyzed in the Y–12 EA, are summarized and incorporated by reference in the HEU Final EIS (see section 4.2). Should storage of surplus HEU pending disposition be required beyond 10 years, it would be done pursuant to and

[5] For example, weapons-usable HEU is anticipated to be recovered from dissolving and stabilizing targets and spent fuel at SRS pursuant to the analysis and decisions in the Final EIS (October 1995) and RODs (December 1995 and February 1996) on the Interim Management of Nuclear Materials at SRS.

[6] If HEU currently in irradiated fuel remains in its current form, it would be managed pursuant to the analyses and decisions in the *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* (April 1995) and the associated RODs (60 FR 28680, June 1, 1995, amended by 61 FR 9441, March 8, 1996), and subsequent, project-specific or site-specific NEPA documentation. Such spent fuel could be disposed of as high level waste in a repository pursuant to the Nuclear Waste Policy Act (42 U.S.C. 10101 et seq.). DOE is in the process of characterizing the Yucca Mountain Site in Nevada as a potential repository for disposal of spent fuel pursuant to that Act.

consistent with the ROD associated with the Department's Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement or tiered NEPA documents.

C. Specific Action Decisions

1. Transfer of HEU and Natural Uranium to USEC

As a first concrete disposition action pursuant to the programmatic decisions described in section VI.A of this ROD, above, DOE has decided to transfer title to 50 metric tons of surplus HEU and 7,000 metric tons of natural uranium to USEC for gradual sale and commercial use. In addition to serving the objectives of the HEU disposition program, these transfers are consistent with the Fiscal Year 1996 Federal Budget, and are specifically mandated by the USEC Privatization Act (Pub. L. 104–134, § 3112(c)(1)).

Specifics concerning the timing of deliveries and the characteristics and locations of material to be delivered to USEC (or to blending contractors that USEC selects) are to be established in a separate DOE/USEC Memorandum of Agreement pertaining to the transfers. USEC or its corporate successor will make decisions concerning where and when blending of the 50 metric tons of HEU being transferred will occur, what technologies will be used, and when and how the resultant LEU will be marketed (consistent with the USEC Privatization Act). It is anticipated that USEC will utilize one or both of the commercial blending facilities for down-blending, that the first transfers of HEU will occur before the end of 1996, and that they will continue for about six years. Under the USEC Privatization Act, USEC (or its corporate successor) may not deliver this material for commercial end use prior to 1998, and there are quantitative limits on annual deliveries to end users (Pub. L. 104–134, § 3112(c)(2)).

The transfer of 7,000 metric tons of natural uranium to USEC is not part of the HEU disposition program. However, since it is part of the transaction transferring 50 metric tons of HEU, the impacts of the transfer are assessed in section 4.9 of the HEU Final EIS. This material is in the form of UF_6, and is part of a larger quantity of UF_6 that is in storage at DOE's Portsmouth (Ohio) and Paducah (Kentucky) Gaseous Diffusion Plants, which are currently being leased to USEC for uranium enrichment operations. The most likely disposition of the 7,000 metric tons of natural uranium is eventual use as feedstock for enrichment to nuclear power plant fuel, the usual business of the enrichment plants. If it is so used, and follows the typical path of such uranium, it would probably be enriched to about 2 percent U–235 at the Paducah Plant, then transported to the Portsmouth Plant for additional enrichment to an appropriate commercial material, generally about 4 percent. From there the enriched UF_6 would be transported to a commercial fuel fabrication plant for conversion and fabrication of nuclear fuel. The analysis in section 4.9 of the HEU Final EIS indicates that the environmental impacts from enrichment and transportation of this material would be negligible. Commercialization of the 7,000 metric tons of natural uranium by USEC is regulated by the same USEC Privatization Act limits as described in the preceding paragraph for commercialization of the 50 metric tons of HEU.

2. Down-Blending of ''Off-Spec'' Materials at SRS

A significant portion of the surplus HEU inventory, including most of the approximately 22 metric tons of surplus HEU that is currently located at the SRS site, is in various forms of off-specification or ''off-spec'' material which, when blended down, would not meet standard U.S. commercial nuclear fuel specifications for content of the uranium isotopes U–234 and/or U–236.[7] As noted in section 2.1.1 of the HEU Final EIS, such off-spec material might nonetheless be commercially used as reactor fuel feed under certain circumstances, which might involve blending to somewhat higher enrichment levels, and NRC license amendments for reactors that would use the material.

DOE had previously decided, in two RODs pursuant to the *Interim Management of Nuclear Materials at Savannah River Site Final EIS* (DOE/EIS–0220, October 1995)(IMNM EIS), to use the H-Canyon and/or F-Canyon and associated facilities at SRS for down-blending, as part of its interim stabilization activities under the IMNM EIS, for UNH solutions (60 FR 65300, December 19, 1995), and Mark-16 and Mark-22 (irradiated) fuels (61 FR 6633, February 21, 1996). These materials are part of the inventory of surplus HEU. The IMNM RODs stated that these HEU materials would be blended down to LEU and then either oxidized using the FA-Line in the F-area at SRS, or stored as LEU solutions pending decisions on ultimate disposition.[8]

In addition to the materials noted above, there is also off-spec unirradiated aluminum alloy HEU reactor fuel material located at SRS and Y–12. Pursuant to this HEU ROD, DOE has decided that the unirradiated HEU reactor fuel will also be down-blended at the F-Canyon and/or H-Canyon and associated facilities at SRS, and will eventually be sold for commercial use, if possible. The ability of SRS facilities to withstand earthquakes is currently being reviewed. No surplus HEU from decisions made in this HEU ROD would be introduced into the canyons or blended in the canyon facilities until completion of the seismic review. The HEU down-blending activities at SRS pursuant to this decision will occur during a relatively limited period, subject to facility operations and availability.

The SRS canyon facilities, with their large chemical processing and separations capabilities, are capable of processing these off-spec materials. Commercial blending facilities are reluctant to handle these materials because of the resultant contamination of their facilities with undesirable uranium isotopes. The UNH blending facilities at the Y–12 Plant are also not considered likely candidates for blending of such off-spec material, as their processing capacity and chemical separation capabilities are much lower than the SRS canyon facilities, and may be needed for future defense programs activities.

The USEC Privatization Act (Pub. L. 104–134, § 3112(e)(1)) provides that DOE may transfer off-spec uranium to a Federal agency without resale or transfer to another entity. Pursuant to the Act, DOE may pursue discussions with the Tennessee Valley Authority (TVA), a Federal agency that operates several nuclear power plants, to try to reach agreement on a demonstration of the use of off-spec LEU derived from surplus HEU that would be down-blended at SRS.

[7] The quantities of the various surplus HEU material forms located at SRS remain classified.

[8] As discussed in section 2.2.3.3 of the HEU Final EIS, due to criticality issues, the FA-Line is not capable of oxidizing material at commercial enrichment levels (4–5 percent), so that facility would not be used for oxidation of the commercial material. Rather, these LEU solutions will be stored at SRS until other arrangements can be made for oxidation of commercial-enrichment material. There are several options for providing for solidification of UNH solutions at commercial enrichment levels at SRS, although none is being proposed by DOE at this time. One option being considered is construction of a private, commercial facility on land leased from DOE at SRS. Such a private facility would need to be licensed by the NRC, and would be accompanied by appropriate NEPA review.

3. Other Future Actions

DOE has no other concrete surplus HEU disposition actions under specific contemplation at this time. DOE has decided that, when additional HEU blend-down actions for either commercial use or for disposal as waste are developed in the future, they could involve the use of all four of the analyzed blending facilities. The commercial facilities (B&W and NFS) are considered to be available for such activities immediately. The SRS facilities may also be available for blending some of the HEU. The Y–12 facilities are currently not operational. Under DOE Order 425.1, *Startup and Restart of Nuclear Facilities*, DOE must successfully complete an Operational Readiness Review addressing operational health and safety issues prior to restart of the Y–12 facilities. HEU operations are expected to resume at Y–12 in 1998. Thus, all four of the facilities would potentially be available, and could be used for portions of the HEU down-blending, in the timeframes that additional disposition actions might develop.

DOE is preparing an HEU Disposition Plan, which will be available shortly after publication of this ROD, that will provide additional information concerning specific disposition actions that are expected to commence during the next several years, as well as describe an approach to other future, specific actions. The plan will be updated periodically based on industry response and program progress.

VII. Avoidance/Minimization of Environmental Harm

As discussed in section III.C. above, implementation of the decisions reached in this ROD will result in low environmental and health impacts during normal operations. However, DOE will take all reasonable steps to avoid or minimize harm, including the following:

- DOE will use current safety and health programs and practices to reduce impacts by maintaining worker radiation exposure as low as reasonably achievable.
- DOE will meet appropriate waste minimization and pollution prevention objectives consistent with the Pollution Prevention Act of 1990. As discussed in section 2.3 of the HEU Final EIS, segregation of activities that generate radioactive and hazardous wastes will be employed, where possible, to avoid the generation of mixed wastes. Treatment to separate radioactive and non-radioactive components will be employed to reduce the volume of mixed wastes. Where possible, nonhazardous materials will be substituted for those that contribute to the generation of hazardous or mixed waste. Waste streams would be treated to facilitate disposal as nonhazardous wastes, where possible. In addition to following such practices at its own facilities, DOE will seek to include comparable requirements in any contracts with commercial facilities.
- Consistent with the requirement of the USEC Privatization Act (Pub. L. 104–134, § 3112(d)(2)(B)), DOE will determine, before making sales of LEU derived from HEU for commercial use, whether such sales would have adverse material impacts on the domestic uranium mining, conversion, or enrichment industries, taking into account other DOE sales of uranium and the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. Such determinations may be made on a periodic basis (for example, for all contemplated sales over a certain period), as opposed to a sale-by-sale basis. (No such determination is required under the USEC Privatization Act for the initial transfer of 50 metric tons of HEU and 7,000 metric tons of natural uranium to USEC, as provided in section VI.B. of this ROD, or to transfers to other government agencies [such as TVA] of off-spec material.)

VIII. DOE Public Reading Rooms

Copies of the HEU Final EIS, the *Cost Comparison for Highly Enriched Uranium Disposition Alternatives*, and this ROD, as well as technical data reports and other supporting documents, are available for public review at the following locations:

Department of Energy Headquarters, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, Attn: Carolyn Lawson, 202–586–6020

Albuquerque Operations Office, Technical Vocational Institute, 525 Buena Vista, SE, Albuquerque, NM 87106, Attn: Russ Gladstone (contractor), 505–224–3286, Elva Barfield (DOE), 505–845–4370

Nevada Operations Office, Nevada Operations Office, U.S. Department of Energy, Public Reading Room, 2753 South Highland Dr., P.O. Box 98518, Las Vegas, NV 89193–8518, Attn: Janet Fogg, 702–295–1128

Oak Ridge Operations Office, U.S. Department of Energy, Public Reading Room, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37831–8501, Attn: Amy Rothrock, 615–576–1216

Richland Operations Office, Washington State University, Tri-Cities Branch Campus, 300 Sprout Road, Room 130 West, Richland, WA 99352, Attn: Terri Traub, 509–376–8583

Rocky Flats Office, Front Range Community College Library, 3645 West 112th Avenue, Westminister, CO 80030, Attn: Dennis Connor, 303–469–4435

Savannah River Operations Office, Gregg-Graniteville Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, Attn: Paul Lewis, 803–641–3320, DOE Contact: Pauline Conner, 803–725–1408

Los Alamos National Laboratory, U.S. Department of Energy, c/o Los Alamos Community Reading Room, 1450 Central, Suite 101, Los Alamos, NM 87544, Attn: LANL Outreach Manager, 505–665–2127

Chicago Operations Office, Office of Planning, Communications & EEO, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, Attn: Gary L. Pitchford, 708–252–2013

Amarillo Area Office, U.S. Department of Energy, Amarillo College, Lynn Library/Learning Center, P.O. Box 447, Amarillo, TX 79178, Attn: Karen McIntosh, 806–371–5400

U.S. DOE Reading Room, Carson County Library, P.O. Box 339, Panhandle, TX 79068, Attn: Tom Walton (DOE), 806–477–3120, Kerry Cambell (contractor), 806–477–4381

Sandia National Laboratory/CA, Livermore Public Library, 1000 S. Livermore Avenue, Livermore, CA 94550, Attn: Julie Casamajor, 510–373–5500

IX. Conclusion

DOE has decided to implement a program to make surplus HEU non-weapons-usable by blending it down to LEU, and gradually selling as much of it as possible for commercial use over time, as specified in the Preferred Alternative in the HEU Final EIS, and including the mitigation activities identified in section VII. This programmatic decision is effective upon being made public, in accordance with DOE's regulations implementing NEPA (10 CFR § 1021.315). The goals of this program are to support the United States' nuclear weapons nonproliferation policy by reducing global stockpiles of excess fissile materials so that they may never be used in weapons again, and to recover the economic value of the material to the extent feasible. This program will demonstrate the United States' commitment to its nonproliferation goals, as specified in the President's Nonproliferation and Export Control Policy of 1993, and provide an example for other nations, where stockpiles of surplus HEU may be less secure from potential theft or diversion than those in the United States, to encourage them to take similar actions. The impacts on the environment, workers, and the public from implementing this HEU disposition program are estimated to be low for most parameters (including radiological impacts) during normal

operations, and well within applicable regulatory limits.

The decision process reflected in this Notice complies with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Issued in Washington, D.C., July 29, 1996.

Hazel R. O'Leary,

Secretary.

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Oak Ridge Operations Office; Notice of Program Interest; Diesel Engine Technologies for Light Trucks

AGENCY: Transportation Technologies, DOE.

ACTION: Notice of program interest—diesel engine technologies for light trucks.

SUMMARY: The Department of Energy is today publishing the Notice of Program Interest for support of the cooperative development of technologies for a high efficiency, very low emission, diesel engine for light trucks, specifically pickups and sport utility vehicles. The Department of Energy has sponsored research in high efficiency diesel engines for several years. These programs have assisted industry in continuously improving the technology in diesel engines for large trucks (class 6–8) which have resulted in efficiencies approaching 45% in current production (vs 27% for gasoline engines) and 55% in advanced research designs. Current penetration of diesels has been limited to the larger pickups (over 8500 lbs GVW) due to emission regulations. The Department is proposing the application of this advanced technology to diesel engines specifically designed for the light truck market. This market segment has grown from 23% in 1984 to over 42% in 1995 representing a substantial influx of low fuel economy vehicles into the public and private fleets. This trend threatens to increase the rate of U.S. dependence on foreign petroleum beyond current projections.

DATES: This notice expires at 4:00 PM EDT on September 9, 1996, and applications may be submitted at any time prior to that time.

ADDRESSES: Submit five (5) copies of the application prior to the expiration date of this notice to: U.S. Department of Energy, Oak Ridge Operations Office, Procurement and Contracts Division, Environmental Acquisitions Branch, 200 Administration Road, P. O. Box 2001, Oak Ridge, TN 37831, Attn: Mary Lou Crow, Contract Specialist. (Telephone: 423–576–7343.)

FOR FURTHER INFORMATION CONTACT EITHER OF THE FOLLOWING: Mary Rawlins, DOE Oak Ridge Operations Office, Telephone: 423–576–4507; William L. Siegel, DOE Headquarters, Telephone: 202–586–2457.

SUPPLEMENTARY INFORMATION: The new design must meet all proposed emission regulations for vehicles under 8500 GVW, while maintaining performance levels expected of current production gasoline engines. Efficiency targets will be cited in terms of vehicle miles per gallon (equivalent BTU basis) and at least a 35% improvement is sought over comparable, current production vehicles. The criteria for selection and funding will be based on the offeror's internal technical capabilities in terms of diesel engine development and manufacturing, and a demonstration of the intent in moving the resultant technology to production targeted for light trucks. The latter can be shown by partnering with a domestic, high volume light truck manufacturer on this development effort. The following types of factors will be considered in DOE's evaluation: (1) The overall merit of the proposed project or activity. (2) The anticipated objectives to be achieved and the probability of achieving the stated objectives. (3) The facilities or techniques which the applicant proposes to make available to achieve the proposed project's objectives. (4) The qualifications of the proposed project director or key personnel who are considered to be critical to the achievement of the proposed project's objectives.

APPLICATIONS: A four (4) to five (5) year, 50% cost shared competitive program is anticipated with multiple industry teams. A financial assistance cooperative agreement award instrument will be used. Total program costs are expected to be in the range of $25 to $50 million per team. Award will be subject to the Energy Policy Act of 1992, Section 2306, which contains the following limitation: ''Section 2306. Limits on Participation by Companies—A company shall be eligible to receive financial assistance under sections XX through XXIII of this Act only if— (1) the Secretary finds that the company's participation in any program under such titles would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; an agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and (2) either—(A) the company is a United States-owned company; or (B) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.'' All responsible sources may submit an application. All applications will be evaluated as unsolicited applications. Applications are to be prepared in accordance with 10 CFR 600.10 and shall not exceed five (5) pages. Along with the application, applicants are required to submit (1) SF–424, Application for Federal Assistance, (2) Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility matters; and Drug-Free Workplace Requirements, (3) Assurance of Compliance Nondiscrimination in Federally Assisted Programs, and (4) DOE F 4620.1, Budget Page. These forms may be obtained from the Contract Specialist and will not be included in the five (5) page limitation

Issued in Oak Ridge, Tennessee on July 29, 1996.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 96–19799 Filed 8–2–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–1933–000]

Gelber Group, Inc.; Notice of Issuance of Order

July 30, 1996.

Gelber Group, Inc. (Gelber) submitted for filing a rate schedule under which Gelber will engage in wholesale electric power and energy transactions as a

marketer. Gelber also requested waiver of various Commission regulations. In particular, Gelber requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Gelber.

On July 25, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Gelber should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Gelber is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Gelber's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 26, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19774 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–652–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

July 30, 1996.

Take notice that on July 23, 1996, Koch Gateway Pipeline Company (Koch), 600 Travis Street, Houston, Texas, 77251–1478, filed in Docket No. CP96–652–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to install a two-inch tap and meter station, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it proposes to install a two-inch tap to an existing receipt meter station to provide a new delivery point and meter station to serve TECO Pipeline Company (TECO) in San Augustine County, Texas for gas lift operations. Koch asserts that it will transport natural gas on an interruptible basis to the delivery tap pursuant to the terms of Koch's ITS Rate Schedule under Part 284 of the Commission's Regulations. It is further asserted that the estimated peak day requirement of the new delivery tap will be 200 MMBtu and that the estimated average daily requirement will be 50 MMBtu. Koch indicates that the estimated cost of construction is $9,450 for which TECO will reimburse Koch.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19772 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–654–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

July 30, 1996.

Take notice that on July 24, 1996, Koch Gateway Pipeline Company (Koch), 600 Travis Street, Houston, Texas, 77251–1478, filed in Docket No. CP96–654–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to install a four-inch tap and meter station, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it proposes to install a four-inch tap and to provide a new delivery point and meter station to serve Promix, Inc. (Promix) in Assumption Parish, Louisiana for refining and processing at its plant. Koch states that Promix will construct approximately 25 feet of four-inch pipeline which will connect Koch's tap and metering facilities on an existing Promix line. Koch indicates that it will transport natural gas on an interruptible basis to the proposed tap pursuant to Part 284 of the Commission's Regulations once the construction of the tap has been completed. It is asserted that the service provided through the proposed facilities will be within the entitlements of shippers providing service to Promix under those shippers' existing ITS agreements with Koch. Koch indicates that the estimated cost of construction is $43,999 for which Promix will reimburse Koch.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19775 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–31–019 and RP94–367–010]

National Fuel Gas Supply Corporation; Notice of Revision to Compliance Filing

July 30, 1996.

Take notice that on July 24, 1996, National Fuel Gas Supply Corporation (National), pursuant to the Letter Order issued by the Commission on February 16, 1996, 74 FERC ¶61,165, tendered for filing a Revision to its Compliance Filing.

National states that on March 22, 1996, National submitted its original Compliance Filing, and on June 21, 1996, the Commission issued a Letter Order approving it.

In addition, on June 17, 1996, National filed its Refund Report reflecting the refunds and direct bills that it issued on May 16, 1996.

National further states that on June 27, 1996, in response to National's Refund Report, Louis Dreyfus Natural Gas Corp. (Dreyfus) filed a Protest. Subsequently, National and Dreyfus have agreed that Dreyfus was entitled to a discount of its rate from June 1, 1995, forward. The revised Compliance Filing reflects that agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19767 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–663–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 30, 1996.

Take notice that on July 24, 1996, Northwest Pipeline Corporation (Applicant), P.O. Box 58900, Salt Lake City, Utah 84158–0900 filed in Docket No. CP96–663–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain inefficient and undersized facilities at the South Tacoma Meter Station in Pierce County, Washington, and to construct and operate upgraded replacement facilities to more consistently accommodate its maximum volume and delivery pressure obligations to Washington Natural Gas Company under existing firm transportation agreements at its South Tacoma delivery point, under blanket certificate issued in Docket No. CP82–433–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to upgrade the meter station by replacing approximately 100 feet of existing 4-inch inlet piping and valves with approximately 100 feet of new 8-inch inlet piping and valves and by replacing the two existing 4-inch regulators with two new 6-inch regulators. As a result of the proposed replacements, the maximum design capacity of the meter station will increase from 28,000 Dth per day (at 400 psig) to approximately 48,300 Dth per day (at 400 psig).

Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[2] Applicant proposes to replace all abandoned facilities with new upgraded facilities, so no abandonment of service will occur. Applicant further states that the total cost of the proposed facility replacements is estimated to be $196,400.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19771 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[1] *See,* 20 FERC ¶ 62,412 (1982).

[2] *See,* 42 FERC ¶ 61,019 (1988).

[Docket No. MT96–20–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 30, 1996.

Take notice that on July 25, 1996, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, with an effective date of August 25, 1996:

Substitute Second Revised Sheet No. 647

Texas Eastern states that the above listed tariff sheet is being filed to make the language in Texas Eastern's tariff consistent with proposed changes in Texas Eastern's Statement of Standards of Conduct which is being filed concurrently herewith. Texas Eastern also states that it is filing a revised Statement of Standards of Conduct to reflect that Texas Eastern has three marketing affiliates. Texas Eastern also states that Texas Eastern and its marketing affiliates function independently of each other, that Texas Eastern does not share any operating employees with its marketing affiliates, and that none of the operating employees of its marketing affiliates are officed in the same building as Texas Eastern.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19769 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–375–006 and RP95–215–005]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

July 30, 1996.

Take notice that on July 25, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the allocation of credits to its former sales customers on July 10, 1996, of $11,509 in accordance with the Offer of Settlement filed on August 21, 1995, in the above-captioned dockets.

Texas Gas states that this final refund report is being made to comply with Section 2.3 of the August 21, 1995 Settlement, relating to the termination of Texas Gas's purchased gas adjustment (PGA) clause and the allocation, direct billing, and recovery of Texas Gas's Account No. 191 balances.

Texas Gas states that the refund report documents the refunds/credits for each customer due to additional interest earned from various escrow accounts that were established while settling the Parc Perdue litigation, subsequent to Texas Gas's Final Refund Report filed on March 5, 1996. The refund/credits follow the provisions agreed to and approved within Article II, Section 2.3 of the Settlement.

Texas Gas states that copies of the refund report are being served upon Texas Gas's jurisdictional customers receiving refunds/credits on July 10, 1996, and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 6, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19768 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–80–000]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

July 30, 1996.

Take notice that on July 25, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the pro rata refund to its eligible firm customers of a July 10, 1996, Gas Research Institute (GRI) refund of $1,018,269.

Texas Gas states that this refund report is being made to comply with Commission Order issued February 22, 1995, in Docket No. RP95–124–000 requiring each pipeline to file a refund report with the Commission within fifteen (15) days of making the refunds.

Texas Gas states that copies of the refund report were included with the refunds made on July 10, 1996, and were served upon Texas Gas's jurisdictional customers receiving refunds and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before August 6, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19770 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–002]

Trunkline Gas Company; Notice of Compliance Filing

July 30, 1996.

Take notice that on July 25, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1996.

2nd Sub Fifth Revised Sheet No. 157
Sub First Revised Sheet No. 177
Sub First Revised Sheet No. 208

Trunkline states that the purpose of this filing is to comply with Ordering Paragraphs (A), (B) and (C) of the Commission's July 19, 1996 Order On Technical Conference in the referenced proceeding, 76 FERC ¶ 61,074. The enclosed tariff sheets have been revised to reflect the modifications Trunkline submitted on May 14, 1996 which were approved by the Commission in its July 19, 1996 Order, as well as the other conditions of that same Order.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19766 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1474–002, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 29, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER95–1474–002]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 22, 1996, tendered for filing a refund report in accordance with the Commission's June 13, 1996 order in the above-referenced proceeding.

Copies of the filing have been served on The Wisconsin Public Power Inc. System, Badger Power Marketing Authority of Wisconsin, Inc., the City of Oconto Falls, Wisconsin, and the Public Service Commission of Wisconsin.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Milford Power Limited Partnership Wholesale Power Services, Inc. C.C. Pace Energy Services ACME Power Marketing, Inc. J.D. Loock & Associates QST Energy Trading, Inc. Ocean Energy Services, Inc.

[Docket No. ER93–493–005, Docket No. ER93–730–003, Docket No. ER94–1181–008, Docket No. ER94–1530–009, Docket No. ER95–1826–002, Docket No. ER96–553–003, Docket No. ER96–588–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and coping in the Commission's Public Reference Room:

On July 16, 1996, Milford Power Limited Partnership filed certain information as required by the Commission's September 17, 1993, order in Docket No. ER93–493–000.

On July 18, 1996, Wholesale Power Services, Inc. filed certain information as required by the Commission's September 25, 1995, order in Docket No. ER93–730–000.

On July 18, 1996, C.C. Pace Energy Services filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1181–000.

On July 19, 1996, ACME Power Marketing, Inc. filed certain information as required by the Commission's October 18, 1994, order in Docket No. ER94–1530–000.

On July 17, 1996, J.D. Loock & Associates filed certain information as required by the Commission's October 27, 1995, order in Docket No. ER95–1826–000.

On July 22, 1996, QST Energy Trading, Inc. filed certain information as required by the Commission's March 14, 1996, order in Docket No. ER96–553–000.

On June 26, 1996, Ocean Energy Services, Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–588–000.

3. Rainbow Energy Marketing Corporation NorAm Energy Services, Inc. Tex Par Energy, Inc. ProGas Power E Prime, Inc. National Fuel Resources, Inc.

[Docket No. ER94–1061–009, Docket No. ER94–1247–009, Docket No. ER95–62–006, Docket No. ER95–968–002, Docket No. ER95–1269–003, Docket No. ER95–1374–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 24, 1996, Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994, order in Docket No. ER94–1061–000.

On July 23, 1996, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On July 24, 1996, Tex Par Energy, Inc. filed certain information as required by the Commission's December 27, 1994, order in Docket No. ER95–62–000.

On July 22, 1996, ProGas Power filed certain information as required by the Commission's July 7, 1995, order in Docket No. ER95–968–000.

On July 24, 1996, E Prime, Inc. filed certain information as required by the Commission's March 29, 1996, order in Docket No. ER95–1269–000.

On July 22, 1996, National Fuel Resources, Inc. filed certain information as required by the Commission's September 7, 1995, order in Docket No. ER95–1374–000.

4. Illinois Power Company

[Docket No. ER96–1485–001]

Take notice that on July 23, 1996, Illinois Power Company (Illinois Power), tendered for filing a refund report in compliance with the June 12, 1996, order in the above referenced docket.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Lowell Cogeneration Company, L.P.

[Docket No. QF86–435–003]

On July 1, 9, & 23, 1996, Lowell Cogeneration Company, L.P. tendered for filing supplements to its filing in this docket.

The supplements pertain to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: Fifteen days after publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas And Electric Company San Diego Gas & Electric Company and Southern California Edison Company

[Docket No. ER96–1663–000]

Take notice that on July 19, 1996, Pacific Gas and Electric Company (PG&E) tendered for filing a Report on Horizontal Market Power Issues as a supplement to the Federal Power Act Section 205 filing previously made in the above referenced docket.

Comment date: August 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER96–1794–000]

Take notice that on July 25, 1996, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to the ''Operating Companies''), amended their earlier filing of Amendment No. 6 to The Southern Company System Intercompany Interchange Contract dated October 31, 1988, as amended, in response to the Staff's deficiency letter dated June 25, 1996.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Atmos Energy Services, Inc.

[Docket No. ER96–2251–000]

Take notice that on July 23, 1996, Atmos Energy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Energy, Inc.

[Docket No. ER96–2278–000]

Take notice that on July 23, 1996, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission fully executed Service Agreement for Non-Firm Transmission Service entered into between Midwest and the City of Hill City.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Energy, Inc.

[Docket No. ER96–2347–000]

Take notice that on July 22, 1996, Midwest Energy, Inc. (Midwest) requested authorization to withdraw its July 9, 1996, filing in the above-captioned docket.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Potomac Electric Power Company

[Docket No. ER96–2475–000]

Take notice that on July 19, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Duke/Louis Dreyfus L.L.C., KN Marketing Inc., Delmarva Power and Light Company, National Gas and Electric L.P., and Eastex Power Marketing Inc. An effective date of July 1, 1996, for these service agreements, with waiver of notice, is requested.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2476–000]

Take notice that on July 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of a Purchase and Sales Agreement between Louisville Gas and Electric Company and Calpine Power Services Company under LG&E's Rate GSS.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2477–000]

Take notice that on July 19, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing the following Transmission Service Agreement between NSP and Morgan Stanley Capital Group Inc.

NSP requests that the Commission accept the agreements effective June 19, 1996, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER96–2478–000]

Take notice that on July 19, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Duke/Louis Dreyfus for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on July 20, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER96–2479–000]

Take notice that on July 22, 1996, New England Power Company, filed a Service Agreement and Certificates of Concurrence with Western Power Services, Inc., under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–2480–000]

Take notice that on July 22, 1996, Louisville Gas and Electric Company, tendered for filing copies of a Purchase and Sales Agreement between Louisville Gas and Electric Company and Alabama Electric Cooperative, Inc. under LG&E's Rate PSS.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER96–2481–000]

Take notice that on July 22, 1996, Louisville Gas and Electric Company, tendered for filing copies of a Non-Firm Transmission Service Agreement between Louisville Gas and Electric Company and Heartland Energy Services, Inc. under LG&E's Rate TS.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER96–2482–000]

Take notice that on July 22, 1996, Louisville Gas and Electric Company, tendered for filing copies of a Non-Firm Transmission Service Agreement between Louisville Gas and Electric Company and Calpine Power Services Company under LG&E's Rate TS.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER96–2484–000]

Take notice that on July 22, 1996, Arizona Public Service Company tendered for filing a Notice of Cancellation of Service Agreement with Howell Power Systems, Inc. under the Arizona Public Service Company's Electric Coordination Tariff No. 1.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Electric Power Company

[Docket No. ER96–2485–000]

Take notice that on July 22, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and LG&E (LG&E). The Transmission Service Agreement allows LG&E to receive transmission service under Wisconsin Electric's FERC Electric Tariff, First Revised Volume No. 5, under Docket No. ER95–1474–000, Rate Schedule STNF.

Wisconsin Electric requests an effective date of July 24, 1996 and waiver of the Commission's notice requirements to allow for economic transactions. Copies of the filing have been served on LG&E, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. San Diego Gas & Electric Company

[Docket No. ER96–2486–000]

Take notice that on July 22, 1996, San Diego Gas & Electric Company (SDG&E) tendered for filing a Notice of Termination of the Firm Transmission Service Agreement between SDG&E and Southern California Edison Company.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER96–2487–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 17, 1996 with Duquesne Light Company (Duquesne) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Duquesne as a customer under the Tariff.

PECO requests an effective date of July 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Duquesne and to the Pennsylvania Public Utility Commission.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER96–2488–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 17, 1996

with UNITIL Power Corp. (UNITIL) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds UNITIL as a customer under the Tariff.

PECO requests an effective date of July 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to UNITIL and to the Pennsylvania Public Utility Commission.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. PECO Energy Company

[Docket No. ER96–2489–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 17, 1996 with Fitchburg Gas and Electric Light Company (Fitchburg) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Fitchburg as a customer under the Tariff.

PECO requests an effective date of July 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Fitchburg and to the Pennsylvania Public Utility Commission.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Citizens Utilities Company

[Docket No. OA96–216–000]

Take notice that the Request for Waiver of Citizens Utilities Company for the Arizona Electric Division (Request for Waiver), which was filed by Citizens Utilities Company as part of its Order No. 888 compliance filing in OA96–184–000, is now being separately docketed as OA96–216–000. Because the Request for Waiver was previously noticed as part of Docket No. OA96–184–000, and a comment period established, this notice of redocketing will not establish a new comment period. Motions to intervene or protests concerning Docket No. OA96–216–000 still should be filed on or before August 8, 1996, as was established for Docket No. OA96–184–000 in the Notice of Filings Made Pursuant to Order Nos. 888 and 889, issued July 19, 1996.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19806 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–641–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Michigan Leg South Looping Project and Request for Comments on Environmental Issues

July 30, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Michigan Leg South Looping Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

ANR Pipeline Company (ANR) proposes to loop its existing Michigan Leg South System with 11.9 miles of 42-inch-diameter pipeline in two segments. The two segments consist of 1.6 miles of loop in Will County, Illinois, and 10.3 miles of loop in Porter County, Indiana. The project also includes the addition of one aftercooling bay at the existing St. John Compressor Station in Lake County, Indiana, and the relocation of an existing pig launcher from milepost (MP) 885.02 to MP 874.72 in Porter County, Indiana, and a pig receiver from MP 848.31 to MP 849.91 in Will County, Illinois. The general location of the project facilities are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 186.3 acres of land. About 35.8 acres of the 186.3 acres is existing pipeline right-of-way. About 50.1 acres would be new permanent right-of-way for the loop, and about 100.4 acres of the construction right-of-way and extra workspaces would be allowed to revert to its prior use after construction.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and

[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. Keep in mind that this is a preliminary list:

- Thirteen residences are within 25 feet of the construction right-of-way.
- The sports facilities on the property of the Liberty School and Liberty Middle School are crossed.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–641–000;
- Send a *copy* of your letter to: Mr. Bob Kopka, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.1, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 30, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Kopka at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Bob Kopka, EA Project Manager, at (202) 208–0282.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19773 Filed 8–2–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 29, 1996, 61 FR 39446.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 31, 1996, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Items have been added on the Agenda scheduled for July 31, 1996.

Item No.	Docket No. and company
CAG–3	RP93–151–000, *et al.,* Tennessee Gas Pipeline Company.
CAG–27	RP96–211–001, Transcontinental Gas Pipe Line Corporation.
CAG–48	OR96–14–000, Exxon Company, U.S.A., a division of Exxon Corporation, V. Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and Unocal Pipeline Company.
CAG–51	OR89–2–007, Trans Alaska pipeline System.
	IS89–7–000, Amerada Hess Pipeline Corporation.
	IS89–8–000, ARCO Pipeline Company.
	IS89–9–000, BP Pipeline (Alaska) Inc.
	IS89–10–000, Exxon Pipeline Company.
	IS89–11–000, Mobil Alaska Pipeline Company.
	IS89–12–000, Phillips Alaska Pipeline Corporation.
	IS89–13–000, Unocal Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19926 Filed 8–1–96; 11:10 a.m.]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5547–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Spill Prevention, Control and Countermeasure Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Spill Prevention, Control and Countermeasure Plans; OMB Control No. 2050–0021; expiring 9/30/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 328.05.

SUPPLEMENTARY INFORMATION:

Title: ''Spill Prevention, Control and Countermeasure Plans'' (OMB Control No. 2050–0021; EPA ICR No. 328.05) expiring 9/30/96. This ICR requests an extension of a currently approved collection.

Abstract: Under Section 311 of the Clean Water Act, EPA's Oil Pollution Prevention regulation (40 CFR Part 112) requires facility owners or operators to prepare and implement SPCC Plans and keep certain records. Preparation of the SPCC Plan requires that a facility owner or operator analyze how to prevent oil discharges, thereby promoting appropriate facility design and operations. The information in the SPCC Plan also promotes efficient response in the event of a discharge. Finally, proper maintenance of the SPCC Plan promotes important spill-reducing measures, facilitates leak detection, and generally ensures that the facility deters discharges at its peak capability. All of the SPCC Plan recordkeeping activities are mandatory. The specific activities and reasons and uses for the information collection are described below.

Recordkeeping Activities: Under § 112.3, a facility owner or operator must prepare a written SPCC Plan, maintain it at or near the facility, and have it certified by a Registered Professional Engineer (PE). Under § 112.5 the SPCC Plan must be amended (I) whenever there is a facility change that materially affects the potential to discharge oil, and (ii) to include more effective prevention and control technology identified in the owner of operator's triennial Plan review. If amended, the Plan must also be certified by a PE. Under § 112.4, in the event of certain oil discharges, facility owners or operators must submit the SPCC Plan and other information to the EPA Regional Administrator and the appropriate state water pollution control agency within 60 days. Upon review, the Regional Administrator may require amendment of the SPCC Plan. Again, the amended Plan must be certified by a PE. Under § 112.3, the owner or operator must maintain (and update) records of specific inspections as outlined under § 112.7(e).

Purpose of Data Collection: Facility owners or operators are the primary user of SPCC Plans and related data. EPA does not collect the Plan or related records on a routine basis. Facilities that prepare, implement, and maintain a SPCC Plan improve their ability to prevent oil discharges, and mitigate the environmental damage caused by such discharges. As facility owners or operators accumulate the data, they necessarily analyze the facility's capability to prevent oil discharges, facilitate safety awareness, and promote the use of appropriate design and operational standards that reduce the likelihood of an oil discharge. The Plan information can also help the facility respond efficiently in the event of a discharge. Inspection records help facility owners and operators to promote important operation and maintenance, and demonstrate compliance with the SPCC requirements.

EPA also uses SPCC Plan data in certain situations. EPA primarily uses SPCC Plan data to verify that facilities comply with the regulation and implement their Plan, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans: (1) When facilities submit the Plans because of oil discharges, and (2) as part of EPA's inspection program. State and local governments may also use the data, which is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 4/5/96 (61 FR 15246); EPA received nine (9) comment letters.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 39.9 hours per newly regulated facility and 5.4 hours per already regulated facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements to train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 448,730.

Frequency of Response: one-time plan, occasional records/reports.

Estimated Total Annual Hour Burden: 2.56 million hours.

Estimated Total Annualized Cost Burden: $77.4 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 328.05 and OMB Control No. 2050–0021 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: July 30, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–19842 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–400104B; FRL–5390–9]

Emergency Planning and Community Right-to-Know; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a public meeting regarding the Agency's proposal and options to add industry groups to the list of industry groups subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) specifically to discuss the potential impacts on small entities. This meeting is being held in addition to two previously scheduled public meetings concerning the proposal.

DATES: The meeting will take place in Chicago, IL on August 19, 1996, at 10 a.m. and adjourn by 3 p.m.

ADDRESSES: The meeting will be held at the: O'Hare Marriott Hotel, 8535 West Higgins Road, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Tim Crawford at 202-260-1715, e-mail: crawford.tim@epamail.epa.gov, or Brian Symmes at 202-260-9121, e-mail: symmes.brian@epamail.epa.gov, or the

Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION: In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment or otherwise manage. The purpose of this requirement is to inform the public, government officials, and industry about the chemical management practices of specified toxic chemicals.

Current EPCRA section 313 reporting requirements apply to facilities classified in the manufacturing sector (Standard Industrial Classification codes 20 through 39), that have 10 or more full-time employees, and that manufacture, process, or otherwise use one or more listed section 313 chemicals above certain threshold amounts.

EPA has been in the process of evaluating industry groups for potential addition under EPCRA section 313. EPA is proposing to add seven industry groups to the list of industries subject to EPCRA section 313 reporting requirements (61 FR 33588). This public meeting is being scheduled in order to provide a forum for dialogue to be shared by EPA, potentially affected industry groups, and the public regarding the basis of EPA's proposed action, options provided, and potential impacts and benefits. This meeting is being held specifically to discuss concerns regarding the potential impacts of the proposal on small entities, including small businesses and small local governments. The previously scheduled public meetings may also serve as a forum for these discussions (61 FR 33619).

Oral statements will be scheduled on a first-come first-serve basis by calling Cassandra Vail at (202) 260-0675. All statements will be part of the public record and will be considered in the development of any rule amendment.

Dated: July 30, 1996.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–19814 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00446; FRL–5390–9]

Worker Protection Standard; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: EPA is holding a series of public meetings to solicit information from workers, growers, and others regarding regulations designed to protect agricultural workers and pesticide handlers. The first meeting was held in Winter Haven, Florida on February 22, 1996. The meetings are a part of EPA's commitment to monitor and evaluate the impact and performance of the Worker Protection regulations. The public meetings are designed to provide an opportunity for those directly affected by the regulations to relay their experiences after the regulations' first full year of implementation. By reaching out to those on the frontlines and for whom these regulations are intended to provide public health protection, EPA will better understand how the program is working and where meaningful improvements should be made. The meetings are open to the public.

DATES: The following is the schedule for the remaining public meetings:

August 7, 1996, Portageville, Missouri

August 21, 1996, Tipton, Indiana

The date and location for a public meeting in Puerto Rico will be announced at a later date. There will not be a public meeting scheduled in Washington, DC as was previously noted.

ADDRESSES: The August 7, 1996 meeting will be held at the University of Missouri Delta Research Center, Highway T, Portageville, Missouri.

The August 21, 1996 meeting will be held at the Tipton County Fair Grounds, 1200 South Main Street, Tipton, Indiana.

In general, registration begins at 5 p.m., and the public meetings begin at 7 p.m. Please call the contacts listed below to verify the schedule for each meeting.

FOR FURTHER INFORMATION CONTACT: By mail: Jeanne Heying (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305-7164, Fax: (703) 308-2962, e-mail: heying.jeanne@epamail.epa.gov., or EPA WPS representatives in regions hosting public meetings.

Indiana meeting: Don Baumgartner, (312) 886-7835.

Missouri meeting: Glen Yager, (913) 551-7296 or Kathleen Fenton, (913) 551-7874.

Puerto Rico meeting: Fred Kozak, (908) 321-6769.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, EPA issued final regulations governing the protection of employees on farms, forests and nurseries, and greenhouses from occupational exposures to agricultural pesticides. The WPS covers both workers in areas treated with pesticides, and employees who handle (mix, load, apply, etc.) pesticides. More specifically, the provisions of the Standard are intended to:

Inform employees about the hazards of pesticides:

-By requiring provisions for basic safety training, posting and distribution of information about the pesticides.

Eliminate exposure to pesticides:

-By prohibiting against the application of pesticides in a way that would cause exposure to people.

-By requiring time-limited restrictions for workers to return to areas following the application of pesticides.

-By requiring provisions for workers and handlers to wear proper protective clothing/equipment.

Mitigate exposures that occur:

-By requiring arrangements for the supply of soap, water, and towels in the case of pesticide exposure.

-By requiring provisions for emergency assistance.

II. Information Sought by EPA

EPA believes that agricultural workers, handlers, and growers are best able to provide unique insights on the effects of the WPS requirements. Their input will be supplemented by data generated from other sources during the course of EPA's longer-term evaluation effort. As a follow-up to the public meetings, EPA will develop a summary of information gained. These tools will be used to develop strategies for improving the administration of the WPS. The Agency is specifically interested in hearing public comment, or receiving written comment, on the following topics.

1. Assistance from regulatory partners and others involved with the WPS.
2. Usefulness of available assistance.
3. Understanding the WPS requirements.
4. Success in implementing the requirements.
5. Difficulties in implementing the requirements.
6. Suggestions to improve implementation.

III. Registration to Make Comments

Persons who wish to speak at the public meeting are encouraged to

register at the meeting location. The Agency encourages parties to submit data to substantiate comments whenever possible. All comments, as well as information gathered at the public meetings will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday (except legal holidays) at the Public Response and Program Resource Branch, Field Operations Division, Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as part of any comment may be claimed as confidential by marking any or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by the Agency without prior notice to the submitter. The Agency anticipates that most of the comments will not be classified as CBI, and prefers that all information submitted be publicly available. Any records or transcripts of the open meetings will be considered public information and cannot be declared CBI.

IV. Structure of the Meeting

EPA will open the meeting with brief introductory comments. EPA will then invite those parties who have registered to present their comments. EPA anticipates that each speaker will be permitted 5 minutes to make comments. After each speaker, Agency and state representatives may ask the presenter questions of clarification. The Agency reserves the right to adjust the time for presenters depending on the number of speakers.

Members of the public are encouraged to submit written documentation to EPA at the meeting to ensure that their entire position goes on record in the event that time does not permit a complete oral presentation.

Any information may be delivered to Jeanne Heying at the address stated earlier in this Notice.

List of Subjects

Environmental protection.

Dated: July 30, 1996.

William L. Jordan,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96–19964 Filed 8–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act; Change In Time And Deletion Of Agenda Item From August 1st Open Meeting

The Federal Communications Commission previously announced on July 25, 1996, its intention to hold an Open Meeting on Thursday, August 1, 1996, commencing at 9:30 a.m. *The time has been changed to 10:30 a.m.*, and the following item has been deleted from the list of agenda items scheduled for consideration.

Item No., Bureau, Subject

1—Cable Services—Title: Preemption of Local Zoning Regulation of Satellite Earth Stations (IB Docket No. 95–59); Implementation of Section 207 of the Telecommunications Act of 1996 and Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service (CS Docket No. 96–83). Summary: The Commission will consider rules to implement Section 207 of the Telecommunications Act of 1996.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and Video Tapes of this meeting can be purchased from Telspan International at (301) 731–5355. This meeting can be viewed over George Mason University's ''Capitol Connection.'' For information on this service call (703) 993–3100.

Dated July 31, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–20015 Filed 8–1–96; 3:16 pm]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 39455, July 29, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1:00 p.m. Thursday, August 1, 1996.

CHANGES IN THE MEETING: The above open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–19912 Filed 8–1–96; 8:45 am]

BILLING CODE 6725–01–P

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 37478, July 18, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m. Thursday, July 25, 1996.

CHANGES IN THE MEETING: The following topics were added to the open portion of the meeting:

- Approval of Federal Home Loan Bank of San Francisco Request for Modification to the Alabama Court Project
- Approval of Federal Home Loan Bank of San Francisco Request for Modification to the Casa Heiwa Project

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–19913 Filed 8–1–96; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011502–001

Title: NYK/HUAL Space Charter and Cooperative Working Agreement

Parties:

NYK Bulkship (USA) Inc.
HUAL c/o Autoliners, inc.

Synopsis: The proposed amendment authorizes the parties to charter space from each other.

Agreement No.: 224–200996

Title: Jacksonville Port Authority/ SeaBulk Ltd Terminal Agreement

Parties:
Jacksonville Port Authority (''Port'')
SeaBulk Ltd

Synopsis: The proposed Agreement provides for the heating of rail cars and occasional transfer of products at the Port's Blount Island Marine Terminal.

Dated: July 31, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19801 Filed 8–2–96; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 96–14]

Compania Sud Americana De Vapores S.A. v. Inter-American Freight Conference, et al.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Compania Sud Americana de Vapores S.A. (''Complainant'') against Inter-American Freight Conference, Inter-American Freight Conference ''Section C,'' A.P. Moller Maersk Line, Crowley Americas Transport, Inc., A/S Ivaran Rederi, Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas S.A., Empresa de Navagacao Alianca S.A., Frota Amazonica S.A., Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft Eggert & Amsinck, and Transroll/Sea-Land Joint Service (collectively designated ''Respondents'') was served July 30, 1996. Complainant alleges that Respondents have violated sections 10(a)(2) and (3) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(2) and (3), by using funds from complainant's Irrevocable Standby Letter of Credit for costs in winding up a Brazil corporation, without authorization by the Inter-American Freight Conference Agreement.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 30, 1997, and the final decision of the Commission shall be issued by November 28, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19759 Filed 8–2–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0701]

Review of Restrictions on Director and Employee Interlocks, Cross-Marketing Activities and the Purchase and Sale of Financial Assets

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment.

SUMMARY: The Board is providing a second opportunity for public comment on proposed revisions to three of the prudential limitations established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is proposing to ease or eliminate the following restrictions on these so-called section 20 subsidiaries: the prohibition on director, officer and employee interlocks between a section 20 subsidiary and its affiliated banks or thrifts (the interlocks restriction); the restriction on a bank or thrift acting as agent for, or engaging in marketing activities on behalf of, an affiliated section 20 subsidiary (the cross-marketing restriction); and the restriction on the purchase and sale of financial assets between a section 20 subsidiary and its affiliated bank or thrift (the financial assets restriction).

DATES: Comments should be received on or before September 3, 1996.

ADDRESSES: Comments should refer to Docket No. R–0701, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202) 452–3236, Thomas Corsi, Senior Attorney (202) 452–3275, Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

In its orders authorizing bank holding companies to operate section 20 subsidiaries, the Board has established a series of prudential restrictions (commonly referred to as firewalls) designed to prevent securities underwriting and dealing risk from being passed from a section 20 subsidiary to an affiliated insured depository institution, and thus to the federal safety net. The firewalls also mitigate the potential for conflicts of interest, unfair competition, and other adverse effects that may arise from the conduct of bank-ineligible securities activities. See, e.g., J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp., 75 Federal Reserve Bulletin 192, 202–03 (1989) (hereafter, 1989 Order); Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp., 73 Federal Reserve Bulletin 473, 492 (1987) (hereafter, 1987 Order).[1] In adopting these restrictions, the Board stated that it would continue to review their appropriateness in the light of its experience in supervising section 20 subsidiaries.

The Board originally sought comment on changes to the interlocks, cross-marketing and financial assets restrictions on July 10, 1990. 55 FR 28,295 (1990). The Board received forty responses to its notice, with comments coming from banks, securities firms, trade associations and other members of the public. However, because legislation

[1] The 1989 Order and the 1987 Order are referred to collectively as the ''section 20 Orders.''

affecting the section 20 firewalls was introduced shortly after the Board sought comment, and has been introduced intermittently in the years since, the Board has deferred further action.

Given the passage of time since the original notice, the Board has decided to reopen these three firewalls for comment. All comments received on the original notice will be considered by the Board before taking final action, but commenters may wish to update their earlier submissions.

Proposed Changes

Introduction

The interlocks and cross-marketing restrictions were intended to insulate a bank or thrift from the underwriting and dealing risks borne by an affiliated section 20 subsidiary by ensuring that each company is operated independently and is perceived as such by its customers. The Board is considering possible alternatives to these restrictions that would maintain the intended insulation while allowing each company to draw on management expertise at its affiliates, operate more efficiently, and serve its customers more effectively.

Similarly, the financial assets restriction was a prophylactic measure designed to insulate a bank or thrift from the risks of an affiliated section 20 subsidiary by limiting one means by which a bank or thrift could fund an affiliated section 20 subsidiary. The Board is now considering whether that restriction is overbroad to the extent that it covers purchases and sales where the bank or thrift assumes no credit or liquidity risk.

Interlocks

The interlocks restriction currently prohibits all director, officer, and employee interlocks between a section 20 subsidiary and its bank or thrift affiliates.[2] The restriction seeks to ensure that customers will not be confused about which company they are dealing with, and that in the event of troubles at the section 20 subsidiary, the two entities will continue to operate independently and be ruled to have done so in the event that creditors of the section 20 subsidiary attempt to recover against the bank or thrift.

By prohibiting bank or thrift employees from serving at the section 20 subsidiary, the interlocks restriction imposes considerable costs on bank holding companies operating a section 20 subsidiary and serves as a barrier to entry for those considering doing so. This cost may be prohibitive for some smaller bank holding companies that cannot afford to pay separate staffs to perform similar functions. Accordingly, the Board believes that this firewall should be reviewed in order to determine whether the burdens it imposes serve functions important to safety and soundness.

With respect to directors, the Board is seeking comment on whether to eliminate the current blanket prohibition entirely or instead to prohibit: (1) A majority of the board of directors of a section 20 subsidiary from being composed of directors, officers or employees of affiliated banks or thrifts, and (2) a majority of the board of directors of a bank or thrift from being composed of directors, officers or employees of an affiliated section 20 subsidiary. The Board believes that a prohibition on majority representation would help to ensure corporate separateness, while allowing personnel costs to be reduced and operating efficiencies to be exploited.

In addition, the Board originally requested comment on replacing the prohibition on officer and employee interlocks with a requirement that the section 20 subsidiary not be managed or controlled by its affiliated banks or thrifts and that there not be a substantial identity of personnel between the entities. Commenters strongly opposed this proposal as vague and impractical, and the Board agrees. The Board now seeks comment on whether the prohibition on officer and employee interlocks should be eliminated altogether or, alternatively, limited to only the senior executive officer or senior executive officers of the section 20 subsidiary.

The Board believes that if the restriction on officer and employee interlocks were eliminated or modified, existing firewalls and the Interagency Policy Statement on the Sale of Uninsured Investment Products would be sufficient to prevent customers from being confused about which company they are dealing with, and consequently whether any product they are obtaining is federally insured. For example, the Board's section 20 Orders require a section 20 subsidiary to provide each of its customers with a special disclosure statement describing the difference between the underwriting subsidiary and its bank and thrift affiliates, and stating that securities sold, offered or recommended by the section 20 subsidiary are not deposits, not federally insured, not guaranteed by an affiliated bank or thrift, and not otherwise an obligation or responsibility of such bank or thrift. E.g. 1989 Order at 215. The Board seeks comment on whether existing disclosure requirements are sufficient to prevent customer confusion and potential liability of a bank or thrift.

The Board also seeks comment on whether concerns about corporate separateness, even given a restriction on director interlocks, warrant maintaining some restriction on officer interlocks. In particular, the Board seeks comment on whether it should generally allow such interlocks but prohibit (1) any senior executive officer of the section 20 subsidiary from serving as an officer or employee of an affiliated bank or thrift, and (2) any senior executive officer of a bank or thrift from serving as an officer or employee of an affiliated section 20 subsidiary.[3] Alternatively, the Board seeks comment on whether the officer or employee interlock should be limited only to the chief executive officer.

Cross-marketing

The Board's section 20 Orders also prohibit a bank or thrift affiliate of a section 20 subsidiary from acting as agent for, or engaging in marketing activities on behalf of, the section 20 subsidiary.[4] The Board is requesting comment on whether to eliminate this

[2] In specific cases, the Board has authorized limited officer or director interlocks between a section 20 subsidiary and its affiliated banks. See, e.g., National City Corporation, 80 Federal Reserve Bulletin 346, 348–9; Synovus Financial Corp., 77 Federal Reserve Bulletin 954, 955–56 (1991); Banc One Corporation, 76 Federal Reserve Bulletin 756, 758 (1990).

[3] Under 12 CFR 225.71, a senior executive officer is defined to include a person who ''without regard to title, exercises the authority of one or more of the following positions: chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. Senior executive officer also includes any other person with significant influence over major policymaking decisions.'' The Board seeks comment on whether, if adopted, this definition should be amended to clarify its coverage of interlocks between U.S. branches and agencies of foreign banks and their affiliated section 20 subsidiaries.

[4] The cross-marketing restriction does not serve as a complete bar on marketing activities by a bank or thrift on behalf of an affiliated section 20 subsidiary. Pursuant to certain conditions, the Board has allowed a bank affiliate of a section 20 subsidiary to: (1) send materials describing the section 20 subsidiary and the section 20 subsidiary's services to retail and commercial customers directly or as a stuffer to bank statements; (2) have its officers and employees send materials and letters on bank letterhead describing the section 20 subsidiary and the section 20 subsidiary's services to the bank's retail and commercial customers; (3) sponsor or co-sponsor with the section 20 subsidiary educational seminars to inform retail and commercial customers about investment opportunities, investment strategies, and the section 20 subsidiary's services; and (4) have its officers and employees send invitations on bank letterhead inviting their customers to attend the educational seminars sponsored or co-sponsored by the banks. Letter Interpreting Section 20 Orders, 81 Federal Reserve Bulletin 198 (1995).

restriction. As noted above, the Board believes that the disclosure requirements contained in the section 20 Orders and the Interagency Statement on Retail Sales of Nondeposit Investment Products may be a more narrowly tailored and less burdensome method of protecting against customer confusion as to whether the customer is dealing with a section 20 subsidiary or an affiliated bank or thrift.

The Board notes that the Glass-Steagall reform legislation passed at various times by the Senate and reported by the House Banking Committee has not prohibited cross-marketing and agency activities. That legislation would have relied instead on disclosures regarding the uninsured status of securities affiliates to prevent customer confusion.

Purchase of Financial Assets

The Board is also seeking comment on amending the financial assets restriction, which generally prohibits a bank or thrift from purchasing financial assets from, or selling such assets to, an affiliated section 20 subsidiary. An existing exception to this restriction allows the purchase or sale of U.S. Treasury securities or direct obligations of the Canadian federal government at market terms, provided that they are not subject to repurchase or reverse repurchase agreements between the underwriting subsidiary and its bank or thrift affiliates. See, *e.g.*, 1989 Order at 216; Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC, 76 Federal Reserve Bulletin 158, 172 (1990).

In establishing the exception for U.S. Treasury securities, the Board cited the breadth and liquidity of the market for such instruments, which make evident the ''market terms'' on which the sale must be transacted and ensure that the bank will be able to resell any asset it purchases. In its 1990 Notice, the Board sought comment on extending this exception to include those U.S. Government agency securities and U.S. Government-sponsored agency securities for which there is a market with a breadth and liquidity comparable to that for U.S. Treasury securities.

The Board now seeks comment on whether it should expand this exception to include the purchase or sale of any assets with a sufficiently broad and liquid market to ensure that the transaction is on market terms and that the bank is not incurring credit or liquidity risk through the purchase of assets. The Board notes that the 1987 Order did not contain a financial assets firewall. In the Board's experience, banks and thrifts whose holding companies operate free of the financial assets restriction have not experienced adverse effects from purchasing assets from, or selling assets to, their affiliated section 20 subsidiaries.

The Board does intend to retain for now the financial assets restriction to the extent that it prohibits a purchase or sale of illiquid assets and any purchase or sale of assets subject to a repurchase or reverse repurchase agreement. The Board believes that any further changes to the financial assets restriction should be considered in conjunction with other funding firewalls, as part of a more comprehensive review of all the remaining firewalls between a section 20 subsidiary and its affiliated banks and thrifts.

By order of the Board of Governors of the Federal Reserve System, July 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–19867; Filed 8–2–96; 8:45 am]

BILLING CODE: 6210–01–P

[Docket No. R–0932]

Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Request for comments.

SUMMARY: The Board is proposing for comment a change in the manner in which interest earned on securities authorized for investment by a member bank of the Federal Reserve System is treated in determining whether a company is engaged principally in underwriting and dealing in securities for purposes of section 20 of the Glass-Steagall Act. In order to ensure compliance with section 20, the Board required that the amount of revenue a company derived from underwriting and dealing in securities that a member bank may not underwrite or deal in (ineligible securities) not exceed 10 percent of the total revenue of the company. The Board is proposing to clarify that interest earned on the types of debt securities that a member bank may hold for its own account is not treated as revenue from underwriting or dealing for purposes of section 20.

DATES: Comments must be received by September 3, 1996.

ADDRESSES: Comments, which should refer to Docket No. R–0932, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551, to the attention of Mr. William Wiles, Secretary. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C.

SUPPLEMENTARY INFORMATION:

Background

Beginning with orders issued in 1987, the Board has authorized nonbank subsidiaries of bank holding companies, so-called section 20 subsidiaries, to underwrite and deal in ineligible securities.[1] In order to assure compliance with section 20 of the Glass-Steagall Act,[2] the Board provided as a condition of its orders that the gross revenue derived by the subsidiary from ineligible securities underwriting and dealing activities not exceed 10 percent of the total gross revenue of the subsidiary, when revenue is averaged over a rolling 8-quarter period.

For purposes of computing the 10 percent revenue limit section 20 subsidiaries currently report all interest earned on third-party ineligible debt securities held by the subsidiaries in an underwriting or dealing capacity as revenue derived from underwriting and dealing in securities.[3] Questions have

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[1] *E.g.*, Citicorp, 73 Federal Reserve Bulletin 473 (1987), *aff'd*, *Securities Industry Ass'n* v. *Board of Governors*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988).

[2] Section 20 provides that a member bank may not be affiliated with a company that is ''engaged principally'' in underwriting and dealing in securities. 12 U.S.C. 377. Section 20 does not prohibit a bank affiliate from underwriting and dealing in securities that banks may underwrite and deal in directly (eligible securities).

[3] Instructions for Preparation of the Financial Statements for a Bank Holding Company Subsidiary

been raised as to whether this treatment is appropriate for interest earned on debt securities that a member bank is authorized to hold. Under the Glass-Steagall Act, a member bank is expressly authorized to purchase and sell for its own account ''investment securities,'' which generally include investment grade corporate debt and certain municipal revenue securities.[4] The Board is aware that pursuant to this authority many banks hold for their own account a significant amount of investment grade debt securities. In addition, many banks buy and sell these securities on a relatively frequent basis as part of managing their investment portfolio. In recognition of this activity, changes to accounting rules were made at the end of 1993 to establish separate accounting treatment for bank portfolio securities that are ''available for sale'' and not intended to be held to maturity.[5]

In view of the above, the Board is proposing to clarify that interest earned on the types of debt securities that a member bank may hold for its own account is not treated as revenue from underwriting or dealing in ineligible securities for purposes of section 20. The Board believes a distinction can be made between the interest earned by a section 20 subsidiary from holding these kinds of securities and the profit made from underwriting or reselling them. The profit or loss a section 20 subsidiary earns on the resale of investment grade ineligible debt securities the subsidiary holds in inventory more closely approximates the revenue that should be attributed to performing the functions of dealing in or underwriting securities, the critical element of which is the actual offering and sale of the instruments involved.[6]

On the other hand, the interest the subsidiary earns on investment grade ineligible debt securities while it holds them in inventory more closely represents the revenue that can be attributed to holding the securities as a member bank may do.[7] Thus, the Board believes that it is reasonable to conclude that interest revenue derived from holding the kinds of debt securities a member bank may hold should not be treated as revenue from underwriting or dealing in securities. The proposed clarification would apply only to interest derived from those types of debt securities that a member bank may hold for its own account, but not underwrite or deal in.

By order of the Board of Governors of the Federal Reserve System, July 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–19865 Filed 8–2–96; 8:45am]

BILLING CODE 6210–01–P

Engaged in Bank-Ineligible Securities Underwriting and Dealing, Form FR Y–20. Schedule SUD–I, Line Item 5 (December 1994) (FR Y–20 Instructions). See also ''Structuring Bank-Eligible and Bank-Ineligible Transactions'' in FR Y–20 Instructions.

[4] 12 U.S.C. 24 Seventh, 335; 12 CFR 1.3. Member banks may not purchase any non-investment grade debt securities or equity securities for their own account.

[5] Statement of Financial Accounting Standards No. 115.

[6] For purposes of the section 20 revenue limitation, the Board has viewed ''public sale'' to include the activity of dealing in securities—the process of buying and reselling to the public specific securities as part of an ongoing, regular business. *E.g., Citicorp, supra,* 73 Federal Reserve Bulletin at 506–08. The term ''underwriting'' generally refers to the process by which new issues of securities are offered and sold to the public. *E.g., Securities Industry Ass'n* v. *Board of Governors,* 807 F.2d 1052, 1062–66 (D.C. Cir. 1986), *cert. denied,* 483 U.S. 1005 (1987).

[7] This distinction is further reflected in the current reporting requirements for section 20 subsidiaries and in Generally Accepted Accounting Principles for bank holding companies, which prescribe that interest revenue be reported separately from gains or losses on securities owned. FR Y–20 Instructions, Statement of Income, Schedule SUD–I, Line Items 2, 5); Securities and Exchange Commission FOCUS Report (Form X–17A–5 Part II) and instructions thereto. Generally Accepted Accounting Principles incorporate the format of the FOCUS Report.

[Docket No. R–0841]

Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comments.

SUMMARY: The Board is proposing to increase from 10 percent to 25 percent the amount of total revenue that a nonbank subsidiary of a bank holding company (a so-called section 20 subsidiary) may derive from underwriting and dealing in securities that a member bank may not underwrite or deal in. The revenue limit is designed to ensure that section 20 subsidiaries will not be engaged principally in underwriting and dealing in such securities in violation of section 20 of the Glass-Steagall Act. Based on its experience supervising these subsidiaries and developments in the securities markets since a revenue limitation was adopted in 1987, the Board believes that a company earning 25 percent or less of its revenue from underwriting and dealing would not be engaged principally in that activity for purposes of section 20.

DATES: Comments must be received by September 30, 1996.

ADDRESSES: Comments, which should refer to Docket No. R–0841, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel (202/452–3236), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Background

Section 20 of the Glass-Steagall Act provides that a member bank may not be affiliated with a company that is ''engaged principally'' in underwriting and dealing in securities.[1] In 1987, the Board first allowed bank affiliates to engage in underwriting and dealing in bank-ineligible securities—that is, those securities that a member bank would not be permitted to underwrite or deal in—when the Board approved an application by three bank holding companies to underwrite and deal in commercial paper, municipal revenue bonds, mortgage-backed securities, and consumer-receivable-related securities.[2] In 1989, the Board allowed five section 20 subsidiaries to underwrite and deal in all debt and equity securities, subject to more rigorous firewalls.[3]

[1] 12 U.S.C. 377.

[2] *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.,* 73 Federal Reserve Bulletin 473 (1987), *aff'd, Securities Industry Ass'n* v. *Board of Governors,* 839 F.2d 47 (2d Cir.), *cert. denied,* 486 U.S. 1059 (1988) (hereafter ''*1987 Order*'').

[3] *J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp,* and

Continued

Currently, thirty-nine nonbank subsidiaries of bank holding companies are authorized to engage in underwriting and dealing activities that are not authorized for a member bank. Fourteen of these so-called section 20 subsidiaries have authority to underwrite and deal in commercial paper, municipal revenue bonds, mortgage-backed securities, and consumer receivable related securities. Twenty-two section 20 subsidiaries have authority to underwrite and deal in all debt and equity securities, and three may underwrite and deal in all debt securities. Over the past nine years, the Board has had substantial experience in supervising the activities and operations of those companies. In the Board's experience, the section 20 subsidiaries have operated in a safe and sound manner without adverse effects on their affiliated banks or the public, and have provided additional competition in the securities markets.

As a condition of its 1987 order approving underwriting and dealing in a section 20 subsidiary, the Board established a revenue test to ensure compliance with the ''engaged principally'' standard of section 20. The Board arrived at a revenue test through a series of interpretive steps. First, the Board determined that a bank affiliate would be ''engaged principally'' in underwriting and dealing only if underwriting and dealing were a ''substantial line of business activity for the affiliate.'' [4] The Board further found that the best measure of the underwriting and dealing activity of a section 20 subsidiary was the gross revenue derived from that activity.[5] In terms of what revenue to consider, the Board ruled that securities that a member bank was authorized to underwrite under section 16 of the Glass-Steagall Act (for example, U.S. government securities) were not covered by the prohibition of section 20; accordingly, the Board decided that revenue derived from underwriting and dealing in such securities should not count in determining whether a section 20 subsidiary's level of underwriting and dealing activity was ''substantial'' for purposes of the statute. Rather, only revenue earned on ''ineligible securities''—those that a member bank could not underwrite or deal in—was counted toward the section 20 limit.

Finally, the Board found that underwriting and dealing in ineligible securities would not be a ''substantial'' activity for a section 20 subsidiary if the gross revenue derived from that activity did not exceed 5 to 10 percent of the total gross revenues of the subsidiary. (As a prudential matter, the Board initially limited ineligible revenue to 5 percent of total revenue in order to gain experience in supervising such companies. In 1989, the Board raised the limit to 10 percent.)

No changes were made to the revenue test in subsequent orders until, in January 1993, the Board allowed section 20 subsidiaries to use an alternative revenue test that was indexed to account for changes in interest rates since 1989.[6] The Board found that historically unusual changes in the level and structure of interest rates had distorted the revenue test as a measure of the relative importance of ineligible securities activity in a manner that was not anticipated when the 10 percent limit was adopted in 1989. In particular, the Board found that because bank-eligible securities (such as U.S. government securities) tended to be shorter term than ineligible securities, an increase in the steepness of the yield curve had caused the revenue earned by at least some section 20 subsidiaries from holding eligible securities to decline in relation to ineligible revenue, even as the relative proportion of eligible and ineligible securities activities being conducted by these subsidiaries remained unchanged.[7] Five section 20 subsidiaries are currently operating under this indexed test.

At the same time it proposed the indexed revenue test, the Board sought comment on use of an asset-based measure as an alternative to the existing gross revenue measure, and in July 1994 sought comment on both the asset-based measure (for a second time) and a sales volume measure.[8] As the courts have recognized, ''the relative significance of the firm's activities could be measured in various ways—dollar volume, number of transactions, strategic significance, and so on.'' [9]

The Board has recently received petitions from trade groups and others urging the Board to increase the revenue limit to at least 25 percent of total revenue. Petitioners argue that the Board could justify a higher revenue limit either by reinterpreting ''engaged principally'' more consistently with the ordinary meaning of ''principal''—that is, to include only the largest or majority activity—or by finding that a higher level of revenue does not yield a level of activity that is substantial.

Proposed Change to Revenue Limit

The Board is proposing to maintain the revenue test but increase the revenue limit from 10 percent of total revenue to 25 percent. The Board seeks comment on whether this amended revenue test would be an appropriate gauge of underwriting and dealing activity for purposes of section 20. The Board is concerned that a test based on assets or sales volume would not yield benefits—in terms of greater accuracy, ease of administration, or immunity from manipulation—that would justify the costs of converting compliance systems to a new test.

The Board is proposing to increase the revenue limit based on its supervision of the section 20 subsidiaries over a nine-year period. Based on this experience, the Board now believes that the limitation of 10 percent of total revenue it adopted in 1987, without benefit of this experience, unduly restricted the underwriting and dealing activity of section 20 subsidiaries to a level that fell short, and continues to fall short, of substantial activity and principal engagement for purposes of section 20.

Furthermore, the Board believes that changes in the product mix that section 20 subsidiaries are permitted to offer and developments in the securities markets have affected the relationship between revenue and activity. When the Board initially adopted a 5–10 percent of total revenue test for underwriting and dealing in investment-grade commercial paper, municipal revenue bonds, mortgage-backed securities and

Security Pacific Corp., 75 Federal Reserve Bulletin 192 (1989) (hereafter ''*1989 Order*'').

[4] *Bankers Trust New York Corp.*, 73 Federal Reserve Bulletin 138, 142 (1987); *1987 Order* at 481–483.

[5] *1987 Order* at 483–485.

[6] *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993) (hereafter, *1993 Modification Order*).

[7] *1993 Modification Order* at 228. Under the indexed revenue test, current interest and dividend revenues from eligible and ineligible activities for each quarter are increased or decreased by an adjustment factor provided by the Board. The adjustment factors, which are calculated for securities of varying durations, represent the ratio of interest rates on Treasury securities in the most recent quarter to those in September 1989. Section 20 subsidiaries use the adjustment factors to ''index'' actual interest and dividend revenues based upon the average duration of their eligible and ineligible securities portfolios.

[8] 59 FR 35,516 (1994).

[9] *Securities Industry Ass'n* v. *Board of Governors of the Federal Reserve System* 847 F.2d 890, 894 (D.C. Cir. 1988). For example, the New York State Banking Department has interpreted its ''little Glass-Steagall Act,'' which contains the same ''engaged principally'' language as section 20, to allow a securities affiliate of a bank to have up to 25 percent of its business activity consist of underwriting and dealing. New York originally measured activity using an asset test but has more recently employed a revenue test. See Letter from Deputy Superintendent Barrantes to Paul L. Lee (May 4, 1988).

consumer receivable related securities, the Board concluded that a ''substantial'' level of engagement in those activities would generally yield revenues of greater than 10 percent of total revenue. Since initially establishing a revenue limit of 10 percent, the Board has expanded significantly the types of underwriting and dealing activities in which a section 20 subsidiary may engage, most notably in the 1989 Order allowing section 20 subsidiaries to underwrite all types of debt and equity securities. Nevertheless, the Board has not until now reexamined its assumption about what level of revenue corresponds to a substantial level of engagement in the types of ineligible securities activities permitted a section 20 subsidiary.

In fact, the Board's experience shows that the relationship between gross revenue and underwriting and dealing activity is not the same for corporate debt securities and other securities approved in the 1989 Order as it was for securities approved in the 1987 Order. A given level of activity in corporate debt and equity underwriting and dealing yields substantially higher revenue than an equivalent amount of activity in underwriting and dealing in investment-grade commercial paper, municipal revenue bonds, mortgage-backed securities, and consumer receivable related securities. For example, bid/offer spreads on many corporate bonds and other securities authorized for dealing in the 1989 Order are significantly wider than the spreads on the securities authorized for dealing in the 1987 Order. Similarly, underwriting fees for those securities authorized in the 1987 Order are significantly smaller than fees for those securities authorized in the 1989 Order, particularly with respect to equity securities and non-investment grade debt securities.[10] Put another way, the Board believes that (all things being equal) a company that maintained a constant level of activity over the past nine years, but shifted its product mix from those authorized by the 1987 Order to those authorized by the 1989 Order, would have seen a significant increase in ineligible revenue.

A converse trend appears to have developed with respect to eligible revenue, where market changes appear to have reduced the eligible revenue derived from a given level of activity. As noted above, to varying degrees over the years, prior interest rate changes have reduced eligible interest revenue relative to ineligible interest revenue for the majority of companies that have elected not to use the indexed revenue test. More importantly, with respect to eligible revenue derived from other sources, most notably brokerage services, increased competition has diminished revenue as a function of activity.[11] Lower commissions have required companies to increase volume in order to maintain a given level of eligible revenue.

In sum, the Board believes that a section 20 subsidiary company that (1) Maintained a steady level of both bank-eligible and ineligible securities activity since 1987, and (2) updated its product mix to include what the Board has interpreted the Bank Holding Company Act to allow, would have seen its the ratio of ineligible to total revenue more than double.

Finally, the Board believes that this increase in the revenue limit would not give rise to the potential dangers to commercial banks from general underwriting activities that motivated the Congress to enact the Glass-Steagall Act, or the more general dangers of affiliation that motivated the Congress to enact the Bank Holding Company Act. The Board has now had considerable experience supervising these companies, and believes that they have operated in a safe and sound manner. Particularly given the safeguards of the examination and reporting process and increased emphasis on internal risk management, the Board believes that allowing a section 20 subsidiary to increase to 25 percent the amount of revenue it derives from underwriting and dealing in ineligible securities would not pose significant risk to an affiliated bank.

By order of the Board of Governors of the Federal Reserve System, July 31, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–19866 Filed 8–2–96; 8:45 am]

BILLING CODE 6210–01–P

[10] See, e.g., Investment Dealer's Digest 12 (Feb. 19, 1996); Investment Dealer's Digest 19 (February 15, 1988).

[11] See, *e.g.,* The Economist 9 (April 15, 1995) (''Commissions on listed securities as a percentage of the value of trade in these instruments have fallen from 70–90 basis points in the early 1980s to below 40 basis points. Even for over-the-counter trading * * * returns have fallen from 80–90 basis points to around 20 basis points.'')

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lewis Management Company, Morris, Illinois; to become a bank holding company by acquiring 19.82 percent of the voting shares of Illinois Valley Bancorp, Inc., Morris, Illinois, and thereby indirectly acquire Grundy County National Bank, Morris, Illinois.

2. TDI Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Security Chicago Corporation, Chicago, Illinois,

and thereby indirectly acquire First Security Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 30, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19788 Filed 8-2-96; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat; Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/FAR Secretariat is changing the stocking of the following Standard form because of low user demand: SF 1410, Abstract of Offers—Continuation.

Since this form is now authorized for local reproduction, you can obtain the updated camera copy in two ways.

On the internet. Address: http// www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Far Secretariat, (202) 501–4755.

DATES: Effective August 5, 1996.

Date: August 26, 1996

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 96–19738 Filed 8–2–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August 1996:

Name: Subcommittee on Request for Proposal No. AHCPR–96–0006, A Study of Clinical Decision Support Systems (CDSS)—Status, Usage, and Barriers to Implementation.

Date and Time: August 14, 1996, 9:00 a.m.–5:00 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 6th Floor Conference Room, 2101 East Jefferson Street, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this two-year contract is threefold: (1) To identify vendors of CDSS and describe the characteristics of these commercially available systems, including the sources of the medical knowledge embedded or accessed by the CDSS and the extent to which they integrate AHCPR's Clinical Practice Guidelines and other guidelines; (2) to describe the health care environments in the CDSS are utilized and the extent to which these systems are integrated with other clinical information systems in these environments; and (3) to describe the perceptions regarding barriers to the widespread adoption and use of CDSS.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposal. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR section 11.5(a)(6), and procurement regulations, 48 CFR section 315.604(d). Anyone wishing to obtain information regarding this meeting should contact Sharon Williams, Office of Management, Contracts Management Staff, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 601, Rockville, Maryland, 20852, (301) 594–1445.

Dated: July 29, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–19802 Filed 8–2–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[30DAY–17]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on July 18, 1996.

Proposed Project

1. Monthly Vital Statistics Report—(0920–0213)—Extension—The compilation of national vital statistics dates back to the beginning of this century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The Monthly Vital Statistics Report provides estimates of monthly occurrences of births, deaths, infant deaths, marriages, and divorces following the end of each month. Similar data have been published since 1937, and are the sole source of these data at the national level. The data are widely used by the Department of Health and Human Services and by other government, academic, and private research organizations in tracking changes in trends of vital events. The data are essential to the U. S. Bureau of the Census as input to their various population estimates. They are also used each month by the Bureau of Economic Analysis, Department of Commerce, to extrapolate an element of the Gross National Product.

Respondents for the Monthly Vital Statistics Report and the Monthly Report on Marriages, Divorces and Annulments are registration officials in each state, the District of Columbia, and New York City. Respondents for the Monthly Marriage and Divorce Statistical Report forms are 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico. There are no direct costs to respondents; the data are routinely available in each reporting office as a by-product of ongoing activities.

Respondents	Number of respondents	Number of responses/ respondents	Avg. burden/ response (in hrs.)
State registration officials: Monthly Vital Statistics Report	52	12	0.1
State registration officials: Monthly Report on Marriages, Divorces, and Annulments	52	12	0.1
County registration officials: New Mexico: Monthly Marriage and Divorce Statistical Report Forms	60	12	0.1

The total burden hours is 197.

Dated: July 29, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–19790 Filed 8–2–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Integrated Review Schedule.

OMB No.: 0970–0035.

Description: State agencies are required to perform quality control review for the AFDC, Food Stamp, and Adult Assistance Programs. The Integrated Review Schedule is jointly designed and used by ACF and FCS. The schedule serves as the comprehensive data entry form for all active quality control reviews in these programs.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–4357	55,000	1	1	55,000

Estimated Total Annual Burden Hours: 55,000.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: July 30, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–19808 Filed 8–2–96; 8:45 am]

BILLING CODE 4184–01–M

Submission for OMB Review; Comment Request

Title: Early Head Start Evaluation.

OMB No.: New Request.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families (ACYF) designed the Early Head Start (EHS) program. In September, 1995, ACYF awarded grants to 68 local programs to serve families with infants and toddlers.

EHS programs are designed to produce outcomes in four domains: (1) Child development, (2) family development, (3) staff development and (4) community development. The Reauthorization required that this new initiative be evaluated. To study the effect of the initiative ACYF awarded a contract through a competitive procurement to Mathematica Policy Research, Inc. (MPR) with a subcontract to Columbia University Center for Young Children and Families. Evaluation will be carried out from October 1, 1995, through September 30, 2000. Data collection activities that are the subject of this Federal Register notice are intended for the first phase of the EHS evaluation.

The sample for the child and family assessments will be approximately 3,400 families who include a pregnant woman or a child under 12 months of age, in 17 EHS study sites. Each family will be randomly assigned to a treatment group or a control group. The sample for the child care assessments will include the primary child care provider for the focal child in each of the 3,400 study sample families. The sample for the staff assessments will be all EHS staff who have contact with the study children and families. The surveys and assessments will be conducted through computer assisted telephone interviewing, pencil and paper self-administered questionnaires, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to identify the features and evaluate the effectiveness of the EHS program.

Respondents: Applicants to the Early Head Start Program, child care providers for Early Head Start families and Early Head Start staff.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
14 Month Parent Interview, Child Assessment Protocol and Video-taping Protocol	3,230	1	2.5	8,075
Parent Services Follow-Up Interview—HSFIS	3,400	1	1.2	4,080
Parent Services Follow-Up Interview—Primary Caregiver	3,298	1	.83	2,737
Child Care Provider Interview—Child Care Centers	478	1	.25	120
Child Care Provider Interview—Family Day Care & Relative Providers	1,022	1	.5	511
Child Care Observation Protocol	1,261	1	2	2,522
Staff Questionnaire	170	1	.5	85

Estimated Total Annual Burden Hours: 18,130 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: July 30, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–19809 Filed 8–2–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 84G–0257]

Enzyme Technical Association; Filing of Petition for Affirmation of GRAS Status; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a petition (GRASP 3G0016) filed by the Enzyme Technical Association (formerly the Ad Hoc Enzyme Technical Committee). The document proposed to affirm that certain enzyme preparations from animal, plant, and microbial sources are generally recognized as safe (GRAS) as direct human food ingredients. This amendment proposes to affirm that carbohydrase and protease enzyme preparations from *Bacillus amyloliquefaciens* are GRAS as direct human food ingredients.

DATES: Comments by October 21, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION: In accordance with the procedures described in § 170.35 (21 CFR 170.35), the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association), c/o Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, IN 46514, submitted a petition (GRASP 3G0016) requesting that the following enzyme preparations be affirmed as GRAS for use in food:

1. Animal-derived enzyme preparations: Catalase (bovine liver); lipase, animal; pepsin; rennet; rennet, bovine; and trypsin.

2. Plant-derived enzyme preparations: Bromelain; malt; and papain.

3. Microbially-derived enzyme preparations: *Aspergillus niger*, var. (lipase, catalase, glucose oxidase, and carbohydrase); *B. subtilis*, var. (carbohydrase and protease mixtures); *Rhizopus oryzae* (carbohydrase); and *Saccharomyces* species (carbohydrase).

In the Federal Register of April 12, 1973 (38 FR 9256), FDA published a notice of filing of this petition and gave interested persons an opportunity to submit comments to the Dockets Management Branch (address above). The petition was amended by notices published in the Federal Register of: (1) June 12, 1973 (38 FR 15471), proposing affirmation that microbially derived enzyme preparations (carbohydrase, lipase, and protease) from *A. oryzae* are GRAS for use in food; (2) August 29, 1984 (49 FR 34305), proposing affirmation that the enzyme preparations ficin, obtained from species of the genus *Ficus* (fig tree), and pancreatin, obtained from bovine and porcine pancreas, are GRAS for use in food; and (3) June 23, 1987 (52 FR 23607), proposing affirmation that the enzyme preparation protease from *A. niger* is GRAS for use in food. In the June 23, 1987, notice, FDA also noted the petitioner's assertion that pectinase enzyme preparation from *A. niger* and lactase enzyme preparation from *A. niger* are included under carbohydrase enzyme preparation from *A. niger*, and that invertase enzyme preparation from *Saccharomyces cerevisiae* and lactase enzyme preparation from *Kluyveromyces marxianus* are both included under carbohydrase enzyme preparation from species of the genus *Saccharomyces*. The agency further noted that, therefore, pectinase enzyme preparation from *A. niger*, lactase enzyme preparation from *A. niger*, invertase enzyme preparation from *S. cerevisiae*, and lactase enzyme preparation from *K. marxianus* were to be considered part of the petition. Interested persons were given an opportunity to submit comments to the Dockets Management Branch (address above) on each amendment.

Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), and the regulations for affirmation of GRAS status in § 170.35, notice is given that the Enzyme Technical Association has submitted a further amendment to its petition (GRASP 3G0016). The amendment proposes that carbohydrase and protease enzyme preparations from *B. amyloliquefaciens* be affirmed as GRAS for use as direct human food ingredients based on the taxonomic separation of *B. subtilis* and *B. amyloliquefaciens* in

1987. The amendment has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 21, 1996, review the amendment and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 2, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–19743 Filed 8–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0257]

Hoffmann-La Roche, Inc., et al.; Withdrawal of Approval of 87 New Drug Applications, 18 Abbreviated Antibiotic Drug Applications, and 103 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 87 new drug applications (NDA's), 18 abbreviated antibiotic applications (AADA's), and 103 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application no.	Drug	Applicant
NDA 6–54	Progstigmin (neostigmine bromide solution) Opthalmic Solution, 5%.	Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 5–319	Pantopaque (iophendylate) Injection	Alcon Laboratories, Inc., 6201 South Freeway, Fort Worth, TX 76134–2099.
NDA 6–135	Folic Acid	Lilly Research Laboratories, Lilly Corporate Center, Indianopolis, IN 46285.
NDA 6–213	Propylthiouracil Tablets	Do.
NDA 6–215	Delphicol Tablets and Solution	Lederle Laboratories, Pearle River, NY 10965.
NDA 6–333	Synophylate (theophylline sodium glycinate) Elixir	Central Pharmaceuticals, Inc., 120 East Third St., Seymour, IN 47274.
NDA 6–386	Mol-Iron Liquid	Schering-Plough Corp., 110 Allen Rd., P.O. Box 276, Liberty Corner, NJ 07938–0276.
NDA 6–686	Dramamine Liquid	Richardson-Vicks, Inc., One Far Mill Crossing, Shelton, CT 06484.
NDA 6–911	Sulfisoxazole Syrup/Pediatric Suspension	Roche Pharmaceuticals, 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 8–082	Propion Gel	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 8–855	Milontin 500 milligram (mg) Kapseals	Parke-Davis Pharmaceutical Research, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 8–951	Pagitane HCl Tablets	Lilly Research Laboratories.
NDA 9–008	Salpix Contrast Medium	The R. W. Johnson Pharmaceutical Research Institute, Rt. 202, Box 300, Raritan, NJ 08869–0602.
NDA 9–115	Serpasil Tablets and Elixir	Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.
NDA 9–220	Di-Isopacin	Consolidated Midland Corp., 16–20 Main St., Brewster, NY 10509.
NDA 9–268	Choledyl Tablets, Pediatric Syrup, and Elixir,	Parke-Davis Pharmaceutical Research.
NDA 9–296	Serpasil Apresoline	Ciba-Geigy Corp.
NDA 9–309	Dionosil Oily	Glaxo, Inc., Five Moore Dr., P.O. Box 13358, Research Triangle Park, NC 27709.
NDA 9–434	Serpasil Parenteral Solution	Ciba-Geigy Corp.
NDA 9–750	Valmid Capsules, 500 mg	Lilly Research Laboratories.
NDA 10–291	Cortril Soluble Parenteral	Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 10–599	Tral Filmtab	Pharmaceutical Products Division, Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500.
NDA 10–670	ORINASE Tablets	The Upjohn Co., 700 Portage Rd., Kalamazoo, MI 49001–0199.
NDA 10–710	Toleron Tablets and Suspension	Wallace Laboratories, Cranbury, NJ 08512.
NDA 10–776	DELTA-CORTEF Eye Drops, S.S.	The Upjohn Co.
NDA 10–911	BUCLADIN-S Tablets	Zeneca, 1800 Concord Pike, Wilmington, DE 19897.

Application no.	Drug	Applicant
NDA 11–078	Theruhistin Syrup	Wyeth-Ayerst Laboratories.
NDA 11–837	Alpha Chymar	Sola/Barnes-Hind, 810 Kifer Rd., Sunnyvale, CA 94086–5200.
NDA 11–878	Serpasil Esidrix	Ciba-Geigy Corp.
NDA 13–157	Anhydron Tablets	Lilly Research Laboratories.
NDA 13–621	Pertofrane Capsules	Rhone-Poulence Rorer Pharmaceuticals, Inc., 500 Arcola Rd., P.O. Box 1200, Collegeville, PA 19426–0107.
NDA 14–173	Proketazine Oral Suspension	Wyeth-Ayerst Laboratories.
NDA 15–148	Colgate MFP Flouride Toothpaste	Colgate-Palmolive Co., P.O. Box 1343, 909 River Rd., Piscataway, NJ 08855–1343.
NDA 16–001	BENZTHIAZIDE Tablets, 25 mg and 50 mg	Solvay Pharmaceuticals, 901 Sawyer Rd., Marietta, GA 30062.
NDA 16–144	Ethamide Tablets	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92713–9534.
NDA 16–287	Kaon Sugar Coated Tablets	Savage Laboratories, Division of Altana, Inc., 60 Baylis Rd., Melville, NY 11747.
NDA 16–749	Norlestrin 21 1/50 Tablets	Parke-Davis Pharmaceutical Research.
NDA 16–764	Stemex Oral Tablets	Hoffman-LaRoche, Inc.
NDA 16–852	Norlestrin 21 2.5/50 Tablets	Parke-Davis Pharmaceutical Research.
NDA 16–854	Norlestrin FE 2.5/50 Tablets	Do.
NDA 16–998	Uticort Cream	Do.
NDA 17–226	SORBITRATE SA Tablets, 40 mg	Zeneca.
NDA 17–421	Armohex Hexachlorophene Liquid Soap Ready to Use	The Dial Corp., 15191 North Scottsdale Rd., Scottsdale, AZ 85260.
NDA 17–508	Lidocaine Hydrochloride Injection	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
NDA 17–546	Nipride Vials	Hoffmann-La Roche, Inc.
NDA 17–675	Bethanidine Sulfate Tablets	Medco Research, Inc., P.O. Box 13886, Research Triangle Park, NC 27709.
NDA 17–701	Lidocaine Hydrochloride Injection	International Medication Systems, Ltd., 1886 Santa Anita Ave., South El Monte, CA 91733.
NDA 17–780	Heparin Sodium Injection	Pharmaceutical Specialist Associates, 9852 Cowden St., Philadelphia, PA 19115.
NDA 17–927	Globin Zinc Insulin Injection	Novo Nordisk Pharmaceuticals, Inc., 100 Overlook Center, suite 200, Princeton, NJ 08540–7810.
NDA 17–928	Protamine Zinc Insulin Suspension	Do.
NDA 18–370	Furosemide Tablets, 20 mg and 40 mg	Superharm Corp., 600 Corporate Dr., suite 520, Fort Lauderdale, FL 33334.
NDA 18–382	Semilente Purified Pork Prompt Insulin Zinc Suspension	Novo Nordisk Pharmaceuticals, Inc.
NDA 18–385	Ultralente Purified Beef Extended Insulin Zinc Suspension	Do.
NDA 18–456	MICATIN Antifungal Spray Powder	Advanced Care Products, Ortho Pharmaceutical Corp., Raritan, NJ 08869.
NDA 18–457	MICATIN Antifungal Shaker Powder	Do.
NDA 18–524	Purified Insulin Semilente	Bristol-Myers Squibb, P.O. Box 4500, Princeton, NJ 08543–4500.
NDA 18–527	Purified Insulin Ultralente	Do.
NDA 18–539	Regular Iletin II	Lilly Research Laboratories.
NDA 18–540	Lente Iletin II	Do.
NDA 18–541	NPH Iletin II	Do.
NDA 18–542	Protamine, Zinc, and Ilentin	Do.
NDA 18–605	Azulfidine Oral Suspension	Kabi Pharmacia, c/o Adria Laboratories, P.O. Box 16529, Columbus, OH 43216–6529.
NDA 18–633	Fibocil Pulvules	Lilly Research Laboratories.
NDA 18–666	Fibocil Injection	Do.
NDA 18–747	Isoclor Timesule Capsules	CIBA, Mack Woodbridge II, 581 Main St., Woodbridge, NJ 07095.
NDA 18–777	Novolin L	Novo Nordisk Pharmaceuticals, Inc.
NDA 18–778	Novolin R	Do.
NDA 18–928	Pentuss Controlled Release Suspension	Fisons Corp., P.O. Box 1710, Rochester, NY 14603.
NDA 18–954	0.2% Lidocaine Hydrochloride in 5% Dextrose Injection	Abbott Laboratories.
NDA 19–005	Bretylium Tosylate in 5% Dextrose Injection	Do.
NDA 19–046	Normozide Labetalol	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.
NDA 19–441	Novolin 70/30	Novo Nordisk Pharmaceuticals, Inc.
NDA 19–443	Sodium Bicardonate Injection	Abbott Laboratories.
NDA 19–456	Pindac Pulvules	Leo Pharmaceutical Products, Ltd. A/S, 55 Industriparken, DK–2750 Ballerup Denmark.
NDA 19–564	Aminosyn II with Electrolytes in Dextrose Injection	Abbott Laboratories.
NDA 19–565	Aminosyn II 5% in 25% Dextrose	Do.
NDA 19–693	Decabid	Lilly Research Laboratories.
NDA 50–003	Erythrocin Stearate-Sulfas Filmtab/Erythromid Filmtab	Abbott Laboratories.
NDA 50–069	TAO Chewable Tablets	Pfizer, Inc.
NDA 50–072	Penbritin Injection	Wyeth-Ayerst Laboratories.

Application no.	Drug	Applicant
NDA 50–126	Bicillin Oral Suspension	Do.
NDA 50–198	Erythrocin Ethyl Succinate-Sulfas Chewable Tablets	Abbott Laboratories.
NDA 50–301	Veracillin Injection	Wyeth-Ayerst Laboratories.
NDA 50–371	Ilotycin Sulfa	Lilly Research Laboratories.
NDA 50–481	Velosef for Injection	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.
NDA 50–523	Vira-A 200 mg/milliliter (mL) Intravenous Infusion	Parke-Davis Pharmaceutical Research.
NDA 50–699	SUPRAX Chewable Tablet	Lederle Laboratories.
AADA 60–075	Penicillin G Potassium Tablets, 200,000 Units, 250,000 Units, 400,000 Units, and 800,000 Units.	Pfizer, Inc.
AADA 60–097	Bacitracin Ointment, 500 Units/Gram	Do.
AADA 60–281	Neomycin and Polymyxin B Sulfates and Bacitracin Ophthalmic Ointment.	Do.
AADA 60–282	Sterile Bacitracin	Do.
AADA 60–576	Mycolog II Cream	Apothecon.
AADA 60–587	Penicillin G Potassium for Oral Solution	Pfizer, Inc.
AADA 60–726	Bacitracin Ophthalmic Ointment	Do.
AADA 60–728	Neomycin Sulfate and Bacitracin Ointment	Do.
AADA 60–877	Gentamicin Sulfate	Shering Corp.
AADA 61–815	Penicillin V Potassium for Oral Solution	Pfizer, Inc.
AADA 61–836	Penicillin V Potassium Tablets, 250 mg	Do.
AADA 61–898	Ampicillin and Probenecid for Oral Suspension	Apothecon.
AADA 62–049	Ampicillin for Oral Suspension	Pfizer, Inc.
AADA 62–050	Ampicillin Capsules	Do.
AADA 62–422	Cephalothin Sodium Injection	Baxter Healthcare Corp., Rt. 120 and Wilson Rd., Round Lake, IL 60073–0490.
AADA 62–494	Doxycycline Hyclate Tablets	Superpharm Corp.
AADA 62–540	Tetracycline Hydrochloride Capsules	Do.
AADA 62–730	Cephalothin Sodium Injection	Baxter Healthcare Corp.
ANDA 70–065	Sulfamethoxazole and Trimethoprim Tablets, 400 mg/80 mg.	Superpharm Corp.
ANDA 70–066	Sulfamethoxazole and Trimethoprim Tablets, 800 mg/160 mg.	Superpharm Corp.
ANDA 70–162	Tolazamide Tablets, 100 mg	Barr Laboratories, Inc., Two Quaker Rd., P.O. Box 2900, Pomona, NY 10970–0519.
ANDA 70–163	Tolazamide Tablets, 250 mg	Do.
ANDA 70–164	Tolazamide Tablets, 500 mg	Do.
ANDA 70–709	Ibuprofen Tablets, 600 mg	Superpharm Corp.
ANDA 70–926	Metoclopramide Hydrochloride Tablets, 10 mg	Do.
ANDA 71–245	Lorazepam Tablets, 0.5 mg	Do.
ANDA 71–246	Lorazepam Tablets, 1 mg	Do.
ANDA 71–247	Lorazepam Tablets, 2 mg	Do.
ANDA 71–319	Propoxyphene Napsylate and Acetaminophen Tablets, 100 mg/650 mg.	Do.
ANDA 71–659	Flurazepam Hydrochloride Capsules, 15 mg	Do.
ANDA 71–660	Flurazepam Hydrochloride Capsules, 30 mg	Do.
ANDA 71–771	Propranolol Hydrochloride and Hydrochlorothiazide Tablets, 40 mg/25 mg.	Warner Chilcott Laboratories, 182 Tabor Rd., Morris Plains, NJ 07950.
ANDA 72–809	Meclofenamate Sodium Capsules, 100 mg	Barr Laboratories, Inc.
ANDA 72–848	Meclofenamate Sodium Capsules, 50 mg	Do.
ANDA 80–457	Reserpine Tablets, 0.1 mg and 0.25 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
ANDA 80–721	Reserpine Tablets, 0.25 mg	Do.
ANDA 80–744	Tripelennamine Hydrochloride Tablets, 50 mg	Do.
ANDA 80–854	Pyridoxone Hydrochloride Injection	Lilly Research Laboratories.
ANDA 80–855	Cyanocobalamin Injection	Do.
ANDA 80–884	Ergocalciferol (Vitamin D) Capsules, 1.25 mg	Do.
ANDA 83–130	Ammonium Chloride Injection	Abbott Laboratories.
ANDA 83–154	Lidocaine and Epinephrine Injection	Do.
ANDA 83–370	Dramamine Tablets	Richardson-Vicks, Inc.
ANDA 83–393	Quinidine Sulfate Tablets, 200 mg	ICN Pharmaceuticals, Inc., ICN Plaza, 3300 Hyland Ave., Costa Mesa, CA 92626.
ANDA 83–471	Cortisone Acetate Tablets, 25 mg	Barr Laboratories, Inc.
ANDA 83–644	Phendimetrazine Tartrate Tablets, 35 mg (yellow)	Do.
ANDA 83–684	Phendimetrazine Tartrate Tablets, 35 mg (white)	Do.
ANDA 83–686	Phendimetrazine Tartrate Tablets, 35 mg (gray)	Do.
ANDA 83–687	Phendimetrazine Tartrate Tablets, 35 mg (pink)	Do.
ANDA 83–944	Triamcinolone Acetonide Ointment, 0.5%	Apothecon.
ANDA 83–999	Hydrocortisone Tablets, 20 mg	Barr Laboratories, Inc.
ANDA 84–031	Sulfisoxazole Tablets, 500 mg	Do.
ANDA 84–177	Quinidine Sulfate Tablets, 200 mg	Do.
ANDA 84–225	Secobarbital Sodium Capsules, 100 mg	Do.
ANDA 84–230	Meprobamate Tablets, 600 mg	Do.

Application no.	Drug	Applicant
ANDA 84–267	Triamcinolone Tablets, 4 mg	Do.
ANDA 84–268	Triamcinolone Tablets, 8 mg	Do.
ANDA 84–286	Triamcinolone Tablets, 2 mg	Do.
ANDA 84–318	Triamcinolone Tablets, 2 mg	Do.
ANDA 84–319	Triamcinolone Tablets, 4 mg	Do.
ANDA 84–320	Triamcinolone Tablets, 8 mg	Do.
ANDA 84–426	Prednisolone Tablets, 5 mg	Do.
ANDA 84–468	Brompheniramine Maleate Tablets, 4 mg	Do.
ANDA 84–579	Reserpine and Hydrochlorothiazide Tablets, 0.125 mg/50 mg.	Do.
ANDA 84–580	Reserpine and Hydrochlorothiazide Tablets, 0.125 mg/25 mg.	Do.
ANDA 84–721	Lidocaine Hydrochloride Injection, 2%	Carlisle Laboratories, Inc., 865 Merrick Ave., Westbury, NY 11590.
ANDA 84–731	Theophylline Capsules, 100 mg, 200 mg, and 250 mg	R. P. Scherer North America, 2725 Scherer Dr., St. Petersburg, FL 33176–1016.
ANDA 84–771	Hydrochlorothiazide Tablets, 50 mg (yellow)	Barr Laboratories, Inc.
ANDA 84–831	Phendimetrazine Tartrate Tablets, 35 mg (green-speckled)	Do.
ANDA 84–834	Phendimetrazine Tartrate Tablets, 35 mg (green)	Do.
ANDA 84–835	Phendimetrazine Tartrate Tablets, 35 mg (pink)	Do.
ANDA 84–944	Lidocaine Ointment, 5% (spearmint)	Carlisle Laboratories, Inc.
ANDA 84–946	Lidocaine Ointment, 5% (mixed fruit)	Do.
ANDA 85–038	Quinidine Sulfate Tablets, 200 mg	Eli Lilly and Co.
ANDA 85–068	Quinidine Sulfate Tablets, 200 mg	Scherer Laboratories, Inc., 2301 Ohio Dr., suite 234, Plano, TX 75093.
ANDA 85–103	Quinidine Sulfate Capsules, 200 mg	Eli Lilly and Co.
ANDA 85–291	Acetaminophen and Codeine Phosphate Tablets, 300 mg/ 30 mg.	Geneva Pharmaceuticals, Inc., 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.
ANDA 85–353	Theophylline Tablets, 100 mg and 200 mg	Central Pharmaceuticals, Inc.
ANDA 85–928	Hydrocortisone Sodium Succinate for Injection	Abbott Laboratories.
ANDA 85–964	Acetaminophen and Codeine Phosphate Tablets, 300 mg/ 60 mg.	Geneva Pharmaceuticals, Inc.
ANDA 86–586	Diphenhydramine Hydrochloride Elixir, 12.5 mg/5 mL	Halsey Drug Co., Inc.
ANDA 87–121	Tolbutamide Tablets, 500 mg	Barr Laboratories, Inc.
ANDA 87–189	Sulfamethoxazole Tablets, 500 mg	Do.
ANDA 87–247	Chlorthalidone Tablets, 50 mg	Superpharm Corp.
ANDA 87–982	Nitroglycerin Extended-Release Capsules, 2.5 mg	Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.
ANDA 87–983	Nitroglycerin Extended-Release Capsules, 6.5 mg	Do.
ANDA 88–213	Triprolidine and Pseudoephedrine Hydrochlorides Syrup, 1.25 mg/ 30 mg per 5 mL.	Halsey Drug Co., Inc.
ANDA 88–297	Aminophylline Tablets, 100 mg	Barr Laboratories, Inc.
ANDA 88–298	Aminophylline Tablets, 200 mg	Do.
ANDA 88–416	Dipyridamole Tablets, 25 mg	Do.
ANDA 88–417	Dipyridamole Tablets, 50 mg	Do.
ANDA 88–418	Dipyridamole Tablets, 75 mg	Do.
ANDA 88–503	Theophylline Controlled-Release Tablets, 100 mg	Forest Pharmaceuticals, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 88–504	Theophylline Controlled-Release Tablets, 200 mg	Do.
ANDA 88–505	Theophylline Controlled-Release Tablets, 300 mg	Do.
ANDA 88–695	Chlorpropamide Tablets, 250 mg	Superpharm Corp.
ANDA 88–735	Triprolidine Hydrochloride Syrup, 1.25 mg/ 5 mL	Halsey Drug Co., Inc.
ANDA 88–794	Hydroxyzine Hydrochloride Tablets, 10 mg	Superpharm Corp.
ANDA 88–795	Hydroxyzine Hydrochloride Tablets, 25 mg	Do.
ANDA 88–796	Hydroxzine Hydrochloride Tablets, 50 mg	Do.
ANDA 88–812	Chlorpropamide Tablets, 100 mg (white)	Barr Laboratories, Inc.
ANDA 88–813	Chlorpropamide Tablets, 250 mg (white)	Do.
ANDA 88–827	Hydrochlorothiazide Tablets, 25 mg	Superpharm Corp.
ANDA 88–828	Hydrochlorothiazide Tablets, 50 mg	Do.
ANDA 88–829	Hydrochlorothiazide Tablets, 100 mg	Do.
NADA 88–865	Prednisone Tablets, 5 mg	Do.
ANDA 88–866	Prednisone Tablets, 10 mg	Do.
ANDA 88–867	Prednisone Tablets, 20 mg	Do.
ANDA 88–893	Tolbutamide Tablets, 500 mg	Do.
ANDA 88–962	Diphenoxylate Hydrochloride and Atropine Sulfate Tablets, 2.5 mg/ 0.025 mg.	Do.
ANDA 89–103	Thioridazine Hydrochloride Tablets, 10 mg	Do.
ANDA 89–104	Thioridazine Hydrochloride Tablets, 25 mg	Do.
ANDA 89–105	Thioridazine Hydrochloride Tablets, 50 mg	Do.
ANDA 89–177	Folic Acid Tablets, 1 mg	Barr Laboratories, Inc.
ANDA 89–179	Diphenhydramine Hydrochloride Syrup, 12.5 mg/ 5 mL	Halsey Drug Co., Inc.

Application no.	Drug	Applicant
ANDA 89–184	Acetaminophen and Codeine Phosphate Tablets, 300 mg/ 30 mg.	Superpharm Corp.
ANDA 89–185	Acetaminophen and Codeine Phosphate Tablets, 300 mg/ 60 mg.	Do.
ANDA 89–199	Cyproheptadine Hydrochloride Syrup, 2 mg/ 5 mL	Halsey Drug Co., Inc.
ANDA 89–362	Lidocaine Hydrochloride Injection, 20%	Abbott Laboratories.
ANDA 89–446	Chlorpropamide Tablets, 100 mg (blue)	Barr Laboratories, Inc.
ANDA 89–447	Chlorpropamide Tablets, 250 mg (blue)	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective September 4, 1996.

Dated: July 9, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–19804 Filed 8–02–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute (NCI); Developmental Therapeutics Program (DTP); Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Identification, Characterization, and Development of Antibiotics From NCI's Natural Products Repository and Database of Open Compounds

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a company that can effectively pursue the preclinical identification, characterization, and development of antibiotic treatments from NCI/DTP's Natural Products Repository and Database of Open Compounds. The selected sponsor will be awarded a CRADA to establish antibiotic activity associated with such compounds.

ADDRESSES: Questions about this opportunity may be addressed to Gary Colby, or Vasiliana Moussatos, Office of Technology Development, NCI, (301) 496–0477, from whom further information may be obtained:

Address for delivery by U.S. Postal Service: Executive Plaza South, Suite 450; 6120 Executive Blvd. MSC 7182; Bethesda MD 20892–7182.

Address for delivery by messenger or overnight delivery services: 6120 Executive Blvd; Suite 450; Rockville, MD 20852.

DATES: In view of the important priority of developing new drugs for the treatment of antibiotic resistant bacteria, proposals must be received at the above address by 5:00 p.m. September 4, 1996.

TERM: The term of the CRADA will be 3 to 5 years.

SUPPLEMENTARY INFORMATION: Cooperative Research and Development Agreement or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below. Under the present proposal, the Government is seeking a company which will perform the requirements set forth in the CRADA in accordance with the regulations governing the transfer of technology in which the Government has taken an active role in developing (37 CFR 404.8).

The general scope of this CRADA includes:

1. Characterizations of compounds or natural product extracts with activity against bacterial strains provided by Collaborator, including but not limited to antibiotic-resistant variants of common nosocomial infections, emerging organisms of public interest (e.g., flesh-eating bacteria), and organisms responsible for opportunistic infections (e.g., Mycobacterium spp.); (This characterization will include screening of compounds provided by NCI for this application (including previously characterized compounds in the public domain), isolation, extraction, and purification of the compound(s) present in natural product extracts, chemical characterization, and demonstration that isolation and production of the active chemical are reproducible.)

2. Using the structure(s) identified in (1), computer analyses by NCI of previously screened open NCI compounds to identify or suggest compounds that also may inhibit bacteria in (1), followed by the use of Collaborator's assays to screen and profile the NCI compounds' activity against different strains of such bacteria;

3. Modification or improvement of assays for activity against such bacterial strains in (1) based directly upon the findings in (1) and (2);

4. Addition of related bacterial strains supplied by Collaborator to this collaboration based upon this experience;

5. Synthesis of analogues of the lead structures based directly upon information gained in this collaboration; and

6. Where appropriate and under a mutually agreeable amendment, preclinical development of compounds to support clinical trials using agents for which the compelling rationale for development was identified in this collaboration.

The principal goal of the CRADA in the first year is to generate sufficient data to prove the concept that compounds exist in the NCI Natural Products Repository of crude extracts and purified chemicals which may possess activity against such bacteria listed above in (1) as provided by the Collaborator. The Collaborator will test a variety of extracts, e.g., fungal, higher plant, marine organisms, etc. selected for this purpose and provided by NCI, against said bacteria utilizing a screening and testing program which may or may not be proprietary to Collaborator such as a standard plate assay of bacterial growth or an enzyme-based screening system capable of high throughput and automation. It is further hoped that long-term results may also lead to new and novel molecular structures.

In view of the intellectual contributions of NCI, such as the creation of the ranked lists of compounds with potential to interact with such bacterial strains of interest as provided by the Collaborator, the results of this collaboration, in the form of agents with clinical potential or tools for

further scientific research, will be considered to be the results of a collaborative effort on the part of NCI and the collaborator. Inventorship and ownership of any intellectual property arising from this collaboration will be determined according to U.S. and international Patent Law with reference to the terms of the negotiated CRADA.

The role of the NCI will include *inter alia* providing nonexclusive access (unless otherwise noted) to research materials, methodology and data:

- Access to extracts (fungal, plant, marine, etc.) and other tests chemicals in the NCI Natural Products Repository and Database of Open Compounds;
- Project guidance and oversight;
- Nonexclusive access to NCI's *in vitro* cell line screening data for open samples of pure compounds or for identified Natural Product extracts found to be active in the expanded microbial screen so antibacterial activity, cell line cytotoxicity, and growth inhibition can be compared.
- Analyses of cytotoxicity/growth inhibition profiles in the NCI Tumor Cell Line Panel to identify open compounds in the NCI database possessing similar profiles as compounds established by the Collaborator as having antibiotic activity;
- Cell lines from the NCI Tumor Cell Line Panel, as well as guidance in their choice;
- Upon verification that similar cytotoxicity/growth inhibition profiles exist between compounds with antibiotic activity and open compounds in the NCI database, provision of lists, rankings and correlates of available compounds to Collaborator for verification testing. The NCI may include in these lists other compound for which there are indications of development potential against (or as markers for) such bacteria listed in (1); and
- As appropriate, performance with the collaborator of additional preclinical studies (such as tests of in vivo efficacy) if compounds meet criteria required for use of these resources.

The role of the successful company under a CRADA will include the following:

- Perform screening operations necessary to identify compounds or extracts with desired anti-bacterial properties;
- Purify and identify active molecules from active natural product extracts;
- Identify, procure and provide to NCI, cultures of such bacteria listed in (1);
- Provide expert advice and support related to safe management of such bacteria listed in (1);
- Perform verification testing of the natural products, open listed correlates and compounds of interest suggested by the NCI, using proprietary or nonproprietary assay systems developed and/or implemented by Collaborator for activity against such bacteria in (1) as well as perform potentially necessary cytotoxic and growth inhibition assays of cell lines in the NCI Tumor Cell Line Panel; and
- Provide written progress reports incorporating results to the NCI on a quarterly basis. (The NCI will alert the Collaborator to any substantive changes to the lists, ranks, or correlates as such information becomes available.)

Criteria for choosing the company include:

- Ability to provide technical screening expertise, ability to supply bacterial cultures, ability to purify active compounds from natural product mixtures;
- Ability to provide sufficient internal staffing necessary to pursue aggressively its efforts associated with the CRADA including scientific, management and administrative support;
- Demonstrated ability to develop and commercialize pharmaceutical agents or products;
- Ability to provide sufficient internal funding necessary to aggressively pursue its efforts associated with the CRADA;
- Ability to provide sufficient internal funding for materials and supplies, training and travel as required by NCI in support of its efforts under the CRADA;
- Willingness to abide by NCI policy required for the transfer of natural products from the NCI Natural Products Repository; and
- Willingness to abide substantially by the terms of the Model NIH CRADA.

The collaborator must agree to abide by the following NCI guidelines for access to natural products from the NCI Natural Products Repository.

(A) Should an agent eventually be licensed to the Collaborator or licensed or sublicensed to a pharmaceutical company for production and marketing, NCI will require the collaborator or successful licensee to negotiate and enter into agreement(s) with the Source Country Government (''SCG'') agency(ies) or Source Country Organization(s) as appropriate. This agreement(s) will address the concern on the part of the Source Country Government (''SCG'') or Source Country Organization(s) (''SCO''), that pertinent agencies, institutions, and/or persons receive royalties and other forms of compensation, as appropriate.

(B) Such terms shall apply equally to instances where the invention is the actual isolated natural product, or where the invention is a product structurally based on the isolated natural product (i.e., where the natural product provides the lead for the development of invention), though the percentage of royalties negotiated as payment might vary depending upon the relationship of the marketed drug to the originally isolated product. It is understood that he eventual development of a drug to the stage of marketing is a long term process which may require 10–15 years.

(C) In obtaining additional sources of active material product extract by CRADA collaborator or licensees, the NCI will require the collaborator or applicant for license to seek as its first source of supply the natural products from Source Country. If no appropriate licensee is found who will use natural products available from Source Country, or if the Source Country Government (''SCG'') or Source Country Organization(s) (''SCO'') as appropriate, or its suppliers cannot provide adequate amounts of raw materials at a mutually agreeable fair price, the licensee will be required to pay the Source Country Government (''SCG'') or Source Country Organization(s) as appropriate, an amount of money (to be negotiated) to be used for expenses associated with cultivation of medicinal plant species that are endangered by deforestation, or for other appropriate conservation measures. Such terms will also apply to instances where the active agent is prepared by total synthesis.

(D) Section C shall not apply to organisms which are freely available from different countries (i.e., common weeds, agricultural crops, ornamental plants, fouling organisms) unless information indicating a particular use of the organism (e.g., medicinal, pesticidal) was provided by local residents to guided the collection of such an organism from Source Country, or unless other justification acceptable to both the Source Country Government (''SCG'') and Source Country Organization(s) (''SCO'') and the NCI is provided. In the case where an organism is freely available from different countries, but a genotype producing an active agent is found only in the Source Country, Section C shall apply.

Dated: July 26, 1996.

Thomas D. Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 96–19847 Filed 8–2–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–06–1610–00]

Proposed California Desert Conservation Area Plan Amendment, Palm Springs-South Coast Resource Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: On March 15, 1996, notice was published in the Federal Register announcing availability of the Proposed California Desert Conservation Area Plan Amendment and Environmental Assessment for a 60-day public review period. In this document, two plan amendments were proposed. Amendment One proposes to expand the Big Morongo Canyon Area of Critical Environmental Concern (ACEC) from 3,075 to 29,000 acres to provide more effective management of bighorn sheep habitat, wetlands, riparian areas, wildlife corridors and other sensitive resources. The Big Morongo Canyon ACEC is located six miles north of Interstate 10, just east of Highway 62, straddling the San Bernardino-Riverside County line. Amendment Two proposes to expand the Salt Creek Desert Pupfish/Rail Habitat ACEC from 4,288 to 14,880 acres to protect palm oases, cultural resources, wildlife corridors, wetlands, endangered species habitat and other sensitive resources. The Salt Creek ACEC would also be renamed the Dos Palmas ACEC. The Salt Creek ACEC is located three miles northwest of the Salton Sea, Riverside County, California.

BLM received 12 public comment letters. BLM has reviewed these letters and has incorporated the comments into the proposed plan. BLM is prepared to proceed with the proposed Dos Palmas ACEC expansion (Amendment Two) and Big Morongo Canyon ACEC expansion (Amendment One). In accordance with title 43 of the Code of Federal Regulations part 1610.5–2, citizens with standing may protest the proposed decisions.

DATES: Protests must be submitted in writing no later than 30-days from the date of this notice to the following address: Area Manager, Bureau of Land Management, Palm Springs-South Coast Resource Area, 690 Garnet Avenue, North Palm Springs, CA 92258–2000.

FOR ADDITIONAL INFORMATION CONTACT: Elena Misquez, Bureau of Land Management, Palm Springs-South Coast Resource Area, 690 Garnet Avenue, North Palm Springs, CA 92258–2000; telephone (619) 251–4826.

SUPPLEMENTARY INFORMATION: Nothing in this Proposed Plan shall have the effect of terminating any validly issued rights-of-way or customary operation, maintenance, repair, and replacement activities in such rights-of-ways within the ACEC boundaries in accordance with Sections 509(a) and 701(a) of the Federal Land Policy Management Act of 1976.

Dated: July 26, 1996.

Julia Dougan,

Area Manager.

[FR Doc. 96–19737 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–40–P

[CA–930–06–1020–00, 4000/1790]

Reopening of Scoping Period for an Environmental Impact Statement and Land Use Plan Amendment Involving the Development of Standards for Rangeland Health and Guidelines for Grazing Management on Public Lands in California and Northwestern Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in California is reopening the scoping period for a statewide Environmental Impact Statement (EIS) and land use plan amendment involving the development of Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100). The EIS is being prepared in compliance with section 102(2)(C) of the National Environmental Policy Act (NEPA). This notice invites public input on the development of the Standards and Guidelines, issues to be addressed, planning criteria, and the alternatives to be considered in the EIS.

DATES: Comments concerning the scope of the EIS and Plan Amendment must be received by September 4, 1996.

ADDRESSES: Any scoping comments or requests to be placed on the mailing list should be sent to Rangeland Health Coordinator, Bureau of Land Management, 2135 Butano Drive, Sacramento, CA 95825–0451.

FOR FURTHER INFORMATION CONTACT: Jim Morrison at (916) 979–2830.

SUPPLEMENTARY INFORMATION: The initial scoping period closed April 24, 1996. BLM is reopening the scoping period to provide the public an opportunity to focus on the efforts of the Resource Advisory Councils (RACs) or to submit additional comments on the scope of the EIS.

As indicated in the March 25, 1996 Notice of Intent, BLM's new grazing administration regulations (43 CFR Part 4100), which became effective August 21, 1995, provide for the development of state Standards for Rangeland Health and Guidelines for Grazing Management. A national programmatic EIS was completed by BLM in 1993 in support of the new regulations. This EIS for California and northwestern Nevada will be tiered to the national EIS, and will incorporate applicable information from previously prepared BLM grazing EISs.

The four RACs in California have been working with BLM in developing proposed S&Gs and alternatives. The proposed S&Gs and alternatives must address the following elements: (1) Watershed function; (2) nutrient cycling and energy flow; (3) water quality; (4) habitat for threatened and endangered species and proposed Candidate 1 or 2, or special status species; and (5) habitat quality for native plant and animal populations and communities.

BLM has preliminarily identified, with RACs involvement, three alternatives for analysis in the EIS: (1) RAC S&G Proposals: This alternative would include the recommended S&Gs of each RAC for their respective area in Bakersfield district and northern California. The California Desert District will operate under existing land use plan direction or the fall-back S&Gs, whichever is the more restrictive, until S&Gs can be developed in conjunction with bioregional plans for the West Mojave, Northern and Eastern Colorado, and Northern and Eastern Mojave Deserts, or other specific plan amendments. (2) No Action: This alternative would incorporate the fall-back S&Gs directly from the regulations; (3) Consistency: This alternative would draw from the individual RAC recommended S&Gs to formulate a consolidated set of S&Gs. It may alter some RAC recommendations or add additional S&Gs to improve consistency among the individual RACs and neighboring states of Arizona, Nevada, and Oregon. In addition to analyzing the three alternative described above, the EIS will describe existing land use plan direction.

The public is invited to comment on these alternatives, suggest other possible alternatives to be addressed in the EIS, or to provide additional scoping comments.

Dated: July 26, 1996.

Ed Hastey,

State Director.

[FR Doc. 96–19740 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–40–M

[AZ–040–1430–06–00; AZA 28238 and AZA 29330]

Notice of Realty Action; Proposed Sale of Public Lands; Arizona

AGENCY: Bureau of Land Management, Stafford District, Arizona.

ACTION: Extension of notice.

SUMMARY: The following lands the Cochise County, Arizona have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713) at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 23 S., R. 24 E., (AZA 28238)
Sec. 8, lot 6.

The area described contains 0.1 acre.

T. 19 S., R. 25 E., (AZA 29330)
Sec. 17, lots 1, 3, 9 to 15 inclusive, 17, 18, NW¼SW¼;
Sec. 18, N½SE¼NE¼;
Sec. 20, lots 2 to 6 inclusive, NE¼NW¼, W½W½.

The area described contains 624.25 acres.

SUPPLEMENTARY INFORMATION: On page 61572 of Vol. 60, No. 230 of the Federal Register published November 30, 1995, the Safford District published a notice for these public land sales. This notice segregated the subject public lands from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of the notice in the Federal Register. Upon publication of this notice in the Federal Register, that segregation will be extended pending disposition of the action of for another 270 day period, whichever occurs first.

FOR FURTHER INFORMATION CONTACT:

Tom Terry, Non-Renewable Resource Advisor, at BLM, Safford District Office, 711 14th Avenue, Stafford, Arizona 85546; telephone number (520) 428–4040.

Dated: July 26, 1996.

William T. Civish,

District Manager.

[FR Doc. 96–19741 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments on information collection regarding National Park Service mining regulations.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS) intention to request that the Office of Management and Budget (OMB) extend and revise the currently approved information collection budget for the NPS's minerals management regulatory program inside park boundaries. Currently, the NPS has regulations at 36 CFR Part 9 to control mineral development activities in park units on mining claims located under the 1872 Mining Law and non-Federal oil and gas rights.

DATES: Comments on this notice must be received by October 4, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Carol McCoy, Chief, Policy and Regulations Branch, Geologic Resources Division, National Park Service, P.O.Box 25287, Lakewood, Colorado 80225, (303) 969–2096.

SUPPLEMENTARY INFORMATION:

Title: NPS/Minerals Management Program/Mining Claims and Non-Federal Oil and Gas Rights

OMB Number: 1024–0064

Expiration Date of Approval: October 31, 1996

Type of Request: Extension and revision of a currently approved information collection

Abstract: While surprising, outstanding mineral rights exist in many units of the National Park System. In most cases, these rights predate the establishment of the units. Currently, over 12,000 mining claims, which were located under the 1872 Mining Law, exist in a total of 20 park units. The majority of these claims are located in Mojave National Preserve that was added to the National Park System through the California Desert Protection Act of 1994 (16 U.S.C. 410aaa). With respect to non-Federal oil and gas rights in park units, 580 non-Federal oil and gas operations currently exist in 13 park units. The potential for additional non-Federal oil and gas operations in additional units is tied to market forces and the quality and quantity of oil and gas deposits in park boundaries that coincide with the presence of private rights.

The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR Part 9: Subpart A for mining claims and Subpart B for non-Federal oil and gas rights. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS did so under Congressional authority granted under the Mining in the Parks Act of 1976 (16 U.S.C. 1901 *et seq.*) and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916 as amended (16 U.S.C. 1 *et seq.*) and individual park enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development within park boundaries.

The heart of the regulations is the approved ''plan of operations'' requirement. Essentially, a plan of operations is a prospective operator's blueprint setting forth all intended activities from access to extraction to reclamation related to developing a particular mineral right in a given park unit. The information required in a plan of operations is set forth in NPS regulations. Before an operator can commence development activities in a park unit, the NPS must approve an operator's proposed plan of operations and the operator must secure a bond in an amount sufficient to cover the cost of reclamation to the Federal Government in the event the operator defaults on his/her obligations.

Usually, an approved plan of operations covers the life of the mine or well, from development and production to reclamation. Under NPS regulations, such plans may be revised. No set form is required for a plan of operations. Each plan is tailored to the intended activities of an operator and the particulars of the environment, e.g., hardwood forest or desert, presence of endangered species or cultural resources, location and extent of water resources including wetlands.

Because of the variability among plans of operations, the duration of such plans, and the fact that prospective operators initiate the plan of operations review process, assessing the annual

paperwork burden of complying with the NPS's mining regulations is difficult. Below is the NPS's best estimate, pro-rated on an annual basis, as to the number of respondents and number of hours involved in complying with the Service's regulations governing mining claims and non-Federal oil and gas rights.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 80 hours per response.

Respondents: Publicly held companies, private companies and individuals.

Estimate of Number of Respondents: On an annual basis, the NPS estimates that it receives a range of between 20 to 35 plans of operations under its regulations: 5 to 15 plans of operations for mining claims and 15 to 20 plans of operations for non-Federal oil and gas rights.

Estimated Number of Responses per Respondent: One. To conduct mineral development operations in park units, a prospective operator must submit a proposed plan of operations to the NPS for review and approval. Once approved, such a plan covers the life of the operation. If the plan is for geophysical work associated with private oil and gas rights it may only cover a period of a few months. In contrast, a plan for a production oil and gas well or a hardrock mine may cover a period of 10 or more years.

Estimated Total Annual Burden: 1760 to 2520 hours. The NPS estimates that on an annual basis, it will take operators a range of 440 to 1760 hours to prepare complete plans of operations for review and approval under the Service's mining claim regulations at 36 CFR Part 9, Subpart A. In the case of non-Federal oil and gas rights, the NPS estimates it will take all operators a range of 1320 to 1760 hours to prepare complete plans of operations for review and approval under the Service's non-Federal oil and gas regulations at 36 CFR Part 9, Subpart B.

Please send comments regarding the accuracy of the burden estimates, ways to improve them and any other related comments on the collection of information under the NPS's mining regulations at 36 CFR Part 9 to the noted addressee above. The NPS also solicits information and estimates on the typical costs that prospective operators incur in preparing complete plans of operations under both the Service's mining claim and non-Federal oil and gas rights. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 26, 1996.

David B. Shaver,

Chief, Geologic Resources Division.

[FR Doc. 96–19765 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–70–P

Draft General Management Plan/Draft Environmental Impact Statement, Cape Cod National Seashore, Massachusetts

AGENCY: National Park Service, Interior.

ACTION: Notice of availability and public meetings of the Draft Environmental Impact Statement for the Draft General Management Plan.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the availability of a draft environmental impact statement (DEIS) for the Draft General Management Plan (DGMP) for Cape Cod National Seashore, Barnstable County, Massachusetts. In accordance with the National Environmental Policy Act of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan. This notice also announces dates of the public review period and public forums for the purpose of receiving public comments on the DEIS.

This Draft Environmental Impact Statement for the Draft General Management Plan presents a proposal and two alternative strategies for guiding future management of Cape Cod National Seashore and balancing resource protection and public use. The major subject areas are natural and cultural resources, public use, nonfederal lands, and park management and operations.

Alternative 1 is a continuation of current management practices, often referred to as a no action or minimum requirements alternative in terms of lower cost improvements and minimum protection and safety actions. Alternative 2, the proposed action, emphasizes a collaborative stewardship approach with local communities to include cooperative efforts with other governmental entities, organizations, local residents, and users to address resource management and use concerns. Alternative 3 builds on the initiatives of the proposed action, proposing the national seashore take a more active role in directing efforts to protect resources through more structured partnerships. The DEIS evaluates the potential environmental impacts associated with the strategies comprising the three alternatives.

DATES: The DGMP and DEIS will be available for public review on August 19, 1996. Comments should be received no later than October 31, 1996. Public meetings regarding the DEIS will be held in both August and October, 1996. Two public forums are now scheduled on August 27, 1996 and August 29, 1996 at the locations listed below. Additional public meeting dates will be arranged for October, 1996 and noticed separately in the Federal Register.

MEETINGS: The public forums will be held at the following National Seashore locations:

Provincelands Visitor Center, 111 Race Point Road, Provincetown, MA, Tuesday, August 27, 1996, 5:30–8:00 p.m.

Salt Pond Visitor Center, 50 Nauset Road (@ Route 6), Eastham, MA, Thursday, August 29, 1996, 6:30–9 p.m.

SUPPLEMENTARY INFORMATION: Public reading copies of the DEIS will be available for review at the following locations: National Seashore Headquarters, 99 Marconi Site Road, Wellfleet, MA 02667. Town halls and libraries in Chatham, Eastham, Orleans, Provincetown, Truro, and Wellfleet.

A limited number of copies of the DEIS are available from: Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, (508) 349–3785. Deputy Field Director, National Park Service, New England System Support Office, 15 State Street, Boston, MA 02109, (617) 223–5048.

Comments on the DGMP and the DEIS shall be submitted to: Ms. Maria Burks, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, (508) 349–3785.

Dated: July 29, 1996.

Maria Burks,

Superintendent, Cape Cod National Seashore.

[FR Doc. 96–19764 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Tuesday, September 17, 1996, at 9:00 a.m.

ADDRESSES: The meeting will be at the Mid-Pacific Region Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Trinity River Task Force Secretary, Bureau of Reclamation, MP–153, 2800 Cottage Way, Sacramento CA 95825. Telephone: (916) 979–2482 or TDD (916) 979–2310.

SUPPLEMENTARY INFORMATION: Task Force members will be briefed on a summary of the program, action plan revisions, and progress on the Flow Study Environmental Impact Statement.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force in person or by mail before, during, or after the meeting. To the extent that time permits, the Task Force Chairman may allow public presentation of oral statements at the meeting.

July 19, 1996.

Kirk C. Rodgers,

Date Deputy Regional Director.

[FR Doc. 96–19871 Filed 8–2–96; 8:45 am]

BILLING CODE 4310–09–P

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that two proposed Consent Decrees in *United States* v. *J & M Land Company and Jersey Central Power & Light Company, Inc.*, Civ. Action No. 96–3457 were lodged in the United States District Court for the District of New Jersey on July 15, 1996. The proposed Consent Decrees resolve the United States' claims against J & M Land Company (''J&M'') and Jersey Central Power & Light Company, Inc. (''JCPLC''), under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9607(a), concerning response actions at the Imperial Oil/Champion Chemical Superfund Site located in the Township of Marlboro, Monmouth County, New Jersey (the ''Site'').

Under the terms of the settlement with J&M, J&M has agreed to pay $30,000 to the Superfund, to grant EPA and the State access to its property for response actions, and to put into place institutional controls as directed by EPA. In return, the United States will release J&M from liability for past and future response costs at the Site. Under the terms of the settlement with JCPLC, JCPLC has agreed to pay $67,500 to the Superfund, to grant EPA and the State access to its property for response actions, and to put into place institutional controls as directed by EPA. In return, the United States will release JCPLC from liability for past and future response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *J & M Land Company and Jersey Central Power & Light Company, Inc.*, Civ. Action No. 96–3457, DOJ #90–11–2–946A.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, District of New Jersey, 402 East State Street, Trenton, New Jersey 08608; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies, please enclose a check in the amount of $8.50 for the J&M Consent Decree and $7.00 for the JCPLC Consent Decree (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–19733 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Joint Stipulation of Settlement Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 6973(d), notice is hereby given that on July 25, 1996, a proposed modification of consent decree in *United States* v. *Dale Valentine, et al.*, Civil Action No. 93CV1005J, was lodged with the United States District Court for the District of Wyoming.

The complaint filed by the United States on February 19, 1993, seeks injunctive relief and civil penalties under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973. The complaint alleges that an abandoned oil reprocessing facility near Glenrock, Wyoming, commonly known as Powder River Crude Processors or Big Muddy Oil Processors (the ''Site''), may present an imminent and substantial endangerment to human health or the environment. The complaint seeks injunctive relief and civil penalties for violations of administrative orders issued by EPA under Section 7003 of RCRA for a cleanup of the Site.

Under a Consent Decree entered by the U.S. District Court for the District of Wyoming on June 21, 1994, five defendants (Texaco Refining and Marketing, Inc., Conoco Pipe Line Company, True Oil Company, Eighty-Eight Oil Company, and Phillips Petroleum Company) agreed to pay a civil penalty of $300,000 for their past violations of the administrative orders and agreed to perform a clean up of the Site, designed to address conditions at the Site which may present an imminent and substantial endangerment to health or the environment. The proposed modification of this Consent Decree provides that one of the performance standard for soils more than three feet below the ground surface will be changed from a standard of less than 100 ppm Total Petroleum Hydrocarbons to a standard of less than 3.3 ppm benzo(a)pyrene.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification of settlement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Dale Valentine, et al.*, DOJ Ref. #90–7–1–692. In accordance with Section 7003(d) of RCRA, commenters can also request a public meeting in the affected area.

The proposed modification may be examined at the Office of the United States Attorney for the District of Wyoming, 3rd Floor, Federal Building, 111 South Wolcott, Casper, Wyoming 82601; the United States Environmental Protection Agency, Region 8, 999 18th Street—Suite 500, Denver, Colo. 80202–2466; and at the Consent Decree Library, 1120 ''G'' Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed modification

may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–19734 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 27, 1996, and published in the Federal Register on April 4, 1996, (61 FR 15121), Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Metcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603)	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-Intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Radian Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19818 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated April 30, 1996, and published in the Federal Register on May 6, 1996, (61 FR 20275), Research Biochemicals, Limited Partnership, Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Etorphine (except HCl) (9056)	I
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Diphenoxylate (9170)	II
Metazocine (9240)	II
Methadone (9250)	II
Fentanyl (9801)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals, Limited Partnership to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19819 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 6, 1996, and published in the Federal Register on May 15, 1996, (61 FR 24515), Research Biochemicals, Limited Partnership, One Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Dimethyltryptamine (7435)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Heroin (9200)	I
Normorphine (9313)	I
Phencyclidine (7471)	II

Drug	Schedule
Benzoylecgonine (9180)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19820 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; juveniles taken into custody reporting program.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: Revision of a currently approved collection.

(2) The title of the form/collection: Juveniles Taken into Custody Reporting Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. To enumerate and describe annual movements of juvenile offenders through state correctional systems. It will be used by the Department of Justice for planning and policy affecting states. Providers of data are personnel in state departments of corrections and juvenile services.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents with an average 12 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 628 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 30, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–19784 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–18–M

National Institute of Justice

[OJP No.1094]

[ZRIN 1121-ZA44]

National Institute of Justice Solicitation for Law Enforcement Courts and Corrections Technology Development, Implementation and Evaluation

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the pending distribution on August 1, 1996 of the National Institute of Justice ''Solicitation for Law Enforcement, Courts and Corrections Technology Development, Implementation and Evaluation.''

ADDRESSES: National Institute of Justice, Office of Science and Technology, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadlines for receipt of proposals are close of business on September 15, 1996, and November 15, 1996.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Violent Crime Control and Law Enforcement Act of 1994 (''the Crime Act''), as amended, Pub. L. 103–322, 108 Stat. 1796, (1994), codified at 42 U.S.C. 13701 *et. seq.*, and the Fiscal Year 1996 Omnibus Appropriations Act, Public Law 104–134, 110 Stat. 1321, (1996).

Background

The National Institute of Justice (NIJ), the research and development agency of the U.S. Department of Justice, wishes to notify interested organizations that on August 1, 1996 an NIJ Solicitation will be released to seek proposals for the development, testing, evaluation, adoption and implementation of new and innovative technologies and techniques to support and enhance law enforcement, courts and corrections

operations, particularly at the State and local level.

The solicitation seeks not only proposals to develop, test and implement criminal justice technologies, but also proposals to evaluate the organizational and behavioral impacts of the use of specific technologies in the criminal justice system. Successful proposals will receive grant funding.

Proposals are expected to describe individual or public-private partnership efforts to support and enhance or evaluate technologies for application in the criminal justice system. NIJ expects to have $10 million to $15 million available to fund awards made under this solicitation. There will be two proposal submittal deadline dates: September 15, 1996, and November 1, 1996. However, award decisions for the proposals submitted for the November 1 deadline will be based on remaining funds available.

The ''Solicitation for Law Enforcement, Courts and Corrections Technology Development, Implementation and Evaluation'' is expected to be released by NIJ on August 1, 1996. Copies of the solicitation will not be made available early, therefore interested parties should not seek to obtain copies of the document prior to the release date. NIJ will place a similar announcement in this publication upon release of the solicitation.

Document Availability

Beginning August 1, 1996, interested organizations may obtain a copy of this solicitation by calling the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of NIJ's ''Solicitation for Law Enforcement, Courts and Corrections Technology Development, Implementation and Evaluation.'' (refer to document number SL000168).

Also beginning August 1, 1996, the solicitation will be available electronically through three sources on the Internet:

(1) The Justice Technology Information Network (JUSTNET) home page on the World Wide Web at http://www.nlectc.org

(2) The NCJRS Justice Information Center home page on the World Wide Web at http://www.ncjrs.org

(3) Through the NCJRS Bulletin Board, telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71.

Those without Internet access can dial the NCJRS Bulletin Board via modem: dial (301) 738–8895. Set modem at 9600 baud, 8N1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 96–19805 Filed 8–2–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Experience Rating Report; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the ETA 204, Experience Rating Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 4, 1996.

The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including application of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Michael Miller, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Ave, N.W., Washington, DC, 20210; telephone number (202) 219–5309; fax (202) 219–8506 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The data submitted annually on the ETA 204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance program on a State by State basis and to measure the variations in assigned contribution rates which result from different experience rating systems. Used in conjunction with other data, the ETA 204 assists in determining the effects of certain factors (e.g., seasonably, stabilization, expansion, or contraction in employment, etc.) on the employment experience of various groups of employers. The data also provide an early signal for potential solvency problems, are useful in analyzing factors which give rise to these potential problems, and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. Further, the data are the basis for determining the Experience Rating Index; the index allows for the evaluation of the extent to which UI benefits in States are effectively charged, noncharged, and ineffectively charged.

II. Current Actions

The change being proposed in this request for extension will alter Section C of the report, All Taxable Subject Accounts, Selected Data by Experience Factor, standardizing it with a uniform format for all States. The change will require that States report the distribution of their employers according to fixed, standardized, experience factor intervals. Presently, States are allowed wide discretion in setting these intervals when submitting Section C. Informal queries of State personnel have indicated that, since Section C is presently tabulated electronically, the programming required to conform to standardized experience factor intervals would consist of modifications to software already in use. This change will allow

States to submit Section C electronically (Sections A and B are currently reported electronically), enable efficient manipulation of the data, and improve the accuracy of the Experience Rating Index.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Experience Rating Report.

OMB Number: 1205–0164.

Affected Public: State Governments.

Agency Number: ETA 204.

Frequency: Annually.

Total Response: 53.

Average Time per Response: 15 min.

Estimated Total Burden Hours: 14.

Total Burden Cost (capital/startup): It is estimated that startup programming will take 40 hours per State or 2,120 hours or $41,870.

Total Burden Cost (operating/maintaining): $277.

Comments submitted to response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 30, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service, Employment and Training Administration.

[FR Doc. 96–19793 Filed 8–2–96; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of Meeting.

SUMMARY: Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656 to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet August 28 and 29, 1996, at The Annapolis Marriott Waterfront Hotel on 80 Compromise Street, Annapolis, Maryland.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234, extension 141.

SUPPLEMENTARY INFORMATION: The Maritime Advisory Committee on Occupational Safety and Health meeting will be held August 28 from 9:00 to 5:00, and August 29 from 9:00 to 5:00 at The Annapolis Marriott Waterfront Hotel on 80 Compromise Street, Annapolis, Maryland 21401, telephone (410–268–7555). At this meeting, the Committee will continue its discussions on maritime enforcement, standards, and outreach initiatives related to the maritime industries. An extensive discussion of safety and health programs is planned.

All interested persons are invited to attend the public meetings of MACOSH, including this one at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than August 14, 1996, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, D.C. this 30th day of July 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–19794 Filed 8–2–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–089)]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: August 27, 1996, 8:30 a.m. to 5:00 p.m.; August 28, 1996, 8:30 a.m. to 5:00 p.m.; and August 29, 1996, 8:00 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268, Room 2120, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. P. Douglas Arbuckle, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–4072.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—National Perspective: NASA Aeronautics Update
—NASA Human Factors Update
Trilateral Committee Human Factors Program Coordination
—FAA Human Factors Coordination
—Human Factors Research
—Airframe Systems Applications
—Airspace Operations Systems Applications

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: July 29, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–19753 Filed 8–2–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–090]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Monday, September 9, 1996, 8:30 a.m. to 5:00 p.m., and Tuesday, September 10, 1996, 8:30 a.m. to 4:30 p.m.

ADDRESS: NASA Headquarters, Conference Room MIC 6–A/B West, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—State of Space Science
—Fundamental Questions in Astrophysics
—Current Programs and Mission Opportunities
—Technology Working Group
—Strategic Planning
—Public Relations
—Other Issues Facing the Subcommittee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 29, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–19752 Filed 8–2–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Systems of Records

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of revisions to three systems and the establishment of five new systems. These revisions to current systems are being made to include altered and new routine uses, and to more accurately reflect the records contained therein. They are reprinted in their entirety. Five new systems have been established to more adequately reflect additional Foundation records covered by the Privacy Act requirements.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems of records to the Director of OMB, the Chairman, Committee on Governmental Affairs, and the Chairman, Committee on Government Reform and Oversight.

EFFECTIVE DATE: Sections 552a(e) (4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect thirty days from date of this publication (September 4, 1996), unless modified by a subsequent notice to incorporate comments received from the public.

COMMENTS: Written comments should be submitted to Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, Room 485, Arlington, VA 22230.

Dated: July 31, 1996.

Herman G. Fleming,

Privacy Act Officer.

1. NSF Privacy Act System Being Revised. The following three systems of records have been altered to better describe the records contained therein and to include altered and additional routine uses. The records contained in NSF–37, ''U.S. Antarctic Research Program Field Participants,'' are covered by the routine uses contained in NSF–36, ''Personnel Tracking System, (Antarctic).'' System–37 is hereby discontinued.

NSF–19

SYSTEM NAME:

Medical Examination Records for Service in the Polar Regions.

SYSTEM LOCATION:

National Science Foundation Health Services Office, 4201 Wilson Boulevard, Room 265–S, Arlington, VA 22230

Antarctic Support Associates (ASA) and subcontractors, 61 Inverness Drive East, Suite 300, Englewood, CO 80112

Force Medical Officer, Naval Support Force Antarctica (NSFA), Port Hueneme, CA and McMurdo Station, Antarctica

Polar Ice Coring Office (PICO), University of Nebraska, Lincoln, Nebraska

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers all individuals, including NSF employees, employees of the NSF civilian support contractors, other federal civilian employees, military personnel, and federal uniformed service employees (USPHS, NOAA, USCG), who have completed applications for positions requiring Antarctic deployment (all stations) and Arctic deployment, Greenland only; and individuals who have requested medical waivers.

Note: Records concerning current and former federal employees are also covered by OPM/GOVT–10.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents relating to the individual's medical screening process, including the individual's medical history; physical, dental, and psychological examination results; and requests for medical waivers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401 *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) Staff of the Naval Support Force Antarctica or its Executive Agent involved in review of medical documentation to determine physical qualifications for Antarctica deployment;

(2) NSF medical contractors and other medical professionals involved in reviewing medical documentation, on behalf of the NSF, to determine physical qualifications for deployment and waivers of medical conditions;

(3) Office of Polar Programs contractors and their subcontractors who are involved in receipt, medical review and administrative processing of all medical records for individuals wishing to deploy to Antarctica or Greenland under the auspices of the U.S. Government.

(4) A panel of medical experts convened for the purpose of looking at medical issues in the polar regions and advising the NSF on improvements to the system.

(5) Federal, state, or local agencies, or foreign governments when disclosure is necessary to obtain records in connection with an investigation by the NSF;

(6) Academic institutions and other employing organizations when the information is relevant to a decision made by the NSF in connection with a medical waiver request;

(7) The personal physician or examining physician of the individual about whom the records pertain when disclosure is necessary to obtain additional information necessary to make a determination on initial qualification or medical waiver;

(8) Family members when the individual seeking deployment is unreachable and additional information is needed in order to make a determination on a waiver request;

(9) Principal investigators when field team members have requested medical waivers, academic institutions, and other employing organizations when the information concerns final determinations on waiver requests; and

(10) The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper format. Records are kept in locked file cabinets or areas with limited access.

RETRIEVABILITY:

The records are retrieved by the name of the individual or by the individual's social security number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. They are kept in locked file cabinets or locations with limited access.

RETENTION AND DISPOSAL:

Except for those records covered by OMP/GOVT—10, records are destroyed approximately eight years after the individual's last Antarctic or Arctic deployment.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Polar Research Support Section, Office of Polar Programs. Point-of-contact: Safety and Health Officer, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, write to the system manager at the above address.

RECORD ACCESS PROCEDURES:

See notification procedure.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should write to the system manager at the above address.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from individuals who intend to deploy to Antarctica or to Greenland and from personal physicians and medical examiners of the deploying individuals; from NSF staff and NSF records; and from non-NSF persons and records, to the extent necessary to carry out the duties described in the NSF Medical Examination procedures. All individuals desiring to deploy to Antarctica or Greenland under the auspices of the National Science Foundation must provide the requested information.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–36

SYSTEM NAME:

Personnel Tracking System (Antarctic).

SYSTEM LOCATION:

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking entry to Antarctica under the auspices of the United States Antarctic Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include documents related to the individual's deployment and/or redeployment to the Antarctic, including but not limited to home and business addresses, telephone numbers, passport and social security numbers, clothing sizes, emergency contact information, and medical and dental information. Records also include logistical and administrative information concerning Antarctic deployment and redeployment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et. seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) Office of Polar Programs civilian contractors and their subcontractors in connection with their responsibilities for coordinating the administrative processing and tracking of persons deploying to Antarctica. These responsibilities include proper outfitting for deployment, facilitating medical clearances, coordinating cargo handling and tracking, and maintaining emergency contacts:

(2) Naval Support Force Antarctica (NSFA) and Air National Guard medical personnel to track medical clearances;

(3) Family members, or other persons designated by the deploying or deployed individual, in instances of emergency;

(4) Other Federal agencies providing transport, search and rescue, and other logistical assistance to and from Antarctica. This will include manifest information for captains or pilots transporting U.S. Citizens to and from Antarctica (such as names, Social Security numbers, and other deployment information);

(5) Other Federal agencies when the records are relevant to an agency decision with regard to disciplinary or other administrative actions concerning an employee;

(6) Academic or other organizations when the records are relevant to an organizational decision with regard to disciplinary or other administrative action concerning an employee;

(7) The Department of Justice or the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests;

(8) The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest; (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

(9) Federal, state, or local agencies, or foreign governments, when disclosure is necessary to obtain records in connection with an investigation by the NSF; and

(10) Representatives of the New Zealand government or other foreign governments when deployment involves travel through, or use of, New Zealand or other foreign government facilities, and the information is necessary to ensure safe and efficient deployment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in an electronic database.

RETRIEVABILITY:

The records are retrieved by name, social security number, or by other unique identifiers.

SAFEGUARDS:

Access to records are limited to those persons with a need to know. The records are maintained in a database that is password protected.

RETENTION AND DISPOSAL:

The records are destroyed approximately eight years after the individual's last Antarctica deployment.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Polar Research Support Section, Office of Polar Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains records pertaining to the requesting individual, contact the NSF Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES.

Information in these records is obtained from individuals seeking deployment to Antarctica, NSF employees, contractors, and uniformed service employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

NSF–48

SYSTEM NAME:

Telephone Call Detail Program Records

SYSTEM LOCATION:

Division of Information Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees (permanent, temporary, part or full time) and all contractors, sub-contractors, consultants, volunteers and other persons who use the National Science Foundation telephone system or who make telephone calls charged to NSF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of NSF telephones to place both local and long distance calls; records relating to NSF calling cards and ''800'' numbers; records indicating assignment of telephone extension numbers to employees and other covered individuals; and records relating to location of telephone extensions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1870: 44 U.S.C. 3101.

PURPOSE:

The purpose of this system of records is to aid NSF in planning its future telecommunications needs, and to control agency telephone costs by ensuring that NSF telephones and calling cards are used for authorized purposes only and by determining individual accountability for telephone, calling cards and ''800'' number usage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to:

1. Members of Congress or a Congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. Federal Government contractors, grantees, consultants, volunteers or other persons who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain the records in accordance with the requirements of the Privacy Act.

3. Federal agencies that have requested information relevant to a decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit by the requesting agency.

4. Appropriate Federal, State, local or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing a statue, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

5. Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) NSF or any of its components, (b) an NSF employee in his/her official capacity, (c) as NSF employee in his/her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where NSF determines that the litigation is likely to affect the Agency.

6. Appropriate Federal or State Court, or other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) NSF or any of its components, (b) an NSF employee in his/her official capacity, (c) an NSF employee in his/her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where NSF determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to requests for discovery.

7. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

8. Telecommunications company and/or the General Services Administration providing telecommunications support to verify billing or permit servicing the account.

9. Current and former NSF employees, contractors, subcontractors, consultants, volunteers, and other persons to determine their individual responsibility for telephone calls.

DISCLOSURE TO CONSUMER REPORTING AGENCIES.

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to a consumer reporting agency as defined in the Fair Credit system to a consumer reporting agency as defined

in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained manually as hard copy in file folders, on diskettes and/or magnetic tapes.

RETRIEVABILITY:

Records are retrieved by originating and destination telephone numbers, responsible individuals, call date, call time, call duration, destination city and state, and calling charge.

SAFEGUARDS:

Access to these records is limited to NSF employees, contractors, subcontractors, and other persons who are performing services on behalf of the NASF and have an official need for the records in the performance of their duties. Hard copy records are maintained in rooms that are locked during non-business hours. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the National Archives and Records Administration, General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Information Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURES:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613. The system manager may require additional information to verify the ''need to know'' and identity of the requester.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

NSF employees, contractors and other persons who are performing services on behalf of the agency; telephone assignment and locator records; GSA and other phone companies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

2. Five New Privacy Act Systems of Records Being Established by NSF. NSF System of Records NSF–54, ''Reviewer/Fellowship and Other Awards File and Associated Records,'' is being established to incorporate all records maintained in administering the review of NSF Fellowship applications submitted to the Foundation. Four additional systems are also being established.

The records are used to administer programs in the Polar Regions: (1) NSF–62, ''Antarctica Service Medals,'' (2) NSF–63, ''Diving Safety Records (Polar Regions),'' (3) NSF–64, ''Radiation Safety Records (Polar Regions),'' and (4) NSF–65, ''Accident and Injury Reports (Antarctic).''

NSF–54

SYSTEM NAME:

Reviewer/Fellowship and Other Awards File and Associated Records.

SYSTEM LOCATION:

Records are decentralized and maintained by individual NSF offices and programs. Some Fellowship reviewer records are maintained by contract, or currently: Oak Ridge Associated Universities, PO Box 3010, Oak Ridge, Tennessee 37831–2010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers that evaluate Foundation Fellowship or other applications or nominations, either by submitting comments through the mail or serving on review panels.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Reviewer/Fellowship and Other Awards File and Associated Records'' system is a subsystem of the Fellowship and Other Awards system (NSF–12), and contains the reviewer's name, nominator or applicant's name and identifying number, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1869, 1870, 1880, 1881a and 20 U.S.C. 3915.

PURPOSE(S):

This system enables NSF program offices and contractors to reference specific reviewers and maintain appropriate files for use in evaluating applications for Fellowships, awards and other support. NSF employees and contractors may access the system to help select reviewers as part of the merit review process and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information in this system may be made to:

1. Federal government agencies needing names of potential reviewers and specialists in particular fields.

2. Contractors, grantees, volunteers and other individuals who perform a service to or perform on or under a contract, grant, cooperative agreement, or other arrangement for the Federal government, as necessary to carry out their duties.

3. Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer or in paper files. Certain Fellowship records are maintained on computer by the contractor.

RETRIEVABILITY:

Information can be accessed from the computer database by individual reviewer names or personal identifier. An individual's name may be used to manually access material in alphabetized paper files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those persons with a need-to-know in order to perform their duties may access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewers, public documents such as *American Men and Women in Science* and recommendations from peers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–60

SYSTEM NAME:

Antarctica Service Medals.

SYSTEM LOCATION:

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755–S, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian science and support personnel, including NSF employees and special participants, who were members of a U.S. Government sponsored expedition to Antarctica.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include names, addresses, social security numbers, organization codes, length of deployment to the Antarctic, zip codes, station codes, number of winter-overs and status of award. The records are kept for the purpose of awarding Antarctica Service Medals to those who meet the eligibility requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) Federal agencies; academic institutions, contracting organizations whose employees are participants in the USAP program to provide information concerning status and eligibility requirements;

(2) Contractors and their employees performing duties on behalf of NSF; Federal, state or local agencies, or foreign governments, when disclosure is necessary to obtain records in connection with an investigation of the Office of Polar Programs;

(3) The Department of Justice or the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests; and

(4) The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computerized database and stored on a computer hard drive.

RETRIEVABILITY:

The records are retrieved from the database by the name of the subject or by the individual's social security number.

SAFEGUARDS:

Access to records is limited to those persons with a need to know. Records are kept in a locked building, with security card access.

RETENTION AND DISPOSAL:

The files are kept indefinitely, pending adoption of a record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Antarctic Sciences Section, Office of Polar Programs 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, contact the NSF Privacy Act Officer, in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from personnel Tracking System reports generated by the Program's primary civilian support contractor, and other federal agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–61

SYSTEM NAME:

Diving Safety Records (Polar Regions).

SYSTEM LOCATION:

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755–S, Arlington, VA 22230

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted proposals to perform scientific diving in the polar regions, when support is provided by the Office of Polar Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents and correspondence related to the individual's request to do scientific diving in the polar regions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) The Diving Safety Officer (DSO) of the institution where the researcher originated;

(2) The NSF Diving Safety Officer when the officer requires such information in the conduct of his duties for the Office of Polar Programs (OPP);

(3) The University of California, San Diego, where the divers go for certification and training;

(4) OPP's civilian support contractors and their subcontractors in connection with their responsibilities for safe diving procedures;

(5) The Principal Investigator responsible for individual divers;

(6) The members of the United States Antarctic Program (USAP) Diving Control Board when the members require such information in the conduct of their duties;

(7) Academic institutions or other organizations involved in compliance with OPP and United States policies on scientific diving;

(8) Other Federal agencies when the records are relevant to an agency decision with regard to disciplinary or other administrative action concerning their employee(s);

(9) Academic or other organizations when the records are relevant to an organizational decision with regard to disciplinary or other administrative action concerning their employee(s)

(10) The Department of Justice or the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests;

(11) The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

(12) Federal, state or local agencies, or foreign governments, when disclosure is necessary to obtain records in connection with an investigation by the NSF.

(13) Other Federal agencies such as Department of Defense or U.S. Secret Service whose facilities and assistance may be sought in training individuals to dive in the polar regions, or who are involved in enforcing or implementing USAP and United States policies on scientific diving.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Some of the records are maintained in paper format in file folders and are kept in file cabinets; other records are kept electronically.

RETRIEVABILITY:

The records are retrieved by the last name of the individuals diver or by a unique control number assigned to each Principal Investigator's scientific project.

SAFEGUARDS:

Access to records are limited to those persons with a need to know. Records are kept in locked buildings, with security card access.

RETENTION AND DISPOSAL:

The records are kept indefinitely, pending adoption of a record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Polar Research Support Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Point of contact: Safety and Health Officer, Office of Polar Programs.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains records pertaining to the requesting individual, contact the NSF Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from the proposal for divers, NSF staff and NSF records, from contractors performing duties for the USAP; from other federal agencies; and from institution diving safety officers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–62

SYSTEM NAME:

Radiation Safety Records (Polar Regions).

SYSTEM LOCATION:

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755–S, Arlington, VA 22230

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested to use radioisotopes in the conduct of scientific research or support activities in the polar regions, when support is provided by the Office of Polar Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include all documents and correspondence related to the individual's request to use radioisotopes in the polar region, including the individual's name, title, organizational affiliation, work address, E–mail address, name of supervisor, and other necessary work information; certification of radiation safety training; radioisotope use protocol, types of radionuclides to be used, proposal number, event number, social security number, license and license number and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) The Radiation Safety Officer (RSO) of the institution where the researcher originated;

(2) Federal agencies involved in enforcing or implementing Office of Polar Programs (OPP) and United States policies on use of radioisotopes;

(3) Academic institutions or other organizations involved in compliance with OPP and United States policies on use of radioisotopes;

(4) Other Federal agencies when the records are relevant to an agency decision with regard to disciplinary or other administrative action concerning their employee(s);

(5) Academic or other organizations when the records are relevant to an organizational decision with regard to disciplinary or other administrative action concerning their employee(s)

(6) OPP's civilian support contractors and their subcontractors when they are responsible for the safe transport, storage, handling, distribution, tracking, retrieval, reporting and disposal of radioactive materials and resultant hazardous waste;

(7) The institution where the researcher originated in the event violations involving the mishandling or misuse of radioactive materials or any resultant hazardous waste are alleged against the institution or researcher;

(8) The Department of Justice or the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests;

RETRIEVABILITY:

The records are retrieved by the last name of the individual or by a unique control number assigned to each investigator's scientific project.

SAFEGUARDS:

The records are available only to those persons whose official duties require such access. Records are kept in locked buildings, with security card access.

RETENTION AND DISPOSAL:

The records are kept indefinitely, pending adoption of a record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Polar Research Support Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Point of contact: Safety and Health Officer, Office of Polar Programs.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains records pertaining to the requesting individual, contact the NSF Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from applicants for radioisotope usage, NSF staff and NSF records, and from contractors performing duties for NSF; from other federal agencies; and from institution radiation safety officers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None.

NSF–63

SYSTEM NAME:

Accident and Injury Reports (Antarctic).

SYSTEM LOCATION:

Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Room 755S, Arlington, VA 22230

Antarctic Support Associates (ASA), and subcontractors, Inverness Drive East, Suite 300, Englewood, CO 80112

Force Medical Officer, Naval Support Force Antarctica (NSFA), Port Hueneme, CA and McMurdo Station, Antarctica

CATEGORIES AND INDIVIDUALS COVERED BY THE SYSTEM:

All persons deploying to Antarctica through the US Antarctic Program who are injured or become involved in an accident while in Antarctica. These individuals may be civilian or federal employees; military; other federal uniformed service employees; and official visitors from the U.S. Congress, the White House, the State Department, or other federal organizations or foreign governments, tourists or foreign visitors.

Note: Records concerning current and former federal employees are also covered by OPM/GOVT–10.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of both work and non-work related injuries or accidents including the nature of the injury or accident, the medical treatment, prognosis, circumstances leading to the injury or accident, when the injury occurred, witnesses, remedies for future prevention. Records include name, social security number, type of accident, date, time and location, diagnosis, treatment, prognosis, name(s) of witnesses, supervisor, circumstances, disability (if any), and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 2401, *et seq.*, 42 U.S.C. 1870, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) The ASA Station Manager, the individual's supervisor and department head when their official duties require notification;

(2) Federal agencies involved in enforcing or implementing USAP and US policies on occupational safety and health;

(3) Academic institutions and other organizations involved in compliance with USAP safety and health policies and procedures;

(4) Federal agencies when the records are relevant to an agency decision with regard to disciplinary or other administrative action concerning a Federal employee;

(5) Contractors and subcontractors for the USAP when the contractor or subcontractor is responsible for implementing safety and health procedures;

(6) The NSFA Safety Officer, where uniformed service employees are involved;

(7) The individual's supervisor(s) for the purposes of determining cause and applying corrective measures for accident and injury prevention;

(8) Academic or other organizations where the records are relevant to an organizational decision with regard to disciplinary or other administrative action concerning their employee(s);

(9) Federal, state of local agencies, or foreign governments, when disclosure is necessary to obtain records in connection with an investigation of the Office of Polar Programs;

(10) Other federal agencies such as Department of Defense or Department of Labor where statistics on work-related accidents and injuries are maintained;

(11) Persons, including witnesses, who may have information, documents or knowledge relevant to accident or injury investigations in order to obtain additional information;

(12) Awardee institutions or organizations in the event that violations are alleged against the institution or researchers in connection with investigation or enforcement proceedings;

(13) Contractors, in the event a violation is alleged against the contractor, its employees, or its subcontractors in connection with investigation or enforcement proceedings;

(14) Contractors and their employees performing duties on behalf of the agency when relevant to the performance of their duties;

(15) The Department of Justice and the Office of Management and Budget for consultation in processing Freedom of Information or Privacy Act requests; and

(16) The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; (d) the United States, when NSF determines that litigation is likely to affect the Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured file cabinets in the Office of Polar Programs, Room 755–S, electronic records are stored on floppy diskettes and in password protected archives. ASA, its subcontractor, and NSFA maintain records electronically.

RETRIEVABILITY:

The records are retrieved by the name of the individual involved in the accident or by a unique personal identifier assigned to that individual.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file cabinets at other times. The electronic records are stored in password protected computer files.

RETENTION AND DISPOSAL:

Except for those records covered by OPM/GOVT–10, records are destroyed approximately eight years after the individual's last Antarctic deployment.

SYSTEM MANAGER(S) AND ADDRESS:

Section Head, Polar Research Support Section, Office of Polar Programs, 4210 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

To determine whether this system of records contains a record pertaining to the requesting individual, contact the NSF Privacy Act Officer, in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from injured individuals; from individuals involved in accidents; witnesses to the accidents or injuries, NSF staff and NSF records, from electronic mail messages, from contractors performing duties for the U.S. Government, and from the USAP medical clinics.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 96–19851 Filed 8–2–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company (Zion Nuclear Power Station, Unit Nos. 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors located at the licensee's site in Lake County, Illinois.

II

In its letter dated March 19, 1996, the licensee requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It also states that the ASME Code edition and addenda specified in 10 CFR 50.55a are applicable. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the 10 CFR Part 50, Appendix G, P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint. Applying the LTOP instrument uncertainties required by the staff's approved methodology results in an LTOP setpoint with an operating window between the LTOP setpoint and the minimum pressure required for reactor coolant pump seals which is too narrow to permit continued operation.

To allow itself a wider operating pressure band, the licensee has requested the use of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection,'' which allows exceeding the 10 CFR Part 50, Appendix G, safety limits by 10 percent. ASME Code Case N–514 is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, ''Codes and Standards,'' only authorizes addenda through the 1988 Addenda.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.''

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Zion reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination

of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent. This exemption permits using the safety margins recommended in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection'' in lieu of the safety margins required by 10 CFR Part 50, Appendix G. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (61 FR 25921).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–19849 Filed 8–2–96; 8:45 am]

BILLING CODE 7590–01–P

Testco, Inc.; Establishment of Atomic Safety and Licensing Board

[Docket No. 150–00032–EA, ASLBP No. 96–719–04–EA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Testco, Inc., Greensboro, North Carolina (Order Imposing Civil Monetary Penalty) (General License) EA 95–101.

This Board is established pursuant to the request of James L. Shelton, President of Testco, Inc., for a hearing regarding an order issued by the Director, Office of Enforcement, dated March 14, 1996, and published in the Federal Register at 61 FR 14583. The order imposes a monetary penalty on Testco, Inc., an agreement state licensee of North Carolina, for certain radiographic activities.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Frank F. Hooper, 26993 McLaughlin Boulevard, Bonita Springs, FL 33923

Issued at Rockville, Maryland, this 30th day of July 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–19848 Filed 8–2–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1128; Docket No. C96–1]

Complaint of Coalition Against Unfair USPS Competition; Order Denying Motion of United States Postal Service To Dismiss Proceeding and Notice of Formal Proceedings

July 30, 1996.

The Commission has before it a Complaint against the United States Postal Service pursuant to 39 U.S.C. § 3662 which concerns a ''Pack & Send'' service, hitherto unknown to and never reviewed by the Commission, and the rates or fees which the Service is charging for providing that service. Complainant, a coalition consisting of organizations and individuals doing business in the Commercial Mail Receiving Agency (''CMRA'') industry, alleges that the Postal Service is charging rates which do not conform to the policies of the Postal Reorganization Act, inasmuch as it is rendering a postal service without first having requested a recommended decision on the service and its rates from the Commission. The Postal Service concedes that it is offering the service on a trial basis at a limited number of facilities, but denies that its ''Pack & Send'' service is within the Commission's jurisdiction under § 3662 because it is not ''postal'' in character. On that ground, it moves to dismiss the complaint.

The factual assertions of Complainant and the Postal Service conflict on some, but not all, points. Furthermore, the information offered to support the conflicting factual claims is incomplete, and does not justify a conclusion at this time either that Pack & Send is, or is not, postal in character. However, some of the information already presented would tend to support an inference that Pack & Send is a postal service, and the Commission believes that further inquiry into this matter would be appropriate. Because the Commission reaches the preliminary conclusion that the Complaint may be justified, depending on the ultimate state of the facts concerning the Pack & Send service offering, the Postal Service's motion to dismiss shall be denied. Formal proceedings to develop an evidentiary record will be conducted in this docket.

Substance of the Complaint. In its Complaint filed May 23, 1996, the Coalition Against Unfair USPS Competition identifies its membership as organizations engaged in the franchising of stores in the CMRA industry, together with individual franchisees who independently own

and operate CMRA stores nationwide. According to the Complaint, ''[e]ach of the individual stores offer pack and send services as part of the overall retail value-added services provided in these stores.'' Complaint at 2. Consequently, the Complaint alleges, by offering the Pack & Send service the Postal Service ''is in effect going into direct competition with the CMRA industry * * *'' Ibid.

The Complaint is accompanied by several attachments intended to document particulars of the Pack & Send service, its competitive purpose, and the terms under which it is being offered. Complaint, Attachments 2–3, 5. Also included is an affidavit reporting the experience of an individual customer who purchased Pack & Send service in a Postal Service retail store in Anchorage, Alaska. Id., Attachment 4.

Complainant alleges that the Postal Service is providing the Pack & Send service as a postal service, but without having submitted a request to the Commission as required by the Reorganization Act. According to Complainant, the status of Pack & Send as a postal service is established by the fact it is being ''bundled'' with acceptance for mailing by postal clerks; by a description in the 1995 Annual Report of the Postmaster General that casts the service as part of a mailing transaction; and by the Service's failure to include the Pack & Send service with other non-postal services specified in connection with its request in Docket No. MC96–2. Id. at 4–5. The Coalition identifies 11 areas where the Postal Service is offering the Pack & Send service, and assert on the basis of anecdotal evidence ''that the implementation of this service is burgeoning.'' Id. at 5. Citing a Postal Service publication which discloses an average packing charge of $3.24, the Complaint also claims that, ''the Postal Service is not pricing this service based on any attribution of costs * * * pricing is based on 'what our competitors charge.'' Id. at 3, *quoting* Attachment 2.

The Coalition observes that the Domestic Mail Classification Schedule contains no classification provision for Pack & Send, and that no reference can be found for an approved rate for the service. Complainant also states it has no knowledge that the service has ever been submitted for a rate or classification decision by the Commission. The only rationale that would support these omissions as lawful under the Reorganization Act, Complainant states, would be a conclusion that Pack & Send is not a postal service. Citing court decisions which dealt with distinguishing ''postal'' from ''non-postal'' services, the Coalition argues that this conclusion would not be justified for the Pack & Send service because the terms under which it is offered prove ''that Pack & Send is a service so closely related to the delivery of mail that it clearly is a postal service.'' Id. at 8.

In response to its Complaint, the Coalition requests that the Commission provide relief in the following forms: (1) issuance of an opinion that the Postal Service is offering Pack & Send in violation of the Reorganization Act; (2) initiation of a proceeding pursuant to sections 3622 and 3623 leading to a recommended decision on the Pack & Send service to the Governors; (3) transmission of the opinion in item 1 to the Governors, together with a request that the Postal Service be directed to suspend its offering of Pack & Send until it has submitted the service to the Commission for a recommended decision; and (4) any other appropriate relief consistent with the requests in the first three items.

Postal Service Answer. The Postal Service responded to the Complaint in an Answer filed on June 24, 1996. The Service denies that it is offering Pack & Send service on a nationwide basis, but states that it ''has begun to offer packaging on an experimental basis at a few selected retail outlets.'' Answer at 2. The Service also denies that Pack & Send is a ''bundled'' service that necessarily entails mailing. It asserts that ''Pack & Send'' refers only to the packaging of items by the Service, and that: ''Customers of the packaging service need not send their packaged items through the Postal Service in order to have them packaged.'' Id. at 9.

The Postal Service denies that, by offering a packaging service, it has ''launched itself into competition with the CMRA industry[.]'' Instead, the Service claims, ''any existing competition between the Postal Service and the CMRA industry was created by the CMRA industry.'' Id. at 3. The Service also denies that there is any foundation for Complainant's characterization of Pack & Send as not being priced on the basis of attributed costs. Id. at 9. The Postal Service does admit that the packaging service has not been the subject of a rate or classification proceeding pursuant to 39 U.S.C. §§ 3622 or 3623 respectively, and that the Domestic Mail Classification Schedule does not include a separate classification for packaging. Id. at 2, 5 and 7.

In response to sections 84 (b) and (c) of the rules of practice, the Postal Service takes the position that the Complaint is not properly before the Commission. The Service claims that the subject of the Complaint is no more than a ''limited parcel packaging trial,'' (id. at 8), and asserts that it ''is not a postal service, within previous interpretations of the term.'' Id. at 9. Because, in the Service's view, the Commission lacks jurisdiction to review the Complaint, the Postal Service also claims that a hearing is unnecessary and the relief requested is inappropriate. Therefore, the Service asserts, the Commission should dismiss the Complaint.

Postal Service Motion to Dismiss and Memorandum. Three days after filing its Answer, the Postal Service submitted a motion to dismiss the proceeding with prejudice ''on the grounds that the subject matter of this proceeding does not fall within the scope of 39 U.S.C. § 3662.'' Motion of the United States Postal Service to Dismiss Proceeding, June 27, 1996, at 1. The Service also filed a memorandum in support of its motion, accompanied by an annotated copy of the Complaint and a Declaration of a Postal Service manager. Memorandum in Support of Motion of the United States Postal Service to Dismiss Proceeding, June 27, 1996.

The Postal Service's memorandum consists of factual statements which describe the parcel packaging service and legal arguments which rely on those statements. The statements of fact are based on the attached Declaration of Hugh McGonigle, who states he is the Manager of Alternate Retail Services. On the basis of the McGonigle Declaration, the Postal Service states that parcel packaging service is currently available on a limited, trial basis at approximately 230 post offices in various areas throughout the United States; that it was initiated to provide a convenience to customers; and that the purpose of the limited testing has been measurement of customer interest and assessment of the service in operation. Memorandum at 1–2.

The Postal Service Memorandum also draws from the McGonigle Declaration to describe the transaction whereby an interested customer can procure packaging service from a window clerk at a facility which offers Pack & Send. According to the Service's description, at one point in the transaction the customer is free to ''choose whether he or she wants to send the package through the Postal Service, to pay for and accept only the packaging, or to retrieve the item and terminate the transaction entirely.'' Id. at 2. The Service represents that the experience reported in the affidavit appended to the Complaint (Attachment 4)—in which Ms. Chou reports being told by a

window clerk that she could not purchase Postal Service packaging unless the item to be wrapped was also mailed through the Service—''is contrary to the Postal Service's intent in offering packaging[,]'' and that there is ''no reason to consider this occurrence anything other than an isolated incident.'' Id. at 3. However, the Service also notes that, ''system-wide operational instructions have not been finalized and distributed [for Pack & Send].'' Ibid. In light of the assertions in the Coalition's Complaint, and in order to ensure consistency in conducting the Pack & Send trial, the Service states that it has issued a directive to remind postal personnel that customers may purchase only packaging, if desired. Ibid. That directive is attached to the McGonigle Declaration.

Based on its representations of fact, the Postal Service presents several arguments against Complainant's assertion that Pack & Send is a ''postal'' service. First, the Service cites the decision in Docket No. R76–1, in which the Commission found the Postal Service's offering of ''postal related products'' such as padded shipping bags, postal scales and packing material, to be ''too attenuated'' in their relation to the carriage of mail to place them within the Commission's jurisdiction. Id. at 4, quoting PRC Op. R76–1, Vol. 2, App. F at 20–21. The Service argues that packing service properly belongs in the same non-postal category as these shipping products, and that its relationship to collection, transmission and delivery of mail is insufficiently close to deem it a postal service. Memorandum at 5.

The Postal Service also argues that Complainant's assertions fail to justify any departure from this conclusion. The Service cites the McGonigle Declaration to rebut Complainant's claim that packaging service is necessarily bundled with mailing. Ibid. It also denies that Attachment 2 to the Complaint, which Complainant terms an advertising circular but the Service characterizes as a ''motivational tool directed to postal personnel,'' (id. at 6), amounts to a statement of Postal Service policy, or supports any inference that the Service recognizes Pack & Send as a postal service. Id. at 6–7. The Service also denies that its Compliance Statement filed with its Request in Docket No. MC96–2 supports such an inference, as parcel packaging ''was not widely available on a permanent basis[]'' when that filing was made. Id. at 7. Finally, the Postal Service disputes that Attachment 5 and anecdotal evidence cited in the Complaint establish that Pack & Send is available on a nationwide basis. Id. at 8–9.

The Postal Service's Memorandum concludes with arguments that the judicial authorities cited by Complainant do not support the conclusion that Pack & Send is a postal service. The Service asserts that parcel packaging clearly does not fall within the ATCMU court's standard of ''very closely related to the delivery of mail'' [1] or the NAGCP court's standard of ''clearly involv[ing] an aspect in the posting, handling and delivery of mail matter.'' [2] To the contrary, the Service argues that packaging is more similar to the sale of packing and wrapping materials, which the Commission found not to constitute postal service in the decision in Docket No. R76–1. The Service notes that packaging service is not limited exclusively to the mailing function; that close (if not identical) substitutes are available from other sources such as Complainant's membership; and that Pack & Send is not tied to postal services in any manner that would change its non-postal character. Id. at 9–11.

Response of Complainant. The Coalition responded to the Postal Service's Motion to Dismiss in an Opposition filed on July 8, 1996. It challenges the Service's arguments that the Pack & Send service is non-postal, particularly the analogy to the sale of packing materials. Complainant argues that the more persuasive and relevant analogy is to the sale of postal money orders, which was found to be a regulated postal service by the court in the ATCMU case on the ground that the vast majority of money orders sold at post offices are actually sent by mail. Even if a postal customer is allowed to procure Pack & Send service without mailing the package, Complainant asserts, ''it is extremely unlikely that a postal customer will use another shipping service when that service is not available at the postal facility.'' Opposition at 4.

Complainant also challenges the Postal Service's interpretations of the information attached to the Complaint, and argues that the totality of Postal Service material available on the Pack & Send service indicates a goal of providing a service that is integrated with mailing. As support for this position, the Coalition cites the ''box it, pack it, and send it'' characterization in the Annual Report of the Postmaster General; the similar description in the advertising circular at Attachment 5 to the Complaint; the $2-off coupon which reads ''Let Us Box, Pack and Ship Your Gifts''; and the reference to ''truly one-stop shopping for [customers'] mailing needs'' in the June 1995 issue of USPS Update also included in the Attachment. Opposition at 5–6. Additionally, Complainant suggests that the Postal Service's declared policy in favor of selling Pack & Send service separately, stated in the McGonigle Declaration and attached Memorandum of June 24, may have been crafted to avoid the Commission's jurisdiction, and in any event ''is subject to change on a moment's notice. * * *'' Id. at 4–5.

Complainant also argues against the Postal Service's denial that it is offering Pack & Send service nationwide, and claims the Service is relying on an erroneous legal premise. The Coalition notes that the Complaint does not allege that the service is available nationwide, and that declarant McGonigle admits that Pack & Send is available in various areas throughout the United States. In any event, Complainant argues, whether or not the service is nationwide is essentially irrelevant because applicable law requires a rate request to the Commission even for temporary, limited or experimental postal services. Id. at 6–7.

Finally, Complainant suggests that additional factual questions about Pack & Send are raised by the Postal Service's specific denial that packaging service is performed by postal clerks. The Coalition states that its allegation that postal clerks perform the Pack & Send service was intended as no more than a routine factual recitation, and that the Service's denial without further elaboration leaves questions about who will perform the service unresolved. Complainant argues that these outstanding factual issues provide another reason for denying the Postal Service's motion.

Disposition of the Motion to Dismiss. As both the Coalition and the Postal Service have recognized, the pivotal issue posed by the Complaint at this juncture is whether the Pack & Send service is ''postal'' or ''non-postal'' in character. If the service is deemed ''postal'' in nature, Complainant's challenge of the rates or fees charged is appropriate for consideration under the terms of 39 U.S.C. § 3662. On the other hand, if the service is found to be ''non-postal,'' then the rates or fees charged

[1] Associated Third Class Mail Users v. United States Postal Service, 405 F. Supp. 1109, 1115 (D.D.C. 1975), aff'd, National Association of Greeting Card Publishers v. U.S. Postal Service, 569 F.2d 570 (D.C. Cir. 1976), *vacated on other grounds,* United States Postal Service v. Associated Third Class Mail Users, 434 U.S. 884 (1977).

[2] National Association of Greeting Card Publishers v. U.S. Postal Service, 569 F.2d 570, 596 (D.C. Cir. 1976).

are outside the purview of § 3662, and the appropriate disposition of the complaint is dismissal.[3]

Determining whether the Pack & Send service is ''postal'' or ''non-postal'' in character requires the application of legal standards to the available facts. While it has been stated in a variety of ways, the primary standard[4] that has been applied in analyzing different services is:

> * * * the relationship of the service to the carriage of mail. Those which can fairly be said to be ancillary to the collection, transmission, or delivery of mail are postal services within the meaning of § 3622.

PRC Op. R76–1, Vol. 2, Appendix F at 3. Application of this standard looks not only at the intrinsic features and terms of the service, but also considers the extent to which use of the service culminates in use of the mails.[5]

The facts presented thus far regarding the Pack & Send service are fragmentary and to some extent controverted. However, even when viewed in a light favorable to the Postal Service, the available facts do not warrant a summary determination at this time that the service is non-postal in character.

First, regardless of whatever relation Pack & Send may have to other activities that are recognized as postal, the packaging service itself is a form of mail preparation activity that is familiar in the postal marketplace. It is a type of work that can be performed by the shipper, the carrier, or a third party intermediary such as one of the Coalition's members. Thus, the Postal Service's provision of the Pack & Send service could be viewed as a form of worksharing in reverse—compensation of the Postal Service for a mail preparation activity that would otherwise be performed by the sender of the parcel or a third party.

Second, it appears that the Postal Service has structured the transaction in which the Pack & Send service is provided in a manner which closely associates payment for the service with payment for packing materials and payment of postage. Postal Service Memorandum at 2; Declaration of Hugh McGonigle at 1–2. The use of an Integrated Retail Terminal (IRT) to calculate and sum the respective charges for packing materials, the Pack & Send packaging service, and applicable postage is neither unreasonable nor sinister. However, this arrangement does raise the question of the extent to which purchase of the Pack & Send service, and payment of the applicable rate or fee, is disaggregated from payment of postage. Even after reading Mr. McGonigle's description of the transaction, it is far from clear how a customer is separately charged for packing materials and the Pack & Send service.[6]

Finally, even if one assumes that the policy directive (attached to the McGonigle Declaration) to provide Pack & Send service without also requiring mailing is observed scrupulously throughout the Postal Service, that fact alone would not necessarily establish the non-postal status of the service. It is possible, as Complainant argues, that the vast majority of customers who purchase the Pack & Send service go on to pay postage and deposit the parcel in the mail. The extent to which this is the case may bear importantly on the postal or non-postal character of the service, as the courts found in the ATCMU and NAGCP decisions.

In light of the incomplete state of the facts available concerning the Pack & Send service, the Commission is not prepared to declare at this time that it is, or is not, postal in character. For this reason, the Postal Service's motion to dismiss the proceeding shall be denied. Furthermore, because some of the information already presented would tend to support an inference that Pack & Send is a postal service, there is reason to believe that the Coalition's Complaint may be justified. Inasmuch as the Pack & Send service and its rates or fees have not been the subject of a Postal Service request and scrutiny in a public proceeding before the Commission, the rates or fees charged may prove not to conform to the policies of the Reorganization Act if the Pack & Send service is shown to be postal in nature.

Proceedings to Consider Complaint. Given the nature of this controversy, there appears to be little likelihood that the matter could be settled or resolved under informal procedures. Because, in the Commission's view, resolution of this Complaint would be assisted by the production of additional facts concerning the Pack & Send service and development of a public record, the Commission has determined under § 86 of the rules of practice that a formal proceeding pursuant to 39 U.S.C. § 3624, with an opportunity for hearing, should be held in this docket. This will enable Complainant and other interested parties to develop information through discovery and to make evidentiary presentations, as well as allow the Postal Service to present its response.

In order to develop a procedural schedule for this docket, Complainant is directed to provide a statement, due 10 days from issuance of this order, estimating the amount of time it will require to develop and file a case-in-chief. The Commission will thereafter issue a procedural schedule and special rules of practice, if any.

It is ordered:

(1) The Motion of the United States Postal Service to Dismiss Proceeding, filed June 27, 1996, is denied.

(2) Proceedings in conformity with 39 U.S.C. § 3624 shall be held in this matter.

(4) The Commission will sit *en banc* in this proceeding.

(5) Notices of intervention shall be filed no later than August 26, 1996.

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[3] The Coalition correctly notes that the geographic extent of the locations in which Pack & Send service has been offered is essentially irrelevant to this determination. The provision of Pack & Send service on a ''nationwide or substantially nationwide basis'' [39 U.S.C. § 3661(b)] could be a ground of jurisdictional dispute in a proceeding to consider a proposed change in the nature of postal services pursuant to § 3661, but the Commission has no such Postal Service proposal before it.

[4] One alternative basis for finding a service to be ''non-postal'' applies where the service relates exclusively to performance of an activity, independent of the carriage of mail, which the Postal Service is required or authorized to perform. Such activities include the sale of migratory bird hunting stamps and philatelic transactions. *See* PRC Op. R76–1, Vol. 2, App. F at 1–2; Docket No. C95–1 (Complaint of David B. Popkin), Order Dismissing Complaint (Order No. 1075), September 11, 1995, at 3–5. The Postal Service has not claimed that the Pack & Send service is ''non-postal'' by virtue of its relationship to any such activity.

[5] This latter consideration was the basis on which the sale of money orders was found to be a postal service in the *ATCMU* case, *supra.* The Postal Service notes that the Commission ''has questioned'' the validity of this jurisdictional analysis with respect to money orders in the R76–1 decision. Postal Service Memorandum at 10, n. 6. The Commission did express doubt regarding the jurisdictionality of money orders in the R76–1 decision, and opined that a standard more strict than that applied by the District Court in *ATCMU* would be appropriate. PRC Op. R76–1, Vol. 2, App. F at 12. Nevertheless, the Court of Appeals subsequently relied on the same rationale employed by the District Court in finding the provision or money orders to be postal in nature. *NAGCP, supra,* 569 F.2d 596.

[6] In his description of how the parcel packaging service works, Mr. McGonigle states that a customer submits an item to a window clerk, who weighs the item on an IRT. The clerk determines the appropriate box size, the fragility of the item to be packaged, and ''the price and weight of the selected box.'' Declaration at 1. At this point, apparently, the charge for packing materials has been established. The clerk then adds the weight of the packaging to the weight of the item, enters that total on the IRT, and enters the class of service selected by the customer and the destination ZIP Code to calculate the total postage that would apply to the piece. Then, according to Mr. McGonigle, ''[t]he clerk enters the box price into the IRT, which generates the total price for packaging and mailing the piece.'' Id. at 2. (Emphasis added.) On the basis of this description, it is impossible to identify a separate charge for the packaging service. Additionally, the photocopies of Postal Service receipts appended to Ms. Chou's affidavit (Complaint, Attachment 4) shed no light on this question; no separate charges for packing materials or the Pack & Send service appear on the receipts.

(6) W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the general public in this proceeding.

(7) Complainant shall provide a statement, due August 12, 1996, estimating the amount of time it will require to develop and file a direct case in this proceeding.

(8) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 96–19754 Filed 8–02–96; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A96–21; Order No. 1127]

Moriah, New York 12960 (Katherine E. Baker, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 30, 1996.

Docket Number: A96–21.

Name of Affected Post Office: Moriah, New York 12960.

Name(s) of Petitioner(s): Katherine E. Baker.

Type of Determination: Closing.

Date of Filing of Appeal Papers: July 29, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(B)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 13, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appenidx

July 29, 1996: Filing of Appeal letter

July 30, 1996: Commission Notice and Order of Filing of Appeal

August 23, 1996: Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]

September 3, 1996: Petitioner's Participant Statement or Initial Brief m[*see* 39 C.F.R. § 3001.115(a) and (b)]

September 23, 1996: Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]

October 8, 1996: Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]

October 15, 1996: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]

November 26, 1996: Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–19755 Filed 8–2–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–22, SEC File No. 270–202 OMB Control No. 3235–0196

Rule 17Ab2–1 and Form CA–1, SEC File No. 270–203 OMB Control No. 3235–0195

Rule 17Ac3–1 and Form TA–W, SEC File No. 270–96 OMB Control No. 3235–0151

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following rules and forms:

Rule 17a–22, which was adopted pursuant to Section 17A of the Securities Exchange Act of 1934 (''Act''), requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[1] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on a average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $3500. This represents one dollar per filing in postage, or a total of $2800. The remaining $700 (or 20% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses.

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is

[1] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

collected by amendment to the initial Form CA–1 when a material change in circumstance necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determined whether an applicant meets the standards for registration set forth in Section 17A of the Act, (ii) enforce compliance with the Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently thirteen registered clearing agencies and one clearing agency that has been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial Form CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $15,000

Subsection (c)(3)(C) of Section 17A of the Act authorizes transfer agents registered with an appropriate regulatory agency (''ARA'') to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(3)(C) of the Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) and accompanying Form TA–W. Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) the locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately thirty Form TA–Ws with the Commission annually. The filing of a Form TA–W occurs only once, when a transfer agent is seeking deregistration. In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the Form, we estimate that approximately one half hour is required to complete Form TA–W, including clerical time. Thus, the total burden of fifteen hours of preparation for all transfer agents seeking deregistration in any one year is negligible.

The Commission estimates a cost of approximately $30 for each half hour required to complete a Form TA–W. Therefore, based upon a total of fifteen hours, transfer agents spend approximately $900 each year to complete thirty Form TA–Ws.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: July 29, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19837 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22109; File No. 812–9672]

Allstate Life Insurance Company of New York, et al.

July 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Allstate Life Insurance Company of New York (the ''Company''), Allstate Life of New York Separate Account A (the ''Variable Account''), and Allstate Life Financial Services, Inc. (''ALFS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the Company to deduct a mortality and expense risk charge from: (i) the assets of the Variable Account in connection with the offer and sale of certain flexible premium deferred variable annuity certificates (the ''Contracts'') and any contracts offered in the future (''Future Contracts'') by the Company which are materially similar to the Contracts; and (ii) the assets of any other variable accounts established in the future (''Future Accounts'') by the Company, in connection with the offer and sale of Future Contracts. Applicants propose that the order extend to any broker-dealer (''Other Broker-Dealers'') which may serve in the future as principal underwriter with respect to the Contracts or Future Contracts.

FILING DATE: The application was filed June 7, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 26, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o David E. Stone, Esq., Allstate Life Insurance Company of New York, 3100 Sanders Road, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Peter R. Marcin, Law Clerk, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Company, a stock life insurance company incorporated in New York, is a wholly-owned subsidiary of Allstate Life Insurance Company (''Allstate Life''), a stock life insurance company incorporated in Illinois, which is wholly owned by Allstate Insurance Company (''Allstate''), a stock property-liability insurance company incorporated under the laws of Illinois.

2. The Company established the Variable Account under New York law on December 22, 1995 to fund variable annuity contracts. The Variable Account is registered under the 1940 Act as a unit investment trust.

3. The Variable Account is currently divided into nine sub-accounts. Each sub-account will invest exclusively in the shares of a designated investment portfolio (each, a ''Portfolio'') of AIM Variable Insurance Funds, Inc. (the ''Fund''). The Company, in the future, may establish additional sub-accounts to invest in other Portfolios of the Fund or in other funds. The Company also may establish Future Accounts to support Future Contracts.

4. ALFS, a wholly owned subsidiary of Allstate Life, will serve as the distributor and principal underwriter for the Contracts. ALFS is registered with the Commission under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are designed for use by individuals in retirement plans that qualify for special federal income tax treatment under Sections 401, 403, 408, or 457 of the Internal Revenue Code (''Qualified Plans'') and in retirement plans that do not qualify for special tax treatment under those sections.

Contract owners may allocate premium payments to one or more sub-accounts of the Variable Account or to the Company's general account (''Fixed Account''). The Contracts require a minimum initial premium payment of $5,000 ($2,000 in the case of a Qualified Plan). Subsequent premium payments must be at least $500 and may be made at any time prior to the date on which income payments begin (''Payout Start Date''). Under an automatic additions program, however, the minimum purchase payment for allocation to the Variable Account is $100 and, for allocation to the Fixed Account, the minimum purchase payment is $500.

6. The Contracts provide for a guaranteed death benefit. If the Contract owner dies before the annuity date, the Company will pay a death benefit to the beneficiary, upon receipt of due proof of death and a payment election. The death benefit is based on the largest of the following amounts: (a) the Contract value on the date the Company determines the death benefit; (b) the amount that would have been payable in the event of a full withdrawal of the Contract value on the date the Company determines the death benefit; (c) the Contract value on every seventh Contract anniversary beginning on the date the Contract was issued immediately preceding the date the Company determines the death benefit, adjusted by any purchase payments, withdrawals and charges made between such death benefit anniversary and the date the Company determines the death benefit; or (d) an enhanced death benefit equal to the greatest of the anniversary values as of the date the Company determines the death benefit. The anniversary value is equal to the Contract value on a Contract anniversary, increased by purchase payments made since that anniversary and reduced by the amount of any partial withdrawals since that anniversary. Anniversary values will be calculated for each Contract anniversary prior to the earlier of (i) the date the death benefit is determined and (ii) the date the deceased attained age 75 or 5 years after the date the Contract was established, if later.

7. The Company reserves the right to assess a $10 charge on each transfer in excess of twelve per Contract year, excluding transfers through dollar cost averaging[1] and automatic fund rebalancing.[2]

8. The Company will deduct an administrative expense charge from the assets of the Separate Account that is equal, on an annual basis, to 0.10% of the daily net assets allocated to the sub-accounts of the Variable Account.

9. An annual Contract maintenance charge of $35 per Contract year will be charged when Contract value is less than $50,000 at the time of the deduction.

10. Applicants represent that the administrative expense charge and the annual Contract maintenance charge will not increase. In addition, Applicants represent that these charges are deducted in reliance on Rule 26a–1 under the 1940 Act.

11. No deductions are made from purchase payments. There are no withdrawal charges on amounts withdrawn up to 10% of the amount of purchase payments per Contract year, but amounts withdrawn in excess of this may be subject to a withdrawal charge, depending on the payment year in which the withdrawal is made, at a maximum rate of 7% of purchase payments withdrawn, declining at a rate of 1% per year until the eighth year when the rate is 0%.

12. The Company will deduct a mortality and expense risk charge that is equal, on an annual basis, to 1.35% (including 0.10% for the enhanced death benefit) of the daily net assets allocated to the sub-accounts of the Variable Account. Applicants state that approximately 0.95% of the 1.35% charge is attributable to mortality risk, and approximately 0.40% is attributable to expense risk. The mortality and expense risk charge is guaranteed not to increase over the life of the Contract.

13. The mortality risk arises from the Company's guarantee to cover all death benefits and to make income payments in accordance with the income plan

[1] Dollar cost averaging permits the Owner to transfer a specified amount every month from the one year guarantee period sub-account of the Fixed Account to any sub-account of the Variable Account. Dollar cost averaging cannot be used to transfer amounts to the Fixed Account.

[2] Automatice fund rebalancing allows all of the money allocated to sub-accounts of the Variable Account to be rebalanced to the desired allocation on a quarterly basis, determined from the first date that the owner decides to rebalance. Each quarter, money will be transferred among sub-accounts of the Variable Account to achieve the desired allocation.

selected and income payment tables in the Contract. The expense risk arises from the possibility that the Contract maintenance and administrative expense charges will be insufficient to cover actual administrative expenses.

14. If the mortality and expense risk charge is insufficient to cover the actual costs of the risks assumed, the Company will bear the loss. If the charge exceeds actual costs, this excess will be profit to the Company and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. The Company expects a profit from the mortality and expense risk charge.

15. The Company may incur premium taxes relating to the Contracts, currently ranging up to 3.5%, and will deduct these taxes either at the Payout Start Date or upon surrender of the Contract.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transaction, from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request an order of the Commission under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from: (i) the assets of the Variable Account in connection with the offer and sale of Contracts and Future Contracts; and (ii) the assets of any Future Account, in connection with the officer and sale of Future Contracts. Applicants propose that the order extend to Other Broker-Dealers which may serve in the future as principal underwriter for the Contracts or Future Contracts. Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants assert that the relief would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants submit that the delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of the Company to take advantage effectively of business opportunities as those opportunities arise, and would not provide any additional benefit or protection to Contract owners. Indeed, Contract owners may be disadvantaged as a result of additional overhead costs incurred by the Applicants, any Future Account, or Other Broker-Dealers.

5. Applicants assert that the 1.25% mortality and expense risks charge (excluding the 0.10% risk charge for the enhanced death benefit) to be assessed under the Contracts and Future Contracts is within the range of industry practice for comparable variable annuity products. Applicants represent that this determination is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as: annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the company with respect to the contracts, the means of promotion, the market for the contracts, investment options under the contracts, purchase payment transfer, dollar cost averaging and portfolio rebalancing features, and the tax status of the features. Applicants represent that the Company will maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in, and the results of, the Applicants' comparative survey.

6. The Company also represents that the mortality risk charge of 0.10% imposed on the Contracts for the enhanced death benefit is reasonable in relation to the risks assumed by the Company under the Contracts. In arriving at this determination, the Company conducted a large number of trials at various issue ages to determine the expected cost of the enhanced death benefit.

First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical Contract owner's death during the year in question. By analyzing the results of several thousand such simulations, the Company was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, the Company determined that a mortality risk charge of 0.10% was a reasonable charge for providing the enhanced death benefit. Applicants represent that the Company will maintain at its home office, and make available to the Commission upon request, a memorandum detailing the methodology used in, and the results of, the Applicants' comparative survey.

7. Applicants acknowledge that the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts. To the extent distribution costs are not covered by the withdrawal charge, the Company will recover its distribution costs from the assets of the general account. Those assets may include that portion of the mortality and expense risk charge which is profit to the Company.

8. Applicants represent that the Company has concluded that there is a reasonable likelihood that the distribution financing arrangement proposed under the Contracts and Future Contracts will benefit the Variable Account, the Future Accounts, Contract owners, and Future Contract owners. The basis for these conclusions is set forth in a memorandum which will be maintained by the Company at its home office and will be made available to the Commission upon request.

9. The Company represents that the Variable Account and any Future Account will invest only in open-end management investment companies which undertake, in the event companies should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board of directors/trustees, a majority of whom are not interested persons of the Company.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19841 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22107; 812–9956]

Daily Money Fund, et al.; Notice of Application

July 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Advisor Annuity Fund, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Investors Trust, Fidelity Institutional Trust, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performance Portfolio, L. P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments—Bond Fund, L.P., Fidelity U.S. Investments—Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II, Fidelity Management and Research Company (''FMR''), Fidelity Distributors Corporation (''FDC''), National Financial Services Corporation (''NFSC''), Fidelity Management Trust Company (''FMTC''), Strategic Advisers, Inc. (''SAI''), Fidelity Service Company (''FSC''), and Fidelity Investments Institutional Operations Company (''FIIOC'').

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d–1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit applicants to create one or more Fidelity ''fund of funds.''

FILING DATES: The application was filed on January 23, 1996, and amended on May 31, 1996 and on July 25, 1996. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 August 23, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants propose to organize one or more ''fund of funds'' (each a ''Top Fund'') which will be an open-end management investment company organized as a Massachusetts or Delaware business trust. A Top Fund will initially have one or more series (''Top Portfolio'') and may organize additional Top Portfolios in the future. Each Top Portfolio may issue multiple classes of shares.

2. Each Top Portfolio may invest in shares of Fidelity open-end management investment companies (''Underlying Funds'') and their series (''Underlying Portfolios'') representing one or more of the following asset groups: the Equity Group, the Fixed Income Group, and the Money Market Group (''Investment Groups''). Investment Groups may be added or deleted at any time. Top Portfolios also may invest in Central Funds (as defined below), and directly in stocks, bonds, and liquid money market instruments, including pooled accounts of such instruments for which the investment adviser has obtained a SEC exemptive order (''money market instruments'').[1]

3. The Underlying Funds are open-end management investment companies registered under the Act. Each Underlying Funds may have one or more Underlying Portfolios and each Underlying Portfolio may issue multiple classes of shares. Top Portfolio shares and Underlying Portfolio shares may be subject to sales charges, including front-end and deferred sales charges, redemption fees, services fees, and rule 12b–1 fees under the Act.

4. Applicants request relief on behalf of each open-end management investment company or series thereof that is (a) advised by, or that in the future becomes advised by, FMR, FMTC, SAI, or a person controlling, controlled by, or under common control with FMR, FMTC, or SAI (collectively referred to as the ''Adviser''); or (b) distributed by FDC, NFSC, or a person controlling, controlled by, or under common control with FDC or NFSC

[1] *See* Investment Company Act Release Nos. 11962 (Sept. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order).

(collectively referred to as the ''Distributor'') (all such investment companies and series thereof are collectively referred to as the ''Fidelity Funds''). Each Fidelity Fund is a member of the same ''group of investment companies'' as defined in paragraph (a)(5) of rule 11a–3 under the Act.

5. The Adviser or an affiliate of the Adviser is, to the extent required, registered as an investment adviser under the Investment Advisers Act of 1940 and will be the investment adviser to each Top Fund, the Top Portfolios, the Underlying Funds, and the Underlying Portfolios. One or more of the Top Portfolios of a Top Fund may have a fixed investment portfolio and, therefore, may not use an investment adviser. In that case, the Adviser or an affiliate of the Adviser may act as the administrator for the Top Portfolio and would not be required to register as an investment adviser.

6. The Distributor is, to the extent required, registered as a broker/dealer under the Securities Exchange Act of 1934 (''Exchange Act''), and is the distributor of certain Fidelity Funds. FSC and FIIOC are registered transfer agents under the Exchange Act. Each is a transfer and dividend paying agent for certain Fidelity Funds (collectively referred to as ''Transfer Agent''). FMR is the parent holding company for the Adviser, the Distributor, and the Transfer Agent.

7. Certain applicants previously received an SEC order for an exemption from sections 12(d)(1), 17(a), 18(f), and 21(b) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder that permits certain Fidelity Funds to borrow and lend to each other through a credit facility (''Interfund Lending Order'').[2] If the present application is granted, the Top Funds and the Underlying Funds could participate in interfund lending. In addition, certain applicants recently filed an application with the SEC for an exemption from sections 12(d)(1), 15(a), and 17(a) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder (the ''Central Funds Application'').[3] The Central Funds Application seeks relief so that participating funds may purchase shares of one or more non-publicly traded Fidelity money-market funds and/or short-term bond funds (the ''Central Funds'') in excess of the percentage limits of section 12(d)(1). If the exemptions requested in the Central Funds Application and the present application are granted, a Top Fund could invest either directly in a Central Funds or in an Underlying Fund that could invest in a Central Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit any Top Portfolio to invest in the Underlying Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of disruptive redemptions, the acquisition by the acquiring company of control of the acquired company, the layering of fees, and the creation of a complex pyramidal structure that may be confusing to investors.

4. Applicants believe that none of these potential abuses would be present in the structure of the Top Portfolios. The Top Portfolios would not exercise any influence over the management of the acquired Underlying Portfolios by the threat of redemptions. Because of the common control of management between the Top Portfolios and the Underlying Portfolios, the Adviser would not structure a Top Portfolio as a vehicle for short-term traders or to otherwise contribute to disruptive cash flow volatility at the Underlying Portfolio level.

5. Applicants represent that the Top Fund will be structured so that an investment in a 1 Top Portfolio will not result in an unnecessary duplication of costs. The Adviser may charge each Top Portfolio an advisory fee to compensate it for monitoring the addition, deletion, and substitution of the Underlying Portfolios within particular Investment Groups and the periodic adjustments among Investment Groups. Each Top Portfolio's shareholder also will pay indirectly their share of the advisory fees and expenses paid by shareholders of the Underlying Portfolios. This will not result in a duplication of advisory fees because the Adviser's services for a Top Portfolio will be in addition to, and not duplicative of, services provided to the Underlying Portfolios.

6. Applicants also assert that their proposed fund of funds structure does not present any danger of excessive sales charges. Although the Distributor may impose sales charges, service fees, and/or rule 12b–1 fees at both the Top Portfolio and Underlying Portfolio levels, sales and distribution expenses relating to the shares of a Top Portfolio will not exceed the limits in Article III, Section 26 of the NASD's Rules of Fair Practice when aggregated with any sales and distribution expenses that the Top Portfolio pays relating to the respective Underlying Portfolio shares. The aggregate sales and distribution expenses at both levels, therefore, will not exceed the limit that otherwise lawfully could be charged at any single level.

7. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Because each Top Portfolio and each Underlying Portfolio are advised by the Adviser or an affiliate under common control with the Adviser, they could be deemed to be under the common control of the Adviser and thus affiliated of one another. Thus, an Underlying Portfolio's issuance of its shares to a Top Portfolio may be considered a sale prohibited by section 17(a).

8. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent

[2] *See Daily Money Fund, et al.*, Investment Company Act Release Nos. 17257 (Dec. 8, 1989) (notice) and 17303 (Jan. 11, 1990) (order).

[3] *Daily Money Fund, et al.*, File No. 812–9844.

with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Underlying Portfolios to sell their shares to each Top Portfolio.[4] Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

9. Section 17(d) prohibits an affiliated person of a registered investment company from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that an affiliated person of a registered investment company acting as principal, shall not participate in any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement. Applicants request an order pursuant to section 17(d) and rule 17d–1 thereunder to the extent that the proposed transactions described in the application, including each Top Fund's possible entry into a Servicing Agreement, as defined below, may be deemed to be joint transactions between affiliated persons.

10. Administrative expenses (including transfer agent, shareholder servicing, custody, legal, and accounting expenses) may be charged at both the Top Portfolio and Underlying Portfolio levels. Applicants might adopt one of a number of possible administrative expense structures. Two examples of possible administrative expense structures are given below. However, any structure implemented will comply with the conditions to the application listed at the end of this notice. As one example, all administrative expenses would be paid for in accordance with a Special Servicing Agreement (''Servicing Agreement'') among each Top Fund, the Underlying Funds, and the Transfer Agent. Under the Servicing Agreement, each Top Portfolio would pay for services provided by the Transfer Agent, and would reimburse the Transfer Agent for services provided by other persons, except to the extent those services, or a portion of them, are paid by the Underlying Portfolios. Applicants represent that each Top Portfolio is expected to create economies for the Underlying Portfolios due primarily to a reduction in the administrative expenses to the Underlying Portfolios of servicing the Top Portfolios. If the aggregate financial benefits to the Underlying Portfolio equals or exceeds the costs of the Top Portfolio with respect to its investment in the Underlying Portfolio, there would be no charge to the Top Portfolio for the services under the Servicing Agreement. If the aggregate financial benefits to the Underlying Portfolio does not equal or exceed the administrative expenses of the Top Portfolio, the Top Portfolio would pay that portion of costs determined to be in excess of the benefits, except to the extent such costs are paid by the Adviser.

11. Alternatively, applicants might adopt a structure that did not seek to balance administrative expenses and benefits between the Top Funds and the Underlying Funds. For example, each Top Portfolio may maintain its shareholder accounts and bear all expenses related thereto. The Underlying Fund would maintain record ownership of the shares owned by the Top Portfolio in a single account in the name of the Top Portfolio. An Underlying Portfolio may adopt a separate class of shares (''New Class'') that would be offered to the Top Portfolios. Expense ratios for the New Class would be expected to be lower than those of other classes of the Underlying Portfolio, primarily due to lower administrative expenses. Applicants represent that the proposed arrangement would be advantageous to all applicants, and that participation of any Fidelity Fund would not be on a basis less advantageous or different from those of any other participants.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. A Top Portfolio and its Underlying Portfolios will be members of the same ''group of investment companies,'' as defined in paragraph (a)(5) of rule 11a–3 under the Act.

2. No Underlying Portfolio shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as otherwise permitted by order of the SEC pursuant to this application and under the Interfund Lending Order, and as may in the future be permitted by order of the SEC pursuant to the Central Funds Application.

3. A majority of the trustees of each Top Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15, the board of trustees of each Top Fund, on behalf of each Top Portfolio, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Portfolio's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Top Portfolio.

5. Any sales charges and other distribution-related fees charged with respect to securities of a Top Portfolio, when aggregated with any sales charges and distribution-related fees paid by the Top Portfolio with respect to securities of the respective Underlying Portfolios, shall not exceed the limits set forth in Article III, section 26, of the NASD Rules of Fair Practice.

6. The applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average net assets for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); monthly purchases and redemptions (other than by exchange) for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); monthly exchanges into and out of each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); month-end allocations of each Top Portfolio's assets among its Underlying Portfolios or Underlying Classes (as applicable); annual expense ratios for each Top Portfolio and each of its Underlying Portfolios or Underlying Classes (as applicable); and a description of any vote taken by the shareholders of any Underlying Portfolio or Underlying Class (as applicable), including a statement of the percentage of votes cast for and against the proposal by the Top Portfolio and by the other shareholders of the Underlying Portfolios or Underlying Classes (as applicable). Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Top Portfolio (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

[4] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–299 (1945). Section 6(c) can be used, along with section 17(b), to grant relief from section 17(a) for an ongoing series of future transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19760 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22110; 812–10108]

The Lazard Funds, Inc., et al; Notice of Application

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Lazard Funds, Inc. (the ''Fund''), and Lazard Freres Asset Management (''Lazard'').

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances in a single joint account to be used to enter into short-term investments.

FILING DATES: The application was filed on April 26, 1996, and amended on July 15, 1996.

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 August 26, 1996, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 30 Rockefeller Plaza, New York, N.Y. 10020.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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 Fund, a Maryland corporation, is a registered, open-end management investment company currently consisting of twelve portfolios (the ''Portfolios''). Lazard, a division of Lazard Freres & Co. LLC, serves as investment adviser to each Portfolio. Applicants request that any relief granted also apply to any future portfolios of the Fund and any future investment companies or portfolios thereof for which Lazard or any entity under common control or controlled by Lazard subsequently serves as investment adviser.

2. State Street Bank and Trust Company (''State Street'') provides administrative services to each Portfolio and serves as each Portfolio's custodian.

3. Lazard has discretion to purchase and sell securities for the Portfolios in accordance with each Portfolio's investment objectives, management policies and investment restrictions. All Portfolios currently are authorized by their investment policies and limitations to invest at least a portion of their uninvested cash balances in short-term liquid investments, including short term money market instruments with overnight, over-the-weekend or over-the-holiday maturities (''Short Term Money Market Instruments'')[1] and repurchase agreements.

4. Applicants expect that at the end of each trading day, some or all of the Portfolios will have uninvested cash balances in their custodian accounts that otherwise would not be invested in portfolio securities by Lazard. Generally, such cash balances are invested separately on behalf of each Portfolio in individual repurchase agreements. The Portfolios' uninvested cash balances typically are not invested in Short Term Money Market Instruments because such investments ordinarily cannot be made on a cost-efficient basis given the relatively small size of each Portfolio's cash balance.

5. Applicants propose to deposit some or all of the Portfolios' uninvested cash balances remaining at the end of each trading day into a single joint account, the daily balance of which would be invested in: (a) repurchase agreements ''collateralized fully,'' as defined in rule 2a–7 under the Act; and (b) Short Term Money Market Instruments which constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act. The Portfolios that are eligible to participate in the joint account and that elect to participate in such account are collectively referred to as ''Participants.''

6. Applicants propose that Lazard be responsible for negotiating the terms of these transactions in accordance with the investment objectives, management policies and investment restrictions of each Participant. Except insofar as it is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Participants, Lazard will have no monetary participation in the joint account, but will be responsible for investing assets in the joint account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

7. Each Portfolio has established certain systems and standards relating to repurchase agreements. These standards include quality standards for issuers of repurchase agreements and requirements that the repurchase agreements will be fully collateralized at all times. Any joint repurchase agreement transaction will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with any other existing and future positions taken by the SEC. In the event that the SEC sets forth guidelines with respect to any type of Short Term Money Market Instrument, all such investments made through the joint account will comply with those guidelines.

8. A Participant's decision to invest in the joint account will be solely at its option; a Participant will not be required either to invest a minimum amount or to maintain a minimum balance in the joint account.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Participants, by participating in the proposed joint account, and Lazard, by managing the proposed joint account, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d). In addition, the proposed joint account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Although Lazard might gain some benefit through administrative convenience and some possible reduction in clerical costs, the

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[1] Such instruments may include Treasury bills, United States government agency certificates, Euro CDs, overnight commercial paper, term bank deposits, certificates of deposit and bankers' acceptances of United States banks.

participating Portfolios and their shareholders will be the primary beneficiaries of the joint account because the joint account may earn higher returns and result in lower transaction costs for the Portfolios, and would be a more efficient means of administering the Portfolios' daily investment transactions.

4. Applicants believe that a Portfolio will never be in a less favorable position than if the joint account were not in place. The assets of a Participant held in the joint account will not be subject to the claims of creditors of other Participants.

5. Participants may earn a higher rate of return on investments through the joint account relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and Short Term Money Market Instruments that is higher than the rate available on smaller repurchase agreements and Short Term Money Market Instruments. The joint account also may increase the number of dealers willing to enter into short-term investment transactions with the participating Portfolios and may reduce the possibility that their cash balances remain uninvested.

6. The joint account may result in certain administrative efficiencies. In addition, by reducing the number of trade tickets which would have to be written, transactions would be simplified, with concomitant reduction of the potential for errors. For the reasons set forth above, applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act and the intention of rule 17d–1.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial cash account will be established with the State Street for the joint account into which each Portfolio will be permitted to have deposited daily some or all of its uninvested net cash balances after the conclusion of its daily trading activity. (If in the future any Portfolio has a custodian other than State Street at which the joint account will be maintained, such Portfolio will appoint such other custodian as a sub-custodian for the limited purpose of receiving cash for deposit into the joint account.) The joint account will not be distinguishable from any other accounts maintained by any Portfolio with State Street, except that monies of the Portfolios will be deposited on a commingled basis. The joint account will not have a separate existence and will not have any indicia of a separate legal entity. The sole function of the joint account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Portfolio of its uninvested cash balances.

2. Cash in the joint account will be invested in one or more of the following, as directed by Lazard: (a) repurchase agreements ''collateralized fully,'' as defined in rule 2a–7 under the Act; and (b) Short Term Money Market Instruments which constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act.

3. Each Participant's funds in the joint account will be invested consistent with that Participant's investment objective(s), management policies and investment restrictions. Not every Participant in the joint account necessarily will have its cash invested in every repurchase agreement entered into and/or Short Term Money Market Instrument purchased through the joint account. However, to the extent a Participant's funds are applied to a particular investment made through the joint account, the Participant will participate in and own a proportionate share of such investment and the income earned or accrued thereon, based upon the percentage of such investment purchased with such Participant's funds.

4. Lazard and State Street will maintain records (in conformity with section 31 of the Act and the rules and regulations thereunder) documenting, for any given day, each Participant's aggregate investment in the joint account and its *pro rata* share of each investment made through the joint account.

5. The securities subject to the repurchase agreement will be transferred to the custodial joint account. The securities will not be held by the repurchase agreement counterparty or by an affiliated person of that counterparty.

6. All investments held by the joint account will be valued on an amortized cost basis.

7. To ensure that there will be no opportunity for one Participant, no Portfolio will be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Portfolio's decision to invest in the joint account will be solely at its options, and no Portfolio will be obligated either to invest in the joint account or to maintain any minimum balance in the joint account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the joint account, including interest payable on such assets invested in the joint account.

8. Lazard will administer the investment of the cash balance in and operation of the joint account as part of its duties under its existing or any future investment management agreements with the Portfolios. Lazard will not collect any additional or separate fee for managing the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

10. The Fund's Board will adopt procedures for each of the Portfolios pursuant to which the joint account will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Fund's Board members will make and approve changes they deem necessary to ensure that such procedures are followed. In addition, the Fund's Board members will determine, no less frequently than annually, that the joint account has been operated in accordance with such procedures and will only permit a Portfolio to continue to participate therein if it determines that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from the Portfolio's continued participation.

11. Each Portfolio that values its assets in reliance upon rule 2a–7 under the act will use the average maturity of the instrument(s) in the joint account (determined on a dollar weighted basis) for the purpose of computing that Portfolio's average Portfolio maturity with respect to the portion of its assets held in the joint account on that day.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19839 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–2111; 812–9760]

The Pilot Funds, et al.; Notice of Application

July 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Pilot Funds, Boatmen's Trust Company (''Boatmen's''), and Kleinwort Benson Investment Management Americas Inc. (''Kleinwort Benson'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B), under sections 6(c) and 17(b) for an exemption from section 17(a), and under section 17(d) and rule 17d–1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to purchase shares of affiliated money market funds in excess of the limits prescribed in section 12(d)(1).

FILING DATES: The application was filed on September 12, 1995 and amended on March 22, 1996, on May 31, 1996, and on July 25, 1996.

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 August 26, 1996 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Pilot Funds, 125 West 55th Street, New York, New York 10019; Boatmen's, 100 North Broadway, St. Louis, Missouri 63178.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Pilot Funds is an open-end management investment company that currently offers fourteen series (each, a ''Pilot Fund''). Four of the Pilot Funds are money market funds subject to the requirements of rule 2a–7 under the Act (together with any future money market funds, the ''Money Market Funds''). The other ten Pilot Funds are non-money market funds (together with any future non-money market funds, the ''Non-Money Market Funds''). Applicants request relief on behalf of the Pilot Funds and any other registered investment companies that now or in the future are advised by Boatmen's (collectively, the ''Funds'').[1]

2. Boatmen's serves as investment adviser for each Pilot Fund. Kleinwort Benson serves as sub-investment adviser for the Pilot International Equity Fund (together with Boatmen's and any entity controlling, controlled by, or under common control with Boatmen's, Kleinwort Benson, and any future sub-investment adviser to a Fund, the ''Investment Advisers''). Pilot Funds Distributors Inc. serves as distributor for each Fund. BISYS Fund Services Limited Partnership serves as administrator for each fund.

3. The Money Market Funds seek current income and liquidity consistent with the preservation of capital by investing exclusively in short-term money market instruments. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be invested in any portfolio securities.

4. Applicants request an order that would permit (a) each of the Funds to utilize cash reserves that have not been invested in portfolio securities to purchase shares of one or more of the Money Market Funds (each such Fund purchasing shares of the Money Market Funds is an ''Investing Fund'') and (b) each Money Market Fund to sell shares to, and redeem such shares from, an Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Funds will be able to reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants' request would permit the Investing Funds to use uninvested cash to acquire shares of a Money Market Fund in excess of the percentage limitations set out in section 12(d)(1)(A). Applicants proposed that each Investing Fund be permitted to invest in shares of a Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed 25% of the Investing Fund's total net assets. Applicants' request also would permit the Money Market Funds to sell their securities to an Investing Fund in excess of the percentage limitations set out in section 12(d)(1)(B).

4. The restrictions in section 12(d)(1) were intended to prevent certain abuses perceived to be associated with the pyramiding of investment companies, including: (a) undue influence by the fund holding company over its underlying funds; (b) the threat of large scale redemptions of the securities of the underlying investment companies; (c) unnecessary duplication of costs, *e.g.*, sales loads, advisory fees, and administrative costs; and (d) unnecessary complexity. For the following reasons, applicants believe that the proposed arrangement does not entail the type of abuse that Congress adopted section 12(d) to prevent.

5. Applicants represent that the proposed arrangement would contain no improper layering of fees. The shareholders of the Investing Funds would not be subject to the imposition of double management fees. Before approving any advisory contract, the Investing Fund's board of trustees,

[1] All existing investment companies that presently intend to rely on the requested order are named as applicants.

including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will consider to what extent the advisory fees charged to the Investing Fund should be reduced to account for the reduction of these services as a result of a portion of the assets of the Investing Fund being invested in the Money Market Fund. Further, no sales load, redemption fee, distribution fee, or service fee will be charged by the Money Market Funds with respect to the purchase or redemption of the Money Market Fund shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of investment.

6. Sections 17(a)(1) and (2) make it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from such investment company. Because each Fund may be deemed to be under common control with the other Funds, it may be an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, would be prohibited under section 17(a).

7. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Investing Funds to purchase shares of a Money Market Fund, and a Money Market Fund to redeem such shares.[2]

8. The Investing Funds will retain their ability to invest their cash balances directly in money market instruments as authorized by their respective investment objectives and policies, if they believes they can obtain a higher return or for any other reason. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales would adversely affect the Money Market Fund's portfolio management and operations. Therefore, applicants believe that the proposal satisfies the standareds for relief in sections 6(c) and 17(b).

9. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, by purchasing shares of the Money Market Funds, each Investment Adviser of an investing Fund, by managing the assets of the Investing Funds invested in the Money Market Funds, and each Money Market Fund, by selling shares to the Investing Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d–1.

10. In passing upon applications submitted pursuant to section 17(d) and rule 17d–1, the SEC will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the proposal satisfies these standards.

Applicants Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in section 26(b)(9) of the NASDd Rules of Fair Practice).

2. Before the next meeting of the board of trustees of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Investment Adviser to the Investing Fund will provide the board of trustees with specific information regarding the approximate cost to the Investment Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Investing Fund that can be expected to be invested in the Money Market Fund. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Investing Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Investment Adviser should be reduced to account for the reduction of these services to the Fund by the Investment Adviser under the advisory contract as a result of a portion of the assets of the Fund being invested in the Money Market Fund. The minute books of the Investing Fund will record fully the board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each Investing Fund will invest uninvested cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total net assets.

4. Investment in shares of the Money Market Funds will be in accordance with each investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised by the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. A majority of the directors of an Investing Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19838 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently are used to grant relief from section 17(a) to permit an ongoing series of future transactions.

[Release No. 34–37487; File No. SR–CBOE–96–14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change Relating to the Telephone Policy for the S&P 100 (''OEX'') Options Post

July 26, 1996.

I. Introduction

On March 12, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend its policy governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index (''OEX'') are traded. The proposed rule change was published for comment and appeared in the Federal Register on April 8, 1996.[3] No comments were received regarding the proposal. The Exchange filed Amendment Nos. 1,[4] 2,[5] and 3[6] to its proposal on June 10, 1996, July 10, and July 23, 1996, respectively. This order approves the proposal.

II. Description of the Proposal

The purpose of the proposed rule change is to amend the Exchange's Regulatory Circular governing the use of telephones at the OEX trading post in two respects: first, by relaxing the restriction against floor brokers taking orders over the post telephones; and second, to accommodate the receipt of such orders, by relaxing the prohibition on the use of post telephones to permit floor brokers to receive incoming calls.[7] In addition, Exchange members seeking to use or install a telephone or telephone line or to be assigned a PIN access code will be required to submit an Application and Agreement form that sets forth the policies enunciated in the proposed Regulatory Circular, requires a member to furnish all the information pertaining to his or her intended use of an OEX post telephone, and shows whether a member has received all of the necessary approvals attendant to the intended telephone usage.[8] Finally, as discussed below, the Exchange is proposing certain amendments to its Rule 6.70.

The first proposed change to the Exchange's OEX telephone policy relaxes the prohibition against floor brokers taking orders over the post telephones. The telephone lines may not be used to receive orders except for those telephone lines dedicated to a particular floor broker who has been approved for such use by the Exchange. Floor brokers who meet the requirements to engage in a public customer business, including the requirement that they be registered representatives associated with a member organization which is qualified to do a public customer business under Chapter IX of the Exchange's rules, and who are approved by the Exchange to receive such telephone orders, would be permitted to take the orders of public customers.[9] Floor brokers who are not qualified to do a public customer business still would be permitted to take the orders of registered broker-dealers, after receiving Exchange approval to take such telephone orders.[10] The second proposed change to the current policy relaxes the prohibition against receiving incoming calls to accommodate the receipt of orders by floor brokers.

Under the revised policy, incoming calls from locations outside of the CBOE building may be received at the OEX post only on telephone lines dedicated to the exclusive use of properly approved floor brokers, and may not be received on Exchange-provided general use telephone lines at the post. For this purpose, a call that emanates from a location outside the building and is patched or conference-linked from a member's booth or other location to a post telephone is considered to be a call from outside the building. Any floor broker who wishes to use a telephone or telephone line to receive incoming calls from outside the CBOE building or to receive orders from any source must obtain prior approval from the Exchange's Department of Compliance and from the OEX Floor Procedure Committee. Additionally, any floor broker who wishes to take orders directly from public customers over a telephone lie at the OEX post must be approved by the Membership Committee to conduct a public customer business in accordance with the rules of the Exchange.[11]

To accommodate these changes, the Exchange has proposed some language changes to the existing Regulatory Circular. First, the Regulatory Circular

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36331 (March 29, 1996), 61 FR 15540.

[4] Amendment No. 1 effects several changes to the CBOE's proposal. First, the Exchange represents that it will conduct floor broker audits in connection with the proposed relaxation of the restrictions on the use of the telephones at the OEX option trading post. Second, the Exchange submitted a form of Application and Agreement to be used by Exchange members in applying to use or install a telephone or a telephone line at the OEX post or to be assigned a personal identification number (''PIN'') access code to make outgoing calls. Third, the Exchange has made certain clarifying revisions to the Regulatory Circular that it intends to issue following Commission approval of its proposal. Letter from Timothy Thompson, CBOE, to Michael Walinskas, Division of Market Regulation (''Division''), Commission, dated June 7, 1996 (''Amendment No. 1'').

[5] Amendment No. 2 effects several technical clarifying changes to the Exchange's proposed Application and Agreement and Regulatory Circular. Amendment No. 2 also notes that the proposed telephone policy is not intended to restrict the Exchange from maintaining a general telephone line or lines at the OEX post on which Exchange staff may make outgoing calls and receive incoming calls. Letter from Timothy Thomson, CBOE, to Michael Walinskas, Division, Commission, dated July 3, 1996 (''Amendment No. 2'').

[6] Amendment No. 3 effects two changes to the Exchange's proposal. First, a sentence is added to the preamble to the proposed Application and Agreement to make it clear that incoming calls from locations outside of the CBOE building may be received at the OEX post only on telephones or telephone lines dedicated to the exclusive use of approved floor brokers, and may not be received on Exchange-provided general use telephone lines at the post. Although this restriction already was set forth in the proposed Regulatory Circular, it was not stated explicitly in the proposed Application and Agreement. Second, language is added to paragraphs L and M of the proposed Application and Agreement to indicate that for purposes of those paragraphs ''Member'' means floor brokers, their employees, or such other associated persons as are authorized to receive calls or qualified to receive orders. Letter from Timothy Thompson, CBOE, to Sharon Lawson, Division, Commission, dated July 23, 1996 (''Amendment No. 3'').

[7] The Regulatory Circular setting forth the current OEX telephone policy initially was filed by the Exchange as SR–CBOE–95–15 (noticed in Securities Exchange Act Release No. 35725 (May 17, 1995)) on May 12, 1995, under paragraph (e)(6) of Rule 19b–4 under the Exchange Act and accordingly became effective upon the date of filing and operative 30 days thereafter. The Exchange re-filed the policy for full Commission review in SR–CBOE–95–49. That second filing was approved by the Commission on December 1, 1995 (Securities Exchange Act Release No. 36546, 60 FR 63552).

[8] Amendment No. 1, *supra* note 4.

[9] In addition to the SEC net capital, recordkeeping, and financial reporting requirements applicable to member organizations, a member or associated person transacting business with the public must satisfy other requirements, including receiving approval from the Membership Committee, participating in certain education programs, and passing a test concerning the handling of customer accounts.

[10] Floor brokers who intend to receive orders only from other Exchange members or other registered broker-dealers for their own accounts need not qualify to do a public customer business under Chapter IX, but still must apply for approval to take orders over a floor telephone.

[11] For these purposes, ''public customer'' means any person or entity other than members, member organizations, or U.S. registered broker dealers.

In its filing, the Exchange states that it is reviewing this policy and expects to decide soon whether or not market-makers at the OEX post also should be permitted to receive incoming calls.

will be amended to make clear that only floor brokers may receive incoming calls from locations outside the CBOE building at the OEX post on approved telephones or telephone lines dedicated to the exclusive use of the floor broker. Second, those floor brokers who have been approved to receive incoming calls will be able to receive incoming calls even if those calls are not for the purpose of transmitting an order to the floor broker. Finally, the Regulatory Circular also will remind members that the Exchange will charge a $5 monthly fee for the use of the telephones for those members that use a PIN access code. This fee was noted and approved in the earlier Commission releases regarding the OEX telephone policy.[12]

The form of Application and Agreement that will be required of members who wish to install or use telephones at the OEX post has been drafted to reflect the amended telephone policy. First, only duly qualified and approved floor brokers will have access to dedicated telephones or telephone lines that are capable of directly receiving calls that originate from off the premises of the Exchange. Second, only those floor brokers who are qualified and approved to conduct a public customer business will be permitted directly to receive public customer orders over telephones at the OEX post, whether such orders are received in calls originating from off or on the floor. Third, members at the OEX post may apply to be assigned a PIN access code that will allow them to use Exchange provided telephone lines at the OEX post, but these lines may be used for outgoing calls only and may not be used to receive orders. Finally, all members in the OEX post are permitted to receive calls from and to place calls to another telephone in the CBOE building on the Exchange's internal system.[13]

Reflecting these policies, the form of Application and Agreement requires applicants to furnish in a single form all of the information pertaining to their intended use of post telephones that the Exchange will need to monitor telephone usage and enforce applicable restrictions. The form also shows whether a floor broker has received all of the several separate approvals that are needed for the installation of a dedicated telephone or line at the OEX post. The form of agreement also serves to remind members of their obligations in respect of the use of OEX post telephones, including some contractual provisions that are not present in the proposed Regulatory Circular. These include paragraphs G and H of the agreement, which deal with liability issues pertaining to telephone usage. Specifically, paragraph G states that the Exchange shall not be liable to members or their customers for losses resulting from the installation, operation, relocation, use of, or inability to use telephones or telephone lines at the OEX post. Paragraph H requires the member to indemnify the Exchange against any liabilities arising out of OEX post telephone or lines.[14] Finally, the Application and Agreement defines the terms ''incoming calls from outside the CBOE building,'' ''dedicated telephone or dedicated telephone line,'' and ''general use telephone lines'' to the extent these terms are relevant to understanding OEX telephone policy.[15]

To accommodate the receipt of orders, the Exchange proposes to amend Rule 6.70, Floor Broker Defined, to state that a floor broker may receive orders from registered broker-dealers without satisfying the additional requirements necessary to take orders from public customers. Currently, Rule 6.70 states that a floor broker only may receive orders from: (1) members, or (2) public customers, if, in the case of public customer orders, that floor broker is either the nominee of, or has registered his individual membership for, a member organization approved to transact business with the public in accordance with Rule 9.3. Orders from non-member registered broker-dealers do not fit into either of these categories; they are not considered public customer orders and are not orders of members. Accordingly, the change will eliminate any ambiguity and make it clear that floor brokers may accept orders from non-member broker-dealers without receiving Exchange approval pursuant to Rule 9.1.

The CBOE also proposes to amend Rule 6.70 to state explicitly the CBOE Rule 9.3 requirement that a floor broker seeking to transact business with the public must complete successfully an examination demonstrating adequate knowledge of the securities business. Currently, a floor broker must complete successfully the Series 7 examination to transact business with the public.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act,[16] in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, insurers, brokers, or dealers. Specifically, the Commission believes that the proposed change to the CBOE's telephone policy at the OEX post should help to facilitate efficient access to OEX options in a fair manner. Providing procedures whereby floor brokers in the OEX trading crowd can readily communicate with the off-floor offices of member firms as well as with other locations off of the Exchange's trading floor, including non-member customers, will allow them to obtain and transmit information and instructions more efficiently which may result in benefits to investors by improving execution of orders. At the same time, the changes, as the CBOE notes, will tend to eliminate the existing disparity between members whose booths currently are adjacent to the OEX post and those that have booths further away from the post. For similar reasons, as discussed below, the Commission finds that the CBOE's proposed Application and Agreement is consistent with the Act. The Application and Agreement is designed to make clear the duties and obligations of members respecting the installation and use of telephones on the Exchange, and to make sure that all necessary approvals are received prior to such installation and use. Accordingly, this should help ensure compliance with Exchange rules by members consistent with Section 6 of the Act.

In File No. SR–CBOE–95–49, the Exchange stated its concern regarding the ability of floor brokers to receive orders over telephones by stating that it was concerned about ''how to provide customers with access to the trading floor on a fair and nondiscriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers, and how to

[12] *See* Securities Exchange Act Release Nos. 35725, and 36546, *supra* note 6.

[13] Paragraph C of the Application and Agreement states that the Exchange will retain the discretion to allow a floor broker to have only a dedicated telephone line on an Exchange-owned telephone (instead of his or her own dedicated telephone) due to space considerations in the OEX post.

[14] Amendment No. 1, *supra* note 4.

[15] Amendment Nos. 1 and 2, *supra* notes 4 and 5, respectively.

[16] 15 U.S.C. § 78f(b)(5) (1988).

surveil order-taking activity conducted over floor telephones.'' The Commission believes that the proposal should not deleteriously affect customer access, given that calls now come into member firm booths, some of which are located just outside of the OEX post. In its filing, the Exchange notes that allowing calls to come directly to the post eliminates the existing disparity between those members whose booths are adjacent to the post and those whose booths are farther away. In its filing, the Exchange states its belief that it will be a business decision of the individual floor brokers and their member firms to decide whether to use telephones at the OEX post, and to determine which customers will have access to those telephones. This is similar to the current situation where firms decide which customers may call them at the booth telephones. In addition, the policy will continue to require that only those quotations that have been publicly disseminated pursuant to Rule 6.43 may be provided to customers over post telephones. Therefore, the Commission agrees with the Exchange that this policy change should not represent a material departure from the current state of customer access.

Further, the Commission believes that the CBOE's floor broker examination program and proposed Application and Agreement and Regulatory Circular adequately address concerns relating to the need to ensure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide adequate surveillance over this activity. The Exchange's floor broker examination program has been expanded to include a review of whether a floor broker is qualified to conduct non-member customer business, and all members registered to conduct non-member customer business are examined by their designated options examining authority each year.[17] Moreover, members that meet internally established criteria will be identified for a floor broker examination. The Exchange also will rely on floor officials and other members in the OEX trading crowd to surveil activity of floor brokers to ensure adequate compliance with the OEX telephone policy. Finally, the application and Agreement that members must submit to use or install a telephone or a telephone line, or to be assigned a PIN access code to make outgoing calls, as well as the Regulatory Circular, clearly state the obligations and responsibilities of members vis a vis non-member customers and the use of telephones, which should aid in compliance. In particular, the terms of the Application and Agreement should help to ensure that the Exchange's telephone policy is understood by members, as are the members' general obligations to adhere to the applicable laws, rules, policies, and procedures of the Application and Agreement, Exchange, and Commission. In addition, the Application and Agreement should ensure that all necessary approvals are received by members prior to their installation and use of telephones.[18]

In summary, because the Commission believes that the CBOE's proposal to modify its policy regarding telephones at the OEX options post may result in benefits to investors by allowing improved access to the market while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper trading activity, the Commission finds that the proposed rule change is consistent with the requirements of the Act. The Commission recognizes that the revised OEX telephone policy only will permit incoming calls at the OEX post from locations outside of the CBOE building on telephones or telephone lines dedicated to the exclusive use of approved floor brokers. Accordingly, other market participants, such as OEX market makers, may not receive incoming calls at the OEX post. The Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory issues. While this is not meant to imply that the Exchange is prohibited in the future from requesting such access for other participants in the OEX trading crowd, appropriate safeguards to address possible misuse of non-public information, adequate surveillance, and compliance with Exchange Rules and the Act would have to be addressed.

Finally, the Commission notes that except for the changes described above, the substance of the revised Regulatory Circular previously has been approved by the Commission. For the same reasons discussed in the Commission's previous approval order, we find those provisions, which include provisions permitting outgoing calls at the post, as well as those which prohibit the use of portable telephones or headsets, consistent with the Act.

As to the remaining proposed amendments, the Commission believes that the Exchange's proposal to amend its Rule 6.70, Floor Broker Defined, to state that a floor broker may receive orders from broker-dealers who are not CBOE members without having to meet the additional requirements necessary to take orders from public customers is consistent with the Act. The Commission notes that the proposed amendment to CBOE Rule 6.70 merely serves to treat registered broker-dealers equally, whether CBOE members or not. The Commission also notes that this provision is consistent with the definition of ''public customer of a member organization'' found in CBOE Rule 6.74, ''Crossing'' Orders.[19] The Commission also believes that the Exchange's proposal to revise its Rule 6.70 to note that among the requirements a floor broker must meet to register pursuant CBOE Rule 9.1 is the successful completion of an examination demonstrating an adequate knowledge of the securities business is consistent with the Act in that it serves to reinforce an existing provision of the CBOE's Rules relating to transacting business with the public.[20]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that Amendment No. 1 clarifies the Exchange's proposal and serves to strengthen it. The Application and Agreement makes clear the duties and obligations of members with respect to the installation and use of telephones on the Exchange, and should ensure that members receive appropriate approvals prior to such installation and use. With respect to the expansion of the Exchange's floor broker examination program, the Commission believes that it is designed to ensure that only members registered and qualified to conduct non-member customer business indeed do so. Amendment No. 1 also serves to make certain non-substantive changes to the Exchange's proposal. The Commission believes that Amendment Nos. 2 and 3 clarify the existing terms of the CBOE's proposal, rather than make any substantive changes. Based on the foregoing, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, and 3 to the Exchange's proposal on an accelerated basis.

[17] Amendment No. 1, *supra* note 4.

[18] For example, the Application and Agreement requires verification that a floor broker desiring to accept orders directly from public customers at an OEX post telephone has been approved by CBOE's Membership Committee to conduct a public customer business.

[19] CBOE Rule 6.74, Interpretation and Policy .01, defines ''public customer of a member organization'' to mean ''a customer that is neither a member nor a broker/dealer.''

[20] CBOE Chapter IX, Doing Business with the Public.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–14 and should be submitted by August 26, 1996.

V. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (File No. SR–CBOE–96–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19761 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37496; File No. SR–CBOE–96–46]

Self-Regulatory Organization: Notice of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Related to Tolling of the Time Period for Settlement of Disciplinary Cases Pursuant to Interpretation and Policy .01(d) Under Exchange Rule 17.8

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 23, 1996,[1] the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Interpretation and Policy .01(d) under CBOE Rule 17.8 (''Interpretation .01(d)''), to allow Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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 amend Interpretation .01(d) to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period.

Pursuant to CBOE Rule 17.8, after a Respondent is served with a statement of charges for an alleged rule violation, the Respondent has 120 days to attempt to resolve the charges by submitting a written offer of settlement. Pursuant to CBOE Rule 17.4(c), within 60 days after a statement of charges has been served, the Respondent may make a written request for and obtain access to all documents concerning the case that are in the investigative file of the Exchange except for staff investigation and examination reports and materials prepared by the staff in connection with such reports or in anticipation of a disciplinary hearing or other privileged materials. If such a request is made, Interpretation .01(d) provides that this 120-day time period shall be tolled during the number of days in excess of seven calendar days that it takes staff to provide access to documents in response to a Respondent's request for such access.

The proposed rule change would revise Interpretation .01(d) to provide that the 120 day time period shall be tolled during the number of days in excess of *thirty* calendar days that it takes staff to provide access to documents in response to a Respondent's request. CBOE has found that in most cases staff needs longer than seven days to respond to such a request. Before providing access, Exchange staff must review and organize the file to remove privileged documents or information that is not discoverable and to remove information that may identify the complainant Consequently, the 120 day settlement period is frequently tolled under Interpretation .01(d) while staff works on responding to the access request.

Exchange staff believes that in some instances Respondents, or their attorneys, have requested access just to gain an extension of the settlement period through tolling. There have been occasions where staff has spent more than 7 days preparing the investigative file for access, but after gaining the benefit of tolling, the Respondent submits an offer of settlement without ever reviewing the file.

CBOE believes it is important to provide a Respondent with access to documents in accordance with Rule 17.4(c); however, CBOE wants to discourage access requests made for the purpose of extending the 120 day settlement period. Therefore, the proposed rule change would amend Interpretation .01(d) to toll the 120 day settlement period only if Exchange staff takes more than 30 days to respond to a Respondent's request. Exchange staff believes that 30 days is generally a realistic estimate of the amount of time needed to respond to an access request. Since in most cases staff will be able to respond within 30 days, access requests should not typically extend the 120 day settlement period.

Under the proposed rule change, a Respondent will still have a sufficient amount of time to settle the matter after obtaining the requested documents. Even if a Respondent waits until the last day the rules allow to file a written

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[21] 15 U.S.C. § 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12).

[1] The proposal was originally filed with the Commission on July 10, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 was a minor technical amendment. *See* Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated July 23, 1996.

request for documents (60 days after a statement of charges has been served) and staff takes thirty days to respond, the Respondent still has thirty more days to submit a settlement offer within the 120 day time period.

It is also proposed to amend Interpretation and Policy .01 under Rule 17.8 to deal with the situation where a Respondent has elected to proceed in an expedited manner pursuant to Rule 17.3 in an effort to resolve a matter by entering into a letter of consent prior to the issuance of charges. Interpretation and Policy .01(b) under Rule 17.8 provides that if an effort to reach agreement with Exchange staff upon a letter of consent is unsuccessful and charges are issued, any time in excess of 30 days spent in attempting to negotiate a letter of consent is deducted from the 120-day settlement period, but that in any event a Respondent will always have at least 14 days after service of charges within which to submit an offer of settlement. Under the existing provision of Interpretation .01(d), which tolls the settlement period after seven days when a document request has been made, assuming a Respondent makes a document request on the first day of the 14-day settlement period, that Respondent always has at least seven days remaining of the 14-day settlement period after the documents are provided within which to submit an offer of settlement. In order to continue to provide this minimum seven day period in light of the proposal not to commence tolling the settlement period until 30 days after a request for documents, Interpretation .01(d) is proposed to be amended to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement.

This proposed amendment to Interpretation .01(d) will be invoked only if, on the day a Respondent receives the requested documents, the time left for settlement is seven days or less. In all other circumstances, tolling of the settlement period begins once Exchange staff has taken more than 30 days to respond to a Respondent's document request.

The CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(7) of the Act in that it improves the Exchange's procedures for the discipline of members and persons associated with members. The proposal reduces the potential for delay in concluding a disciplinary case by appropriately limiting a Respondent's ability to toll the 120 day settlement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. CBOE–96–46 and should be submitted by August 26, 1996.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19840 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37491; File No. SR–CHX–96–19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Enhanced SuperMAX and Timed Enhanced SuperMAX

July 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 2, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend its Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program, described in subsections (e) and (f) of Rule 37 of Article XX of the Exchange Rules, for five months, until December 31, 1996, and the deadline for filing a report to the Commission describing its experience with the pilot program, to August 31, 1996.

The text of the proposed rule change is available at the Office of the Secretary, CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1996, the Commission approved a proposed rule change of CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[1] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options to be available under this new rule.[2] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, were approved on a pilot basis until July 31, 1996. The Commission, in the Pilot Approval Order, requested that the CHX provide a report to the Commission, by May 31, 1996, describing its experience with the pilot program.

The purpose of the proposed rule change is to request a five-month extension of the pilot program, until December 31, 1996, and to request an extension, until August 31, 1996, of the deadline for submitting the monitoring report to the Commission. The Exchange requests the five-month extension of the pilot program to give the CHX additional time to prepare the report for submission to the Commission. The Exchange requests additional time to prepare the monitoring report because of the increased amount of staff time and resources that the Exchange devoted in ensuring smooth transitions that were necessitated by the Exchange's decision to withdraw from the clearance and settlement and securities depository businesses.[3] Now that this transition is virtually complete, the Exchange can devote the necessary time and resources needed to provide the Commission with the information requested in the report.

As stated above, the two options available in the pilot program are Enhanced SuperMAX and Timed Enhanced SuperMAX. Enhanced SuperMAX is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[4] Unlike the old pilot program, however, the new Enhanced SuperMAX program is available starting at 8:45 a.m. instead of 9:00 a.m. This program differs from the Exchange's SuperMAX program in that under this program, certain orders are ''stopped'' at the NBBO[5] and are executed with reference to the *next* primary market sale instead of the previous primary market sale. Timed Enhanced SuperMAX is a slight variation on the Enhanced SuperMAX program. It executes orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5).[6] More specifically, the Commission continues to believe that the pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges.

In the Pilot Approval Order,[7] the Commission asked the Exchange to monitor the operation of the systems and determine their effectiveness and to submit a report to the Commission by May 31, 1996 describing its experience with the pilot program. Moreover, the Commission requested that the Exchange assure the Commission that the pilot program has no adverse effects on the quality of customer order executions and determine whether specialists were choosing the appropriate system for each of their stocks. The Exchange has represented that it has not had available the necessary human resources to gather the relevant data and prepare the monitoring report and, therefore, requests an extension of the deadline for filing the report until August 31, 1996, and an extension of the pilot program until December 31, 1996.

The Commission believes that the empirical data in the monitoring report and the conclusions reached therein will be critical in determining whether to further extend or permanently approve the Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program. Moreover, extending the effectiveness of the pilot program until December 31, 1996 will provide the Commission with four months in which to carefully and comprehensively evaluate the information provided by the Exchange. Accordingly, the Commission believes that it is reasonable to extend the Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program until December 31, 1996, and extend the deadline for filing the monitoring report until August 31, 1996.

Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program should be submitted to the

[1] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995).

[2] *See* Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465 (August 2, 1995) (''Pilot Approval Order'').

[3] *See* Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (January 17, 1996).

[4] *See* Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765 (December 18, 1991).

[5] The term national best bid or offer (''NBBO'') is defined under SEC Rule 11Ac1–2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1–1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of Nasdaq.

[6] 15 U.S.C. 78f.

[7] *See supra,* note 2.

Commission by October 15, 1996 as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This will permit the pilot program to remain in effect until December 31, 1996 without interruption. In addition, the Exchange has represented that no problems have arisen and no complaints have been received concerning the pilot program since its implementation.[8] Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–96–19 and should be submitted by August 26, 1996.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–96–19), extending the pilot program until December 31, 1996 and extending the deadline for filing the monitoring report to August 31, 1996, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19763 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[8] Telephone conversation between David T. Rusoff, Esq., Foley & Lardner, and James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, SEC on July 17, 1996.

[9] U.S.C. 78s(b)(2).

[10] CFR 200.30–3(a)(12).

[Release No. 34–37490; File No. SR–DTC–96–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding the Quarterly Assessment of Participants for Lines of Credit Costs

July 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 12, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–12) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposal is to change from a monthly basis to a quarterly basis DTC's assessment of participants to recover its costs of obtaining a committed line of credit to fund shortfalls resulting from late payments of principal and income (''P&I payments'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to change from a monthly basis to a quarterly basis DTC's assessment of participants to recover its costs of obtaining a committed line of credit to fund shortfalls resulting from late P&I payments. In order to help assure that DTC is able to allocate P&I payments to participants in same-day funds on the payment date, DTC has obtained a committed bank line of credit to support P&I Payment allocations of funds not received by DTC's 2:30 p.m. cut-off time. DTC's procedures provide that the commitment fee paid by DTC will be charged to participants monthly on a pro-rata basis based upon the P&I payments that each participant received during the previous calendar year or other reasonably determined time period.[3] The purpose of the proposed rule change is to provide for this charge to be made quarterly, instead of monthly, because DTC is billed on a quarterly basis.

DTC believes that the proposed rule change is consistent with Section 17A of the Act[4] and the rules and regulations thereunder, because it will provide for the equitable allocation of dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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

DTC did not solicit comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder in that the proposal changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 36837 (February 13, 1996), 61 FR 6404 [File No. SR–DTC–96–02] (notice of filing and immediate effectiveness of proposed rule change regarding principal and income payments to participants).

[4] 15 U.S.C. § 78q–1 (1988).

[5] 15 U.S.C. § 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1995).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–12 and should be submitted by August 26, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–37492; File No. SR–NASD–96–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Extension and Permanent Approval of the NASD's Short Sale Rule

July 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval to a portion of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to implement its short sale rule (''Rule'') on a permanent basis. With this filing, the NASD is also proposing a three-month extension of the pilot program for the short sale rule so that the effectiveness of the Rule does not lapse while the Commission considers the NASD's request for permanent approval of the Rule.

The text of the proposed rule change with respect to the proposal to implement the short sale rule on a permanent basis is as follows (additions are in italics and deletions are bracketed):

NASD Rule 3350

* * * * *

(k)(3)[(A) Until February 1, 1996, the term ''qualified market maker'' shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subsection, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:

(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided, however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;

(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any stock in which it has registered pursuant to this subsection within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.

(B) For purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq on a continuous basis; provided, however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, t]*T*he term ''qualified market maker'' shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.

[(1) This section shall be in effect until August 3, 1996.]

The text of the proposed rule change with respect to the proposal to extend the short sale rule for a three-month period is as follows (additions are italics and deletions are bracketed):

NASD Rule 3350

* * * * *

(1) This section shall be in effect until [August 3, 1996] *November 4, 1996.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[7] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background and Description of the NASD's Short Sale Rule

On June 29, 1994, the SEC approved the NASD's short sale rule applicable to short sales [3] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[4] The NASD's short sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[5] The Rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

i. Market Maker Exemption

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, the Rule provides an exemption to ''qualified'' Nasdaq market makers. Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the short sale rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system, although it can not take advantage of the exemption from the Rule.

From September 4, 1994 through February 1, 1996, Nasdaq market makers who maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided that the short sales were made in connection with bona fide market making activity (''the 20-day'' test). Since February 1, 1996 until the present, the ''20-day'' test has been replaced with a four-part quantitative test known as the Nasdaq Primary Market Maker (''PMM'') Standards.

Under the PMM Standards, a market maker must satisfy at least two of the following four criteria to be eligible for an exemption from the short sale rule: (1) the market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock.[6] If a market maker is a PMM for a particular stock, there is a ''P'' indicator next to its quote in that stock. In addition, market makers are able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed on the next business day following notice of failure to satisfy the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards in the next review period.

The ability of a member firm to achieve and maintain PMM status in 80 percent of the NNM issues in which it is registered can also have the following corollary effects:

a. Existing NNM Securities: If a member firm is a PMM in 80 percent or more of the securities in which it has registered, the firm may immediately become a PMM (*i.e.*, a qualified market maker) in a NNM security by registering and entering quotations in that issue. If the member firm is not a PMM in at least 80 percent of its stocks, it may become a PMM in that stock if it registers in the stock as a regular Nasdaq market maker and satisfies the PMM qualification standards for the next review period.

b. Initial Public Offerings (''IPOs''): If a member firm has obtained PMM status in 80 percent or more of the stocks in which it has registered, the firm may immediately become a PMM in an IPO by registering and entering quotations in the issue. However, if the firm: (1) withdraws from the IPO on an unexcused basis any time during the calendar month in which the IPO commenced trading on Nasdaq or (2) fails to meet the PMM standards for the month in which the IPO commenced trading on Nasdaq,[7] then the firm is precluded from becoming a PMM in any other IPO for ten business days following the unexcused withdrawal of failure to meet the PMM standards (''10-day rule'').[8]

c. Merger and Acquisition Situations: after a merger or acquisition is announced, a market maker that is a PMM in one stock may immediately become a PMM in the other stock by registering and entering quotations in that issue.

ii. Options Market Maker Exemption

In an effort to not constrain the legitimate hedging needs of options market makers, the NASD's short sale rule also contains a limited exception for standardized options market makers. Specifically, under the Rule, an NASD member may execute a short sale for the account of an equity option market maker or an index option market maker that would otherwise be in contravention of the NASD's short sale rule so long as: (1) the short sale is an ''exempt hedge transaction'';[9] and (2)

[3] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a ''short sale'' contained in Rule 3b–3, 17 CFR 240.3b–3, which rule is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[4] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order''). The termination date for the pilot program was subsequently extended until August 3, 1996 due to delays in implementation of the NASD's Primary Market Maker Standards. *See* Securities Exchange Act Release Nos. 36171 (August 30, 1995), 60 FR 46651; and 36532 (November 30, 1995), 60 FR 62519.

[5] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up bid'' or a ''down bid.'' Specifically, an ''up bid'' is denoted by a green ''up'' arrow and a ''down bid'' is denoted by a red ''down'' arrow. Accordingly, absent an exemption from the rule, a member can not effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen. In order to effect a ''legal'' short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green, up arrow next to it, members can effect short sales in the security without any restrictions.

[6] Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

[7] On June 20, 1996, the NASD submitted a rule filing to the SEC that clarified the applicable PMM review period for IPOs listed during the last five business days of a month. *See* Securities Exchange Act Release No. 37426 (July 11, 1996), 61 FR 37521 (File SR–NASD–96–25).

[8] The PMM rule also has provisions applicable to secondary offerings. Specifically, unless a market maker is registered in a security prior to the time a secondary offering in that stock has been publicly announced or a registration statement has been filed, it cannot become a PMM in the stock unless: (1) the secondary offering has become effective and the market maker has satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effective or (2) the market maker has satisfied the PMM standards for 40 calendar days.

[9] For equity option market makers, an ''exempt hedge transaction'' is defined to be a short sale that

the options market maker is registered with a ''qualified options exchange'' [10] as a ''qualified options market maker'' [11] in a stock options class overlying a NNM security or in an options class overlying a ''qualified stock index.'' [12]

iii. Warrant Market Maker Exemption

The Rule also contains an exemption for warrant market makers similar to the one available for options market makers. To be eligible for the exemption, a warrant market maker must be registered as a market maker in the warrant and the short sale must be an ''exempt hedge transaction'' [13] that results in a fully hedged position. Any short sale by a warrant market maker unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, is not considered an ''exempt hedge transaction'', however.

iv. Exemptions Comparable to Those Contained in Rule 10a–1

The NASD's short sale rule also incorporates seven exemptions contained in Rule 10a–1 [14] that are relevant to trading on Nasdaq. Specifically the rule exempts:

- Sales by a broker-dealer for an account in which it has no interest and that is marked long;
- Any sale by a market maker to offset odd-lot orders of customers;
- Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such securities as soon as possible without undo inconvenience or expense;
- Sales by a member to liquidate a long position which is less than a round lot, provided the sale does not change the member's position by more than one unit of trading (100 shares);
- Short sales effected by a person in a special arbitrage account;[15]
- Short sales effected by a person in a special international arbitrage account; [16] and
- Short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities rights pursuant to Rule 10b–18 [17] or a standby underwriting commitment.

The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 dealing with the liquidation of index arbitrage positions [18] and an ''international equalizing exemption'' [19] are equally applicable to the NASD's short sale rule.

v. Interpretations to the NASD's Short Sale Rule

In conjunction with the adoption of the short sale rule, the NASD also issued three Interpretations by the NASD Board of Governors dealing with the Rule. Interpretation A to the Rule clarifies some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and, therefore, not exempt from the Rule's application.[20] Interpretation B defines a ''legal'' short sale on a down bid as one that is executed at a price of at least a 1/16th of a point above the current inside bid. Finally, Interpretation C clarifies some of the circumstances under which

was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale, provided that when establishing the short position the options market maker receives, or is eligible to receive, good faith margin pursuant to Section 220.12 of Regulation T under the Act. For index option market makers, an ''exempt hedge transaction'' is defined to be a short sale in a NNM security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that: (1) the security sold short must be a component security of the index underlying such index option; (2) the index underlying such offsetting index options position is a ''qualified stock index''; and (3) the dollar value of all exempt short sales effected to hedge the offsetting stock index options position(s) does not exceed the aggregate current index value of the offsetting options position(s).

[10] A ''qualified options exchange'' is defined to be a national securities exchange that has received SEC approval of its rules and procedures governing: (1) the designation of options market makers as qualified options market makers; (2) the surveillance of its market makers' utilization of the exemption; and (3) authorization of the NASD to withdraw, suspend, or modify the designation of a qualified options market maker in the event that the options exchange determines that the qualified options market maker has failed to comply with the terms of the exemption and the exchange believes that such action is warranted in light of the substantial, willful, or continuing nature of the violation. All national securities exchanges that trade standardized options are ''qualified options exchanges.''

[11] An options market maker is a ''qualified options market maker'' if it has been appointed as such by a qualified options exchange.

[12] A ''qualified stock index'' is defined to be a stock index that includes one or more NNM securities, provided that more than 10% of the weight of the index is accounted for by NNM securities. In addition, qualified stock indexes are reviewed as of the end of each calendar quarter, and an index would cease to qualify if the value of the index represented by one or more NNM securities was less than 8 percent at the end of any subsequent calendar quarter.

[13] An ''exempt hedge transaction'' is a short sale in an NNM security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position that was created in a transaction contemporaneous with the short sale.

[14] 17 CFR 240.10a–1.

[15] In order to fall within this exemption, the person effecting the short sale must then own another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold short, provided the short sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold short and the security owned, and such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

[16] In order to fall within this exemption, the short sale must be effected for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and a securities market subject to the jurisdiction of the United States, provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offering enabling a person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.

[17] 17 CFR 240.10b–18.

[18] In 1986, the SEC took a ''no action'' position that, under certain conditions, permits broker-dealers not to aggregate certain short positions when liquidating index arbitrage positions involving long stock. This no-action position was clarified in a later SEC Release and the SEC has proposed to amend Rule 10a–1 to incorporate this interpretation. *See* Securities Exchange Act Release No. 30772 (June 3, 1992) 57 FR 24415.

[19] Specifically, the NASD has interpreted its short sale rule to provide that any person can sell a foreign security, or a depositary share or depositary receipt relating to such a security, on a down bid at the opening, provided the inside bid is equal to or above the last reported sale price (adjusted for current exchange rates and ADR multiples) of the security in the principal foreign market for that security.

[20] Specifically, Interpretation A provides that bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. Similarly, the Interpretation states that bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. In addition, the Interpretation provides guidance with respect to what constitutes bona fide market making in the context of a merger or acquisition situation.

a member would be deemed to be in violation of the Rule.[21]

2. Proposal To Adopt the Short Sale Rule on a Permanent Basis

When the Commission approved the NASD's short sale rule on a temporary basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.'' [22] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.'' [23] Nevertheless, in light of the Commission's concerns with adverse comments made about the Rule and the Commission's own concerns with the structure and impact of the Rule,[24] the Commission determined to approve the Rule on a temporary basis to afford the NASD and the SEC an opportunity to study the effects of the Rule and its exemptions. In particular, before considering any NASD proposal to extend, modify, permanently implement or terminate the Rule, the Commission requested that the NASD examine: (1) the effects of the Rule on the amount of short selling; (2) the length of time that the Rule is in effect (*i.e.*, the duration of down bid situations); (3) the amount of non-market maker short selling permitted under the Rule; (4) the extent of short selling by market makers exempt from the Rule; (5) whether there have been any incidents of perceived ''abuse short selling''; (6) the effects of the Rule on spreads and volatility; (7) whether the behavior of bid prices has been significantly altered by the Rule; and (8) the effect of permitting short selling based on a minimum increment of 1/16th.

Accordingly, in response to the Commission's requests and concerns, the NASD's Economic Research Department has prepared a study on the economic impact of the NASD's short sale rule that addresses these issues.[25] This study examined market activity both before and after implementation of the Rule and found that the Rule has had its intended effect of diminishing short selling at the bid in declining markets, while still allowing short sales to occur at prices slightly above the bid in down bid situations. Specifically, among other things, the Short Sale Study found that:

- The Rule appears to dramatically reduce the amount of the short selling on down-bids, without having the undesirable effect of driving away all non-exempt short sales on down bids;
- Stocks with large down-bid percentages (*i.e.*, the average percentage of time during the trading day that the Rule is invoked) are not associated with economically-large reductions in market quality, as measured by relative displayed spreads, percent bid range, and trading activity;
- For stocks with large monthly increases in short interest, implementation of the Rule has been associated with lower bid price volatility and narrower dollar spreads;
- The Rule does not appear to have reduced overall sales at the bid by non-exempt sellers (long and short sales combined). Thus, since short sales at the bid on down bids by non-exempt short sellers are prohibited,[26] the results illustrate that short sales at the bid have been replaced by long sales at the bid during down-bids for these securities; Apparent ''unnatural'' bid price movement occurred extremely infrequently (0.6 percent or fewer of all bid changes evaluated in the study), indicating that market makers are not attempting to move bids to invoke or deactivate the Rule;
- On a stock-by-stock basis, the percentage of volume accounted for by short sales increases as the stock experiences larger price declines as opposed to price increases or no price changes, suggesting that speculative short selling is more apt to occur when stock prices are falling; and
- Exempt short sales generally are executed above the bid, indicating that market makers are not abusing the exemption. Specifically, in a down-bid environment, 7.5 percent of exempt short sales are executed at or below the bid, while the comparable figure during an up-bid environment is 8.7 percent.

The interviews conducted in conjunction with the Study also indicate that the Rule has been effective in promoting the integrity of the Nasdaq market. Specifically, most market participants interviewed stated that the Rule has had the effect of slowing down the ''piling on'' of short sales in a declining market, thereby contributing to greater market stability. At the same time, market participants indicated that the Rule does not unduly constrain them from effecting short sales in a declining market, although they say it does take them longer to execute short sales in a falling market. Most market participants interviewed also stated that the exemptions from the Rule are warranted and have not been abused. In particular, most market participants interviewed reiterated the importance of retaining the market maker exemption and stated that there is no need to change the PPM standards. Similarly, the American Stock Exchange and the Chicago Board Options Exchange, the two largest standardized options markets in the United States, both stated that the options market maker exemption has performed well and that the exchanges have not detected any abuses of the exemption by their members. In sum, the NASD believes

[21] Specifically, the Interpretation contains the following non-exhaustive list of activities that would be considered to be manipulative acts and violations of the rule: (a) in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale; (b) if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short; (c) if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price; and (d) if a market maker entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offset those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

[22] *See* Short Sale Rule Approval Order, *supra* note 3, 59 FR at 34891.

[23] *Id.* 59 FR at 34892.

[24] When the NASD's short sale rule was first considered by the Commission, the SEC received 397 comment letters on the proposal, with 275 comments opposed to the Rule and 122 comments in favor of the Rule. Those comment letters opposed to the Rule argued that: (1) the NASD had failed to provide sufficient evidence of the need for a short sale rule or demonstrate the appropriateness of a short sale rule based on a ''bid'' test instead of a ''tick'' test; (2) the PMM standards will have negative effects on both market makers and the Nasdaq market; and (3) the short sale rule is inconsistent with the requirements of the Act.

[25] The Economic Impact of the Nasdaq Short Sale Rule, NASD Economic Research Department (July 1996) (''Short Sale Study''). A copy of the Short Sale Study is available in the Commission's Public Reference Room in File No. SR–NASD–96–30.

[26] Specifically, the Short Sale Study found that only 2.8 percent of short sales by non-exempt short sellers occur at or below the inside bid in down-bid situations. Since the short sale rule prohibits short sales at the bid on down bids, this figure should theoretically be zero. Reasons why this figure is 2.8 percent include, among others, improper alignment of trades and their corresponding inside quotes, potential reporting errors, and violations of the Rule.

that the market participant interviews corroborate and provide further support for the empirical findings made in the quantitative portion of the Short Sale Study. Namely, that the NASD's short sale rule has been effective in accomplishing what the NASD intended the rule to accomplish (*i.e.*, reducing speculative short selling at the bid in declining markets) without causing unnecessary disruptions elsewhere in the marketplace. Accordingly, the NASD believes the Short Sale Study reaffirms and substantiates the statutory findings made by the Commission when it approved the NASD's short sale rule on a temporary basis.

Thus, the NASD believes experience with the NASD's short sale rule since its implementation in September 1994 warrants permanent approval of the Rule. Specifically, the NASD believes experience with the Rule illustrates and substantiates the benefits to investors and the integrity of Nasdaq that the NASD believed would result from the rule. Namely, that wit the Rule in place purchasers of NNM securities have greater assurance that they can liquidate their positions in a declining market without predatory short sellers exacerbating downward pressure on stocks and reducing overall liquidity. I sum, the NASD continues to believe that its short sale rule strikes a reasonable balance between the needs to prevent abuse short selling and reduce the exposure of the Nasdaq market to manipulative and excessive intra-day volatility, on the one hand, and the need to not distort the pricing efficiency and liquidity provided by appropriate short selling activity on the other.

Based on experience with the short sale rule, the NASD also believes the Rule should be permanently approved in its present form. Specifically, given the geographically dispersed nature of Nasdaq's competing dealer market structure, the NASD continues to believe that it is appropriate for its short sale rule to be based on a ''bid'' test [27] instead of a ''tick'' test [28] (as is the case with Rule 10a–1). When the NASD's short sale rule was first considered by the Commission in 1994, the SEC and commentators expressed concern that structuring the Rule as a ''bid'' test instead of a ''tick'' test could result in the Rule being in effect for longer periods of time in comparison to a ''tick'' test. The SEC also expressed concern that market markers could control the amount of short selling by simple adjusting their bids. Based on the findings of the Short Sale Study, however, the NASD believes these concerns are no longer valid. First, while the Study clearly found that the Rule is having its intended effect of inhibiting the execution of non-exempt short sales at the bid in a declining market, the Study also found that market participants are nevertheless readily able to effect short sales at prices slightly above ''down'' bids.[29] Similarly, several market participants interviewed in conjunction with the preparation of the Study stated that the Rule has not adversely impacted their ability to effect short sales, just that it takes them longer to effect such short sales. Second, the Study's finding that apparent ''unnatural'' quote movements have occurred very infrequently indicates that market makers are not adjusting their quotes to facilitate or constrain short selling activity.[30] Accordingly, the NASD continues to believe that a ''bid'' test short sale rule is the most appropriate for Nasdaq's competing dealer market. Moreover, the NASD notes that SEC approval of the NASD's proposed NAqcess system and its accompanying ''equivalent protection rules,'' [31] along with the SEC's own proposed rule governing the display of customers limit orders,[32] would substantially increase the ability of non-exempt short sellers to receive executions at prices at least a 1/16th of a point above the bid in down bid situations, thereby minimizing the impact of the Rule on legitimate short selling activity.

In addition, based on the Short Sale Study's finding that the amount of exempt short selling occurring at or below the bid is virtually the same in both down-bid and up-bid situations and the fact that market makers do not appear to be adjusting their quotes to constrain or facilitate short selling, the NASD can find no basis to conclude that the market maker exemption should be modified. The NASD continues to believe that an exemption from the rule for bona fide market making activity by market makers who provide liquidity and continuity to the market is essential for the maintenance of fair and orderly markets on Nasdaq. In this connection, the NASD also believes the current primary market maker standards represent a reasoned, balanced approach to confine the use of the exemption to those market participants truly adding liquidity and depth to the market. The NASD also believes the qualification criteria do not impose standards that are unattainable by both small and large market makers because the standards are designed to assess market maker performance in the activities they have direct control over (although the proportional volume standard is the only standard that a market maker may have less control over).[33]

The NASD also notes that retention of the NASD's short sale rule has significant competitive implications. Indeed, in the Short Sale Rule Approval Order, the Commission stated that it ''recognizes that without a short sale rule for Nasdaq, the NASD is competitively disadvantaged. The exchange markets can and do attract issuers and investors with the claim that their markets protect against potential short selling abuse.'' [34] Given that experience with the NASD's short sale rule over the past two years illustrates that the Rule provides investors and the marketplace with protections against predatory short selling comparable to Rule 10a–1, the NASD believes the competitive disadvantages highlighted by the Commission would become severe if the NASD's short sale rule were not permanently approved. In particular, without permanent approval of the NASD's short sale rule, Nasdaq could potentially loose issuers to other marketplaces simply because those markets have a short sale rule in place which is very similar to the NASD's short sale rule. Moreover, aside from these serious competitive concerns, the NASD believes it should be allowed to continue to implement a rule that affords investors the same protections against abusive short selling activity when trading NNM securities that they receive when trading exchange-listed securities by virtue of Rule 10a–1.

In this connection, even if the Commission were to conclude that the

[27] The NASD's short sale rule is commonly referred to as a ''bid'' test because it is activated based upon movements in the inside bid on Nasdaq.

[28] Rule 10a–1 is commonly referred to as a ''tick'' test because it is activated based on movements in the last sale prices of securities.

[29] *See* Short Sale Study, *supra* note 25.

[30] *See* Short Sale Study, *supra* note 25.

[31] *See* Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574.

[32] *See* Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792.

[33] The NASD also continues to believe that it is appropriate and consistent with the Act for the NASD's short sale rule to exempt certain qualified market makers while Rule 10a–1 does not provide an exemption for exchange specialists other than the limited exemption contained in Rule 10a–1(e)(6) for specialists on regional exchanges. Specifically, the NASD believes the following differences between the dealer and auction markets warrant the retention of the market maker exemption from the Rule: (1) exchange specialists have a monopoly over the securities in which they trade; (2) dealers generally do not have an informational advantage over other dealers; and (3) dealers do not have the ability to close their markets because of sudden volatility or an order imbalance.

[34] Short Sale Rule Approval Order, *supra* note 4, 60 FR at 34891.

NASD's short sale rule has had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange (''NYSE'') Rule 80A[35] illustrates that the Commission would still have a sufficient basis to approve the Rule on a permanent basis. When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no casual relationship between index arbitrage and market volatility and that activation of the rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the Commission approved the proposal on a one-year pilot basis noting that ''the NYSE proposal represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility.'' [36] After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that ''the standard measures of NYSE market quality appear largely unaffected by Rule 80A. Specifically, the NYSE Report indicated that: (1) quotes on the NYSE did not widen after the 50 DJIA point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.[37] In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule ''represents a modest but useful step by the NYSE to attempt to address the issue of market volatility,'' [38] that the rule ''has not been disruptive to the marketplace'',[39] and that there was a ''lack of evidence of any harmful effects of Rule 80A.''[40] In sum, the SEC discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE and permit the NASD to permanently implement a short sale rule reasonably designed to enhance the quality of Nasdaq and minimize the effects of abusive short selling practices.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6), 15A(b)(9), 15A(b)(11), and 11A of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes its short sale rule is consistent with Section 15A(b)(6) of the Act because the Rule is premised on the same antimanipulation and investor protection concerns that underlie the SEC's own short sale rule, Rule 10a–1. In particular, as with Rule 10a–1, the NASD's short sale rule promotes just and equitable principles of trade by permitting long sellers access to market prices at any time, while constraining the execution of potentially abusive and manipulative short sales at or below the bid in a declining market. In addition, as with Rule 10a–1, the NASD's short sale rule removes impediments to a free and open market for long sellers and helps to assure liquidity at bid prices that might otherwise be usurped by short sellers. Lastly, because the immediate beneficiaries of the Rule are shareholders of NNM companies, the Rule is designed to protect investors and the public interest. At the same time, given that the NASD's short sale rule does not constrain short sales in a raising market or prohibit the execution of short sales in a declining market above bid prices, the NASD believes the Rule does not diminish the important pricing efficiency and liquidity benefits that legitimate short selling activity provides.

Section 15A(b)(9) provides that the Association's rules may not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. While the NASD's short sale rule does impose compliance burdens on market participants and conditions the execution of short sales in a declining market, the NASD believes these burdens and restrictions are necessary in furtherance of the protection of investors and the integrity of the Nasdaq market. Specifically, by implementing a short sale that is designed to protect investors and issuers from predatory short selling practices, reduce the exposure of Nasdaq to manipulation and extreme intraday volatility, and afford investors in Nasdaq securities the same protections against abusive short selling that investors in exchange-listed securities presently receive, the NASD believes its proposal is consistent with the Act and that any burdens or competition resulting from the Rule do not outweigh the overall benefits to investors that the Rule provides.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Specifically, by minimizing the extreme intra-day price volatility associated with abusive short selling activity, the NASD believes its short sale rule prevents misleading quotations and promotes more orderly quotation movements, particularly in a declining market. In addition, the NASD believes its primary market maker standards provide an incentive for market makers to improve the quality of their quotations.

The NASD also believes that the proposed rule change is consistent with the significant national market system objectives contained in Section 11A of the Act. Specifically, Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) the economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investors orders in the best market. Specifically, by minimizing the destabilizing influences of abusive short selling activity, the NASD believes all of these objectives will be advanced. Similarly, Section 11A(c)(1)(F) assures the ''equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.'' Because approval of the NASD's proposal would result in equivalent short sale regulation in the exchange and Nasdaq markets, the NASD believes its proposal is consistent with Section 11A(c)(1)(F).

In addition, the NASD notes that the SEC cited the NASD's adoption of a short sale rule as a basis to question whether its recently proposed Rule 105 of Regulation M is necessary at all.

[35] Rule 80A provides that when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in a market stabilizing manner.

[36] *See* Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (Order approving File Dos. SR–NYSE–90–5 and 90–11).

[37] *See* Securities Exchange Act Release No. 29854 (October 24, 1994), 56 FR 55963 (October 30, 1994) (order approving file SR–NYSE–91–21) (''Rule 80A Approval Order'').

[38] *Id.* 56 FR at 55967.

[39] *Id.*

[40] *Id.* 56 FR at 55967–68.

Specifically, in proposing Rule 105, which liberalizes current Rule 10b–21[41] government short sales in connection with a secondary offering, the SEC stated:

Since the adoption of Rule 10b–21, several additional regulatory measures have been implemented that may lessen the effects of short selling in connection with an offering. These initiatives, which include permitting passive market making during offerings of Nasdaq securities and implementing a short sale rule for the Nasdaq market, may reduce the need for Rule 105. (Footnote omitted).[42]

The NASD believes it would be inconsistent for the SEC to not permanently approve the NASD's short sale rule and yet approve another SEC rule that liberalizes current Rule 10b–21 or eliminate it altogether because of, among other things, the presence of the NASD's short sale rule.

Lastly, the NASD believes that extending the effectiveness of the short sale rule for an additional three-month period while the SEC reviews the NASD's proposal for permanent approval of the Rule would avoid the confusion in the marketplace that would result if the Rule were to lapse for three months and then be reinstated later. Finally, the NASD believes that extending the pilot period for the short sale Rule will help to ensure that future regulatory action taken with respect to the Rule is based on a greater knowledge and understanding of the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

As discussed above in Section II. A., the NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The NASD believes the primary market makers of all sizes to qualify as primary market makers. Moreover, it is important to note that market makers that do not meet the standards are still permitted to remain registered market makers in the Nasdaq system. In addition, without a short sale rule for the Nasdaq market, Nasdaq would be adversely impacted in its ability to compete for listing with exchange markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

[41] 17 CFR 240.10b–21.

[42] *See* Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108, 17126.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to Section 19(b)(2) for approving that part of the proposed rule change that requests a three month extension of the pilot program for the Rule prior to the 30th day after publication in the Federal Register. With regard to the request for permanent approval of the Rule, within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal to extend the short sale rule for a three-month period is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) which requires that the NASD rules be designed, among other things, to facilitate securities transactions and protect investors and the public interest. Further, the Commission finds good cause to approve a temporary three-month extension of short sale rule pilot prior to the 30th day after the date of publication of notice of filing in that accelerated approval will avoid disrupting the market while the Commission considers the NASD's request for permanent approval.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (SR–NASD–96–30) providing a three-month extension of the NASD's pilot short sale rule is approved until November 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19836 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37495; File No. SR–NYSE–96–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc.; Relating to Amendments to Percentage Order Rules 13 and 123A.30

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 amendments to Exchange Rules 13 and 123A.30, respectively. The filing proposes to amend Rule 13 to provide that if the percentage order is marked ''last sale-cumulative volume,'' then the initial elected portion of the percentage order may be re-entered on the specialist's book at the prices of subsequent sales, within the overall limit on the order. The filing also

[43] 17 CFR 200.30–3(a)(12).

proposes to amend Rule 123A.30 to provide that a converted percentage order retains its status on the specialist's book unless the transaction is effected on a higher bid, or a new higher bid is made, or the percentage order was not converted at its maximum limit price.

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

A percentage order is a limited price order to buy or sell fifty percent of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a ''live'' order capable of execution in one of two ways: (i) all or part of the order can be ''elected'' as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be ''converted'' into a limit order to make a bid or offer or to participate directly in a trade. Percentage orders were first adopted in 1972 to permit large size orders to trade along with the trend of the market.

The election process. Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are ''elected'' and become a limit order on the specialist's book at the price of the electing sale. Most percentage orders are entered as ''last sale percentage orders,'' meaning that they may be executed at the price at which they were elected, or at a better price. These orders may not, however, be executed at an inferior price to the electing sale even if that inferior price is still within the limit price on the order.

For example, assume that the specialist receives a last sale percentage order to purchase 5,000 shares with a limit price of 30. If a trade of 500 shares takes place at 29½, 500 shares of the percentage order would be placed on the specialist's book as a limit order at 29½. This order could be executed at a price of 29½ or lower, but could not be executed at a higher price, even though the limit price on the percentage order was 30.

Proposed change to the election process. The Exchange is proposing to amend the definition of last sale percentage order, after their initial election, in Rule 13 to provide that such orders may be re-entered on the specialist's book at the price of subsequent transactions, within the limit price on the percentage order, if the order is marked ''last sale-cumulative volume.'' Thus, in the example above, if there was a subsequent trade of 500 shares at 29⅝, 500 shares of a percentage order marked ''last cumulative volume'' would be elected on to the specialist's book at 29⅝, and the 500 shares previously entered on to the book at 29½ would be canceled and reentered at 29⅝, for a total of 1,000 shares of the percentage order on the book at 28⅝. If the order were simply marked ''last sale,'' it would be handled as today under the current rule.

The conversion process. The second way that a percentage order can be activated into a limit order is through the conversion process. Most percentage orders contain the additional instruction ''CAP–D.'' ''CAP'' is an acronym meaning ''convert and parity,'' which instructs the specialist that he or she may convert all or a portion of the order into a limit order, either to make a bid or offer or to participate directly in a trade. ''D'' instructs the specialist that the order may be converted to participate in destabilizing transactions as well as stabilizing transactions. As a practical matter, CAP–D orders are viewed as a necessary adjunct to the standard election procedure because they allow the specialist greater flexibility to match the order with other buying and selling interest in the market. CAP–D orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.[1]

One such restriction codified in Rule 123A.30 provides that a percentage order may be converted to make a bid or offer, but if a higher bid (lower offer) is subsequently made, the converted percentage order bid or offer is treated as cancelled, subject to further conversion of the order. This means that the bid or offer loses whatever priority it had with respect to other limit orders on the specialist's book.

For example, assume that the market is quoted 20 bid, offered at 20¼, 10,000 by 10,000, with the bid at 20 representing 10,000 shares of a converted percentage order. Under the current rule, if the specialist then receives an order to buy 5,000 shares at 20, and an order to buy 200 shares at 20⅛, when the specialist changes the quotation to 20⅛–20¼, 200 by 10,000, the converted percentage order bid of 20 for 10,000 is cancelled, and the 5,000 share order now has priority on the specialist's book at 20. If a transaction took place at 20⅛, and the quotation reverted to 20 bid, offered at 20¼, the percentage order, although it can be re-converted to make a bid at 20, would have lost its priority on the book.

Proposed change to the conversion process. The Exchange is proposing to amend Rule 123A.30 to allow the converted percentage order to retain its priority on the book when a higher bid (lower offer) is made. However, if a transaction is effected at that higher bid (lower offer), and a bid or offer is made that is higher (lower) than the price of such transaction, the converted percentage order would be cancelled, subject to re-conversion. The order would not be cancelled, however, regardless of subsequent trades in the market, if it was converted at its maximum limit price.[2]

The Exchange believes that these amendments will facilitate the ability of specialists to ensure that the elected and converted portions of percentage orders are executed along with the trend of the market.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[3] 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. This proposed rule change will remove impediments to and perfect the mechanism of a free and open market by increasing opportunities for percentage orders' participation in the Exchange's auction wherein the elected and converted portions of percentage orders

[1] *See* NYSE Rule 123A.30; Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (order approving amendment to Rule 123A.30 permitting conversion of percentage orders on destabilizing ticks under certain restrictions).

[2] The Exchange is also proposing to amend Rule 123A.30 to include a provision that a specialist must document the status of a converted percentage order on the specialist's book as a limit order at the price it was converted.

[3] 15 U.S.C. 78f(b)(5).

are executable along with the trend of the 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

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 longer period (i) as the Commission may designate up to 90 days of such date of 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 to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–16 and should be submitted by August 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19835 Filed 8–2–96; 8:45 am]

BILLING CODE 8010–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

July 30, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Helen LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted variously for swing, carryover and re-crediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 66268, published on December 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 31, 1996, you are directed to amend the directive dated December 15, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
313	2,959,342 square meters.
314	1,223,775 square meters.
315	1,929,494 square meters.
333/334/335/833/834/835.	248,718 dozen, of which not more than 129,162 dozen shall be in Categories 333/335/833/835.
336/836	58,951 dozen.
338	320,184 dozen.
339	1,341,138 dozen.
340	303,055 dozen.
341	206,188 dozen.
342	93,278 dozen.
345	62,499 dozen.
347/348/847	757,868 dozen.
350/850	68,578 dozen.
351/851	70,743 dozen.
359–C/659–C [2]	356,944 kilograms.
359–V [3]	129,063 kilograms.
633/634/635	566,257 dozen.
638/639/838	1,659,998 dozen.
640	127,609 dozen.
641/840	219,326 dozen.
642/842	116,769 dozen.
645/646	299,127 dozen.
647/648	551,431 dozen.
659–S [4]	137,159 kilograms.
Group II	
400–469, as a group	1,528,982 square meters equivalent.
Sublevel in Group II	
445/446	84,030 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070, 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–19777 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of a New Export Visa Arrangement and Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras; Correction

July 30, 1996.

In the letter to the Commissioner of Customs published in the Federal Register on July 23, 1996 (61 FR 38236), column 3, line 8, change ''July 15, 1996'' to ''August 1, 1996.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 96–19776 Filed 8–2–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 7/26/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1581
Date filed: July 23, 1996
Parties: Members of the International Air Transport Association
Subject:
TC3 Reso/C 0088 dated May 31, 1996
TC3 (to/from US Territories) Resolutions r–1–001aa r–2–002
TABLES—TC3 Rates 0092 dated June 25, 1996
TC23 Reso/C 0223 dated May 31, 1996
TC23 (to/from US Territories) Resolution r–3–002
TABLES—TC23 Rates 0222 dated July 9, 1996
Intended effective date: October 1, 1996

Docket Number: OST–96–1582
Date filed: July 23, 1996
Parties: Members of the International Air Transport Association
Subject:
TC12 Reso/C 0929 dated May 31, 1996
TC12 Resolutions
TABLES—TC12 Rates 0521 dated June 21, 1996, TC12 Rates 0522 dated June 21, 1996, TC12 Rates 0523 dated June 28, 1996, TC12 Rates 0524 dated July 2, 1996
Intended effective date: October 1, 1996

Docket Number: OST–96–1583
Date filed: July 23, 1996
Parties: Members of the International Air Transport Association
Subject:
TC31 Telex Mail Vote 816 (& Amendment) Japan-Hawaii fares
r–1—090k, r–3—091p, r–2—090c, r–4—091z
Intended effective date: August 1, 1996

Docket Number: OST–96–1584
Date filed: July 23, 1996
Parties: Members of the International Air Transport Association
Subject:
TC1 Telex Mail Vote 817
Canada-Caribbean Amending Resolution
r–1–051b, r–3–061b, r–5–073j, r–2–041b, r–4–070ff
Intended effective date: August 5, 1996

Docket Number: OST–96–1585
Date filed: July 23, 1996
Parties: Members of the International Air Transport Association
Subject:
TC2 Telex Mail Vote 815
Within Africa Increase (5%) Resolution
Amendment to Mail Vote
Intended effective date: August 1, 1996

Docket Number: OST–96–1589
Date filed: July 24, 1996
Parties: Members of the International Air Transport Association
Subject:
TC31 Telex Mail Vote 818
Fares from San Francisco/Mexico/Caribbean
Intended effective date: September 1, 1996

Docket Number: OST–96–1596
Date filed: July 26, 1996
Parties: Members of the International Air Transport Association
Subject:
TC3 Telex Mail Vote 819
Colombo-India fares
r–1–043a, r–2–053a, r–3–063a
Intended effective date: August 15, 1996

Docket Number: OST–96–1597
Date filed: July 26, 1996
Parties: Members of the International Air Transport Association
Subject:
TC12 Fares 0509 dated July 26, 1996
US-UK Add-on Amounts
Intended effective date: October 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–19822 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 26, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1600
Date filed: July 26, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 16, 1996
Description: Application of the State of Alaska, the Anchorage International Airport and the Fairbanks International Airport, pursuant to 49 U.S.C. Sections 40109(c), 41304(a), and 14 CFR Section 302 Subparts D and Q, petitions the Department of Transportation to amend the Foreign Air Carrier Permit and exemption authority of all foreign carriers authorized to serve the United States

to enable them to engage in expanded cargo transfer activities at the Alaska International Airports.

Docket Number: OST–95–716

Date filed: July 24, 1996

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 1996

Description: Amendment No. 1 to the Application of Alaska Airlines, Inc., hereby amends its pending certificate application to request: (1) certificate authority to serve Vancouver, British Columbia, Canada from Los Angeles rather than San Diego; and (2) the reallocation of Alaska's two daily non-stop frequencies to the Los Angeles-Vancouver market.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–19821 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–99; Notice 2]

Decision That Certain Nonconforming 1994 Alfa Romeo 164 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming 1994 Alfa Romeo 164 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 Alfa Romeo 164 passenger cars manufactured before September 1, 1993, without automatic transmissions, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards, are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1994 Alfa Romeo 164), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Liphardt & Associates of Ronkonkoma, New York (''Liphardt'')(Registered Importer R–90–004) petitioned NHTSA to decide whether 1994 Alfa Romeo 164 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on January 4, 1996, (61 FR 367) to afford an opportunity for public comment. As stated in the notice of petition, the vehicle which Liphardt believes is substantially similar is the 1994 Alfa Romeo 164 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claimed that it carefully compared the non- U.S. certified 1994 Alfa Romeo 164 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Specifically, the petitioner claimed that the non-U.S. certified 1994 Alfa Romeo 164 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirrors;* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems;* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner stated that the non-U.S. certified 1994 Alfa Romeo 164 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contended that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of appropriate symbols on the brake failure, parking brake, and seat belt warning lamps; (b) installation of a U.S.-model speedometer.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.- model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.- model taillamps; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner stated that the vehicle is equipped with an air bag and knee bolster that have identical part numbers to those found on its U.S.-certified counterpart.

One comment was received in response to the notice of the petition, from Fiat Auto U.S.A., Inc. (Fiat), the United States representative of Alfa Lancia Industriale, the vehicle's manufacturer. In its comment, Fiat stated that it has devoted a great deal of care in assuring that the U.S. certified

version of the 1994 Alfa Romeo 164 is manufactured in accordance with all applicable Federal motor vehicle safety standards. Fiat contended that it is not practically feasible to change the body structure of this vehicle to comply with U.S. requirements for bumpers, side impact protection, fuel system integrity, and occupant crash protection. Fiat observed that these changes require a great deal of development and testing which are generally beyond the capability and expertise of registered importers.

Fiat additionally challenged the petitioner's claim that the non-U.S. certified 1994 Alfa Romeo 164 is identical to its U.S. certified counterpart with respect to compliance with certain standards. Contrary to the petitioner's claim, Fiat stated that the vehicle does not comply with Standard No. 105 because it lacks the required brake warning light. Fiat also stated that the vehicle does not comply with Standard No. 111 because the required warning statement is not etched into the passenger's side rearview mirror. Fiat further contended that automatic transmission equipped versions of the vehicle do not comply with the requirement in Standard No. 114 that removal of the ignition key be prevented when the shift lever is in any position other than ''Park.''

Fiat also claimed that the air bag systems installed in the vehicle have a different activation calibration and a different driver's side knee bolster than that of its U.S. certified counterpart, giving them different performance characteristics. Fiat stated that the air bag system has been tested under European rules that permit the use of a restrained dummy, but that its compliance with Standard No. 208 has not been determined. Additionally, Fiat claimed that the seat belt systems installed in the vehicle are of European design, and do not comply with Standard No. 209. Fiat also stated that child restraint features required by Standard No. 213 are missing from the vehicle's rear seats.

Fiat observed that the vehicle has different door reinforcements than that of its U.S. certified counterpart, and that its compliance with Standard No. 214 has never been tested. Fiat also stated that the vehicle has a different body structure and fuel tank from that of its U.S. certified counterpart, and that it therefore does not comply with the fuel system integrity requirements of Standard No. 301. Additionally, Fiat contended that the vehicle is not marked as required by the Theft Prevention Standard in 49 CFR Part 541. Fiat finally asserted that the vehicle has not been tested for compliance with the Bumper Standard in 49 CFR Part 581. Fiat noted in this regard that the vehicle does not have cross members and shock absorbers that are found on its U.S. certified counterpart, nor does it have body structure reinforcement to support loading from a U.S. model bumper.

NHTSA accorded Liphardt an opportunity to respond to Fiat's comments. In its response, Liphardt stated that the petition addressed the need for a brake warning light as part of the modifications that would be made to conform the vehicle to Standard No. 101. With respect to the Standard 111 compliance issue raised by Fiat, Liphardt stated that the vehicle is equipped with a passenger side rearview mirror that has the same part number as the component found on the vehicle's U.S. certified counterpart. Liphardt also stated that the requirements in Standard No. 114 for automatic transmission equipped vehicles do not apply to the vehicle it seeks to import. Liphardt further stated that the vehicle is equipped with seat belts, and with an air bag, sensor, and knee bolster that have part numbers identical to those of the components found on the vehicle's U.S. certified counterpart. Liphardt stated that the Standard No. 213 compliance issue raised by Fiat involving the absence of child restraint features is satisfied by virtue of the fact that the vehicle is equipped with identical seat belts and seat belt anchorages as those found on its U.S. certified counterpart. Likewise, Liphardt asserted that because the vehicle has identical doors, fuel system, and bumpers to those found on its U.S. certified counterpart, the Standard No. 214, Standard No. 301, and Bumper Standard compliance issues raised by Fiat are not relevant. With respect to the Theft Prevention Standard issue raised by Fiat, Liphardt stated that the necessary markings will be placed on the vehicle prior to importation.

NHTSA has reviewed each of the issues that Fiat has raised regarding Liphardt's petition. NHTSA believes that Liphardt's responses adequately address each of those issues. NHTSA further notes that the modifications described by Liphardt have been performed with relative ease on thousands of nonconforming vehicles imported over the years, and would not preclude the non-U.S. certified 1994 Alfa Romeo 164 from being found ''capable of being readily altered to comply with applicable motor vehicle safety standards.''

NHTSA has accordingly decided to grant the petition. However, in view of Liphardt's statement that the Standard No. 114 compliance issue raised by Fiat is inapplicable to the vehicle that it seeks to import because that vehicle is not equipped with an automatic transmission, only vehicles without automatic transmissions will be eligible for importation under this decision. Moreover, because Fiat did not import any 1994 Alfa Romeo 164 passenger cars after September 1, 1993, the date on which automatic restraints became required for both front outboard seating positions, only vehicles manufactured before that date will be eligible for importation under this decision.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–156 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1994 Alfa Romeo 164 manufactured before September 1, 1993, without an automatic transmission, that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a 1994 Alfa Romeo 164 originally manufactured before September 1, 1993, without an automatic transmission, for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 30, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19823 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 32950]

R.J. Corman Railroad Company/ Western Ohio Line—Acquisition Exemption—Lines of Consolidated Rail Corporation

R.J. Corman Railroad Company/ Western Ohio Line (RJCW), a Class III

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce

rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire rail lines of Consolidated Rail Corporation in Darke County, OH, extending between: (1) Milepost 151.3, at Ansonia, and milepost 160.64, at Greenville; (2) milepost 95.00 and milepost 94.46, in Meekers; and (3) milepost 92.30 and milepost 96.45, in Greenville, a total distance of approximately 14.03. RJCW will operate the property.

The transaction is scheduled to be consummated on or after July 31, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32950, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036. Telephone: (202) 293–6300.

Decided: July 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19834 Filed 8–2–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–475X]

New Hampshire and Vermont Railroad Company—Abandonment Exemption—in Coos and Grafton Counties, NH

New Hampshire and Vermont Railroad Company (NHVT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over approximately 38.2 miles of railroad between milepost 149.4 (Station 1302+00 on Val. Sec. 24.2), in Gorham, and milepost 130.5 (Station 314+60 on Val. Sec. 24.2), in Waumbek Junction (Jefferson), and between milepost 113.0 (Station 995+66 on Val. Sec. 22), in Littleton, and milepost 93.7 (Station 4944+35 on Val. Sec. 21), in Woodsville, in Coos and Grafton Counties, NH.

NHVT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 4, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 15, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 26, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: David H. Anderson, 288 Littleton Road, Suite 21, Westford, MA 01886.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NHVT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 9, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19833 Filed 8–2–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–476 (Sub-No. 1X)]

PL&W, Inc.—Abandonment Exemption—in Columbiana County, OH and Beaver County, PA

PL&W, Inc. (PL&W) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire line of railroad between milepost 0.0 at Negley, in Columbiana County, OH, and the end of the Smith's Ferry Branch at Smith's Ferry, in Beaver County, PA, a distance of 9.0 miles.[2]

PL&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead

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Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. PL&W's verified notice indicated a proposed consummation date of July 31, 1996. Because the verified notice was not filed until July 16, 1996, consummation should not have been proposed to take place prior to September 4, 1996. PL&W's representative has confirmed that the correct consummation date is on or after September 4, 1996.

traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10505(g) unless the evidence indicates the existence of a corporate affiliate that will: (1) Continue rail operations; or (2) realize significant benefits in addition to being relieved of the burden of deficit operations by its affiliated railroad. *See T and P Rwy.—Aband.—in Shawnee, Jefferson, and Atchison Counties, KS,* Docket No. AB–381, *et al.* (ICC served Apr. 27, 1993). Because these conditions do not appear to exist here, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 4, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by August 15, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 26, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PL&W has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 9, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19832 Filed 8–2–96; 8:45 am]

BILLING CODE 4915–00–P

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[5] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 210

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Label.

DATES: Written comments should be received on or before October 4, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Label.

OMB Number: 1545–0295.

Form Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify 8 specific items needed so that the media can be processed by the Internal Revenue Service.

Current Actions: The IRS media label, Form 5064, has been eliminated. Filers will prepare their own pressure sensitive label containing the required information specified in Notice 210.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–19869 Filed 8–2–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 2120

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2120, Multiple Support Declaration.

DATES: Written comments should be received on or before October 4, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Multiple Support Declaration.

OMB Number: 1545–0071.

Form Number: 2120.

Abstract: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 26 min.

Estimated Total Annual Burden Hours: 4,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–19870 Filed 8–2–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, August 7, 1996.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation
- Procedural matters

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: July 30, 1996.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 96–19911 Filed 8–1–96; 8:45 am]

BILLING CODE 8720–01–M

Corrections

Federal Register
Vol. 61, No. 151
Monday, August 5, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; ISP International Spare Parts GmbH; Order

Correction

In notice document 96–15743 beginning on page 31504 in the issue of Thursday, June 20, 1996, after the subject heading above, the following information should be inserted:

''In the matter of ISP International Spare Parts GmbH, Industrie Park, D, 14974 Ludwigsfelde, Germany, Respondent.''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges Wolfgang Nothacker; Order

Correction

In notice document 96–17544 appearing on page 31505 in the issue of Thursday, June 20, 1996, after the subject heading above the following information should be inserted:

''In the matter of Wolfgang Nothacker, c/o ISP International Spare Parts GmbH, Industrie Park, D, 14974 Ludwigsfelde, Germany, Respondent.''.

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-23 and 201-24

[FIRMR Amendment 8]

RIN 3090-AF32

Amendment of FIRMR Provisions Relating to GSA's Role in Screening Excess and Exchange/Sale Federal Information Processing (FIP) Equipment

Correction

In rule document 96–18887 appearing on page 39081 in the issue of Friday, July 26, 1996, make the following correction:

On the same page in the third column under Effective Date: in the first line ''August 26, 1996'' should read ''July 26, 1996''.

BILLING CODE 1505–01–D

federal register

Monday
August 5, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Braked Roll Conditions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28643; Notice No. 96–10]

RIN 2120–AF83

Braked Roll Conditions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the requirements for landing gear braking on transport category airplanes to require that the airplane be designed to withstand main landing gear maximum braking forces during ground operations. This action would ensure that the landing gear and fuselage are capable of withstanding the dynamic loads associated with the maximum dynamic braking condition, and would also relieve a burden on industry by eliminating differences between the Federal Aviation Regulations (FAR) and European Joint Aviation Requirements (JAR).

DATES: Comments must be received on or before November 4, 1996.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28643, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28643. Comments may also be submitted electronically to: nprmcmts@mail.hq.faa.gov. The official docket may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM–7), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments in the information docket may be examined in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven D. Connally, FAA, Airframe and Propulsion Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposal contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28643.'' The postcard will be the date stamped and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the online Federal Register database through GPO Access (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or GPO's Federal Register web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should request from the Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Ave SW., Washington, D.C. 20591, or by calling (202) 267–3484, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The current 14 CFR part 25 airworthiness standards, § 25.493, and its predecessor rule, Civil Air Regulations (CAR) 4b.235(b), prescribe conditions that the airplane structure and landing gear must be designed to withstand during airplane taxing with a constant (steady) application of brakes (''braked roll'' condition). The taxi condition is generally the most critical condition regarding nose gear and forward fuselage loading during the braking event, due to the increased braking coefficient of friction at low speeds and the lack of lift on the wings and lack of aerodynamic damping. Both rules treat the braked roll condition as a static equilibrium condition that accounts for the airplane weight and the added nose down force caused by steady braking. Neither rule accounts for the additional dynamic loads on the nose gear and fuselage caused by the initial pitching motion of the airplane due to sudden application of main landing gear brakes. Adequate strength has been achieved on existing airplanes by application of other part 25 design requirements and by the manufacturers' need to comply with the more stringent British Civil Airworthiness Requirements (BCAR).

For many years the BCAR have included a dynamic braking condition that requires that consideration be given to the maximum likely combination of dynamic vertical reaction and sudden increase in drag load that could occur on the nose gear as a result of sudden main gear braking while encountering obstacles. The BCAR address obstacles such as overruns onto semi-prepared surfaces during rejected takeoffs, running off the edge then back on to the runway during avoidance maneuvers, running over displaced or lowered edges of runway paving, and inadvertent use of runways under repair. In application of the BCAR requirement, it was found that U.S. designed airplanes generally have had adequate strength to meet this condition without requiring any modifications. However, this may not always be the case, especially if new airplane designs are significantly different from past conventional configurations in vertical and longitudinal mass distributions of

fuel, payload, engine location, etc. As the takeoff weight increases with respect to landing weight, the dynamic braked roll condition can become more critical for the nose gear and fuselage. Without a specific dynamic braked roll condition, the current braked roll requirements do not guarantee that such strength will always be present.

In 1988, the FAA, in cooperation with the JAA and other organizations representing American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe. The objective was to achieve common requirements for the certification of transport airplanes without a substantive change in the level of safety. Other airworthiness authorizes such as Transport Canada also participated in the process.

In 1992, the harmonization effort was undertaken by the Aviation Rulemaking Advisory Committee (ARAC) to harmonize the loads requirements. A working group of industry and government structural loads specialists from Europe, the Untied States, and Canada was chartered by notice in the Federal Register (58 FR 13819, March 15, 1993). On June 10, 1994 (58 FR 30081), the Loads & Dynamics Harmonization Working Group was assigned the additional task of reviewing and harmonizing the braked roll condition. That harmonization effort has now progressed to the point where a specific proposal has been developed by the working group, adopted by the ARAC, and recommended to the FAA by letter dated November 6, 1995.

Discussion

The European Joint Aviation Authorities (JAA) consider the BCAR braked roll condition too severe a condition to be considered for an airplane design requirement. For instance, it is unlikely that maximum braking will occur at the same instant the gear runs off the runway or during an avoidance maneuver. Nevertheless, the JAA has recognized that sudden application of main gear maximum braking during ground operations is a likely event that the airplane should be able to withstand; and since October 1988, the European Joint Aviation Requirements (JAR–25) have included a dynamic braked roll condition, which now supersedes the previously cited BCAR requirement.

The FAA agrees with the JAA that the sudden application of main gear maximum braking force during ground operations is a likely operational event that the airplane must be able to withstand, and that the BCAR requirement that combines high vertical loads with extreme drag load is an unrealistic condition for the nose gear. However, the current braked roll condition of 14 CFR 25.493 does not ensure that the nose landing gear and fuselage structure are capable of withstanding the loads developed from sudden application of main gear maximum braking force.

The FAA considers the JAR dynamic braked roll condition to be a realistic method to account for dynamic loads that could exceed the static load requirements of § 25.493(b) on future designs. The proposed rule would amend the current FAR braked roll conditions, which address only the loads produced by airplane weight and steady braking forces, to add a requirement to include the effects of dynamic braking. This would account for the effects of airplane pitch inertia on the nose gear and fuselage. The proposed new § 25.439(e) provides a mathematical expression, in terms of airplane weight, geometry, coefficient of friction, and dynamic response factor, that may be used in the absence of a more rational analysis to account for the dynamic loads developed on the nose landing gear during hard braking conditions. An analytical expression is also provided for the dynamic response factor, f, that may be used if there is no data to more accurately define this parameter. Regardless of the FAR requirements, the existing JAR requirement will be imposed on U.S. manufactured airplanes seeking approval to the JAR. It is therefore proposed to harmonize the FAR with the JAR by incorporating the dynamic braked roll condition in the FAR.

Since there is no evidence to suggest that the current fleet of transport category airplanes does not have adequate strength to withstand the proposed dynamic braked roll condition, the FAA does not consider it necessary to apply this requirement retroactively.

Regulatory Evaluation Summary

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposal: (1) Would generate benefits that justify its costs; (2) is not a ''significant regulatory action'' as defined in the 'Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant economic impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

The proposed amendment would codify current industry practice and would not impose additional costs on manufacturers of transport category airplanes. By conforming § 25.493 of the FAR with § 25.493 of the JAR, the proposed amendment would increase harmonization between American and European airworthiness standards and reduce duplicate certification costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis, in which alternatives are considered and evaluated, if a rule is expected to have ''a significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The proposed amendment would affect manufacturers of transport category airplanes produced under new type certificates. For airplane manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Since no part 25 airplane manufacturer has 75 or fewer employees, the proposed amendment would not have a significant economic

impact on a substantial number of small airplane manufacturers.

International Trade Impact Assessment

The proposed amendment would not constitute a barrier to international trade, including the export of American airplanes to foreign countries and the import of foreign airplanes into the United States. Instead, by harmonizing standards of the FAR with those of the JAR, it would lessen restraints on trade.

Federalism Implications

The regulation 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.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), there are no reporting or recordkeeping requirements associated with this proposed rule.

Conclusion

Because the proposed changes to the braked roll condition are not expected to result in substantial economic cost, the FAA has determined that this proposed rule would not be significant under Executive Order 12866. Because this is an issue that has not prompted a great deal of public concern, the FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policy and procedures (44 FR 11034, February 25, 1979). In addition, since there are no small entities affected by this proposed rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this proposed rule, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposed rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under the caption, **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. By amending § 25.493 by revising paragraph (c), and by adding new paragraphs (d) and (e) to read as follows:

§ 25.493 Braked roll conditions.

* * * * *

(c) A drag reaction lower than that prescribed in this section may be used if it is substantiated that an effective drag force of 0.8 times the vertical reaction cannot be attained under any likely loading condition.

(d) An airplane equipped with a nose gear must be designed to withstand the loads arising from the dynamic pitching motion of the airplane due to sudden application of maximum braking force. The airplane is considered to be at design takeoff weight with the nose and main gears in contact with the ground, and with a steady-state vertical load factor of 1.0. The steady-state nose gear reaction must be combined with the maximum incremental nose gear vertical reaction caused by the sudden application of maximum braking force as described in paragraphs (b) and (c) of this section.

(e) In the absence of a more rational analysis, the nose gear vertical reaction prescribed in paragraph (d) of this section must be calculated according to the following formula:

$$V_N = \frac{W_T}{A+B}\left[B + \frac{f\mu AE}{A+B+\mu E}\right]$$

Where:

V_N= Nose gear vertical reaction.

W_T= Design takeoff weight.

A = Horizontal distance between the c.g. of the airplane and the nose wheel.

B = Horizontal distance between the c.g. of the airplane and the line joining the centers of the main wheels.

E = Vertical height of the c.g. of the airplane above the ground in the 1.0 g static condition.

μ = Coefficient of friction of 0.80.

f = Dynamic response factor; 2.0 is to be used unless a lower factor is substantiated. In the absence of other information, the dynamic response factor f may be defined by the equation:

$$f = 1 + \exp\left(\frac{-\pi\xi}{\sqrt{1-\xi^2}}\right)$$

Where:

ξ is the effective critical damping ratio of the rigid body pitching mode about the main landing gear effective ground contact point.

Issued in Washington DC on July 24, 1996.

Elizabeth Yoest,

Acting Director, Aircraft Certification Services.

[FR Doc. 96–19361 Filed 8–2–96; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
August 5, 1996

Part III

Department of Labor

Office of the Secretary
Wage and Hour Division

29 CFR Parts 4 and 5
41 CFR Parts 50–201 and 50–206
Amendments to Federal Contract Labor Laws by the Federal Acquisition Streamlining Act of 1994; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

Wage and Hour Division

29 CFR Parts 4 and 5

41 CFR Part 50–201 and 50–206

RIN 1215–AA96

Amendments to Federal Contract Labor Laws by The Federal Acquisition Streamlining Act of 1994

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises regulations on Labor Standards for Federal Service Contracts Davis-Bacon and Related Acts Provisions and Procedures, General Regulations Under the Walsh-Healey Public Contracts Act, and the Walsh-Healey Public Contracts Act Interpretations to incorporate changes necessitated by the Federal Acquisition Streamlining Act of 1994, which raised the coverage threshold of the Contract Work Hours and Safety Standards Act (CWHSSA) to $100,000 and, among other things, eliminated the eligibility requirements of the Walsh-Healey Public Contracts Act (PCA).

DATES: These regulatory changes are effective on September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements contained in 29 CFR parts 4 and 5 and in 41 CFR parts 50–201 and 206. Thus, this rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

II. Background

The Department published a notice of proposed rulemaking in the Federal Register on September 7, 1995 (60 FR 46553), inviting public comments on proposed revisions to 29 CFR parts 4 and 5, and 41 CFR parts 50–201 and 50–206, to correspond to provisions of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 108 Stat. 3243). Section 4104(c) of FASA amended sections 103 and 107 of the Contract Work Hours an Safety Standards Act (CWHSSA), 40 U.S.C. 327 *et seq,* to establish a threshold of $100,000 or more for contracts subject to CWHSSA's overtime provisions. As a result of this new $100,000 statutory threshold, conforming revisions were proposed to § 4.181(b) of 29 CFR part 4 and §§ 5.5(b) and 5.15(b) (1) and (2) of 29 CFR part 5.

Section 7201 of FASA amended the PCA to: (1) Repeal section 1(a) of the PCA, which eliminates the requirement that covered contractors must be either a ''regular dealer'' or ''manufacturer,'' [1] and to redesignate paragraphs (b), (c), (d) and (e) to (a), (b), (c) and (d), respectively; (2) substitute, in section 10(b) of the PCA, the term ''supplier of'' for the terms ''regular dealer'' and ''manufacturer''; (3) strike, in section 10(c) of the PCA, the terms ''regular dealer'' and ''manufacturer''; and (4) add new subsections (a) and (b) to section 11 of the PCA to provide for the Secretary's authority to define the terms ''regular dealer'' and ''manufacturer.''

Pursuant to these statutory amendments to the PCA, the Department proposed the following modifications to 41 CFR parts 50–201 and 50–206:

1. Renumber § 50–201.1 of 41 CFR part 50–201 relating to contract stipulations as § 50–201.3;
2. Delete the paragraph currently designated as § 50–201.1(a) to remove the ''manufacturer of or regular dealer in'' requirement, and redesignate subsequent paragraphs of this section;
3. Delete § 50–201.101 relating to definitions of the terms ''manufacturer'' and ''regular dealer'';
4. Delete § 50–201.604 relating to partial administrative exemptions from the manufacturer or regular dealer requirement; and
5. Delete the entire part 50–206, which relates primarily to the qualifications of contractors and interpretations of the terms ''manufacturer'' and ''regular dealer,'' and incorporate §§ 50–206.1 and 50–206.2 into the general regulations at part 50–201 as new §§ 50–201.1 and 50–201.2, respectively.

In addition, section 3023 of FASA repealed 10 U.S.C. 7299 to eliminate the applicability of the PCA to contracts for the construction, alteration, furnishing, or equipping of naval vessels. While this amendment required no changes in the regulations, the Department advised contracting agencies and contractors that such contracts would, as a result, be subject to the Davis-Bacon Act, which applies to contracts in excess of $2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work, because marine vessels have historically been regarded as ''public works'' for purposes of the Davis-Bacon Act.

In connection with the repeal of the bidder eligibility requirements, section 7201(4) added a new provision to the PCA which provided that the Secretary of Labor ''* * * *may* [emphasis added] prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by * * * (the United States).'' The new section also provides for judicial review of any legal question regarding the interpretation of manufacturer or regular dealer as promulgated under this new section. According to the legislative history of FASA's section 7201(b), authorizing the Secretary of Labor to define the terms ''regular dealer'' and ''manufacturer'' was considered appropriate because the terms have been incorporated by reference into a number of other statutes. (See H.R. Conf. Rep. No. 712, 103d Cong., 2d Sess. 225 (1994).)

Because only one statute was found which explicitly incorporates PCA's definition of the term ''manufacturer'' and/or ''regular dealer'' by reference,[2] the Department concluded that maintaining special rules defining the terms ''manufacturer'' or ''regular dealer'' was not necessary, given FASA's repeal of the eligibility requirements; that the former definitions could be adapted, if necessary, by other Federal agencies; and that the former definitions could be used to resolve questions of PCA eligibility in contracts awarded prior to the change in applicable law. This conclusion was also supported by the fact that a review of the numerous

[1] Under the PCA as amended, an eligible bidder includes, in addition to a manufacturer or regular dealer, any supplier or distributor of the materials, supplies, articles, or equipment to be manufactured or supplied under the contract.

[2] This statute, 15 U.S.C. 637, concerns contracting authority of the Small Business Administration and the awarding of subcontracts to small businesses owned and controlled by socially and economically disadvantaged individuals. It provides at 15 U.S.C. 637(a)(17) that a responsible business concern may be the actual manufacturer or processor of the product to be supplied under a contract or ''* * * be a regular dealer, as defined pursuant to section 35(a) of Title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government * * *.'' (See 15 U.S.C. 637(a)(17)(B)(iii).)

references to the ''manufacturer'' or ''regular dealer'' provisions of the PCA throughout the Code of Federal Regulations (CFR) disclosed that they were only intended to implement these eligibility requirements through the procurement process.

A total of 3 comments were received in response to the notice. Two commenters focused their remarks on the repeal of 10 U.S.C. 7299, which eliminated the applicability of the PCA to contracts for the construction, alteration, furnishing, or equipping of naval vessels. Both the Department of Navy and Shipbuilders Council of America questioned the Department's interpretation that, in the absence of 10 U.S.C. 7299, the Davis-Bacon Act would apply to shipbuilding and ship repair contracts. The Department of Navy also argued that the Congress intended to implement a Department of Defense 800 panel recommendation on acquisition reform which sought repeal of the PCA, including repeal of 10 U.S.C. 7299, and a companion amendment to the Davis-Bacon Act to make clear that it was not applicable to ship repair or construction contracts. This commenter further argued that the failure of FASA to include an amendment to the Davis-Bacon Act does not alter Congressional intent. To clarify the situation, according to this commenter, the Department of Navy expected 10 U.S.C. 7299 to be reinstated in the upcoming FY 1996 appropriation authorization for the Department of Defense. The third commenter, the Honorable Jan Meyer, Chair, Committee on Small Business, U.S. House of Representatives, supported the Department's view that the promulgation of special rules defining the terms ''manufacturer'' or ''regular dealer'' was not necessary.

After review of the comments, the Department has concluded that it is appropriate to adopt the revisions proposed in the September 1995 rulemaking as a final rule. With respect to commenter concerns that contracts for naval vessels, previously subject to the requirements of the PCA, would be subject to the DBA in the absence of 10 U.S.C. 7299, the Department lacks authority to provide for an alternative result. Marine vessels have historically been regarded as ''public works'' for purposes of the DBA.[3] The DBA has accordingly been applied to contracts for the construction, alteration, or repair of Federally-owned or operated marine vessels (*e.g.*, of the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and Maritime Administration). Pursuant to 10 U.S.C. 7299, however, contracts in excess of $10,000 calling for construction, alteration, furnishing or equipping of naval vessels (U.S. Navy or U.S. Coast Guard) were heretofore subject to PCA. This statute had the effect of removing Navy and Coast Guard vessels from DBA coverage. The repeal of 10 U.S.C. 7299, however, caused the provisions of DBA to become applicable to Navy and Coast Guard vessels as with all other Federally-owned or operated marine vessels. Although this may have been an unintended consequence of the passage of FASA, the question of DBA coverage is clear. Thus, contracts involving U.S. Navy or U.S. Coast Guard vessels, as for all other U.S. Government marine vessels historically, would also be subject to DBA by statutory language in the absence of 10 U.S.C. 7299. In any case, however, this issue has become moot by the enactment of section 815 of the Fiscal Year 1996 DOD Authorization Act (Pub. L. 104–106; February 10, 1996), which includes a provision reinstating former 10 U.S.C. 7299. As a result, each contract for the construction, alteration, furnishing or equipping of a naval vessel is once again subject to the PCA, unless the President determines that this requirement is not in the interest of national defense.

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act of 1995

This final rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The revisions adopted in this rule are technical in nature as required by statutory language in FASA. While the new statutory threshold of $100,000 under the Contract Work Hours and Safety Standards Act can be expected to reduce procurement burdens on purchases under $100,000, contractors awarded such contracts may continue to be obligated to pay weekly overtime where the requirements of the Fair Labor Standards Act (29 U.S.C. 201, *et seq.*) apply. Likewise, the repeal of the ''manufacturer'' and ''regular dealer'' requirements under PCA may be expected to increase competition for certain supply contracts; however, the impact on procurement costs resulting from an enlarged pool of eligible bidders is not clearly apparent, and could be minimal. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 and section 202 of the Unfunded Mandate Reform Act of 1995. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The final rule will not have a significant economic impact on a substantial number of small entities. The rule implements statutory changes enacted by FASA, and furthers its streamlining objectives. The repeal of the ''manufacturer'' and ''regular dealer'' requirements under PCA will likely increase the number of eligible bidders on supply contracts, many of whom would be small entities, which would have beneficial effects consistent with the purpose of the Regulatory Flexibility Act. The elimination of PCA bidder requirements will also simplify the processing of eligibility protests on bidder eligibility and will otherwise streamline the procurement process. While these and other benefits of the rule would be difficult, if not impossible, to quantify, the rule is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 4

Administrative practice and procedure, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

[3] See *Title Guaranty and Trust Co.* v. *Crane Co.*, 219 U.S. 24 (1910); 38 Op. Atty. Gen. 418; and 17 Comp. Gen. 585.

29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

41 CFR Parts 50–201 and 50–206

Administrative practice and procedures, Child Labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth above, 29 CFR Part 4, 29 CFR Part 5, CFR Part 50–201, and 41 CFR Part 50–206 are amended as set forth below.

Signed at Washington, DC, on this 30th day of July, 1996.

Maria Echaveste,

Administrator, Wage and Hour Division.

Accordingly, the following Parts of the Code of Federal Regulations are amended:

(a) Part 4, Title 29, Code of Federal Regulations (29 CFR Part 4);

(b) Part 5, Subpart A, Title 29, Code of Federal Regulations (29 CFR Part 5);

(c) Part 50–201, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR Part 50–201); and

(d) Part 50–206, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR part 50–206), as set forth below.

Title 29—Labor

Subtitle A—Office of the Secretary

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for part 4 is revised to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; 5 U.S.C. 301; and 108 Stat. 4101(c).

§ 4.181 [Amended]

2. In § 4.181, paragraph (b)(1) is revised to read as follows:

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including service contracts in excess of $100,000, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer and mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employees' basic rate of pay for all hours worked in any workweek in excess of 40. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work, required to be done in accordance with the provisions of the Walsh-Healey Act.

* * * * *

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

3. The authority citation for part 5 is revised to read as follows:

Authority: 40 U.S.C. 276a–176a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; 108 Stat. 4104(c); and the statutes listed in section 5.1(a) of this part.

4. In § 5.5, paragraph (b) is revised to read as follows:

§ 5.5 Conract provisions and related matters.

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

* * * * *

§ 5.15 [Amended]

5. In § 5.15, paragraph (b) is amended by removing paragraphs (b)(1) and (2), and by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(1), (2), and(3), respectively.

Title 41—Public Contracting and Property Management

CHAPTER 50—PUBLIC CONTRACTS, DEPARTMENT OF LABOR

PART 50–201—GENERAL REGULATIONS

6. The authority citation for part 50–201 is revised to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201.

7. Sections 50–201.1 and 50–201.2 are redesignated as §§ 50–201.3 and 50–201.4, respectively, and paragraph (a) of the clause in § 50–201.3, as newly redesignated, is removed, and paragraphs (b) through (j) are redesignated as paragraphs (a) through (i), respectively, and the heading of the clause is revised to read as follows:

REPRESENTATIONS AND STIPULATIONS PURSUANT TO PUBLIC LAW 846, 74TH CONGRESS, AS AMENDED

* * * * *

§ 50–201.101 [Removed]

§ 50–201.102 through 50–201.106 [Redesignated as §§ 50–201.101 through 50–201.105]

8. Section 50–201.101 is removed, and §§ 50–201.102 through 50–201.106 are redesignated as §§ 50–201.101 through 50–201.105, respectively.

§ 50–201.604 [Removed]

9. Section 50–201.604 is removed.

PART 50–206—THE WALSH-HALEY PUBLIC CONTRACTS ACT INTERPRETATIONS

§§ 50–206.1 and 50–206.2 [Redesignated at 50–201.1 and 50–201.2]

§§ 50–206.3 and 50–206.50 through 50–206.56 [Removed]

10. In part 50–206, §§ 50–206.1 and 50–206.2 are redesignated as §§ 59–201.1 and 50–201.2 in part 50–201, respectively, and the remainder of part 50–206 is removed.

[FR Doc. 96–19792 Filed 8–2–96; 8:45 am]

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1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
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2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
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500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
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200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
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280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
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141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
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21 Parts:			
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100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
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600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
*1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
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300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
***23**	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
*200–219	(869–028–00078–9)	14.00	Apr. 1, 1996
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	Apr. 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
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§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
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1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
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1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
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
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700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
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38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
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52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
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72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
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190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
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425–699	(869–026–00156–1)	30.00	July 1, 1995
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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
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1–100	(869–026–00159–6)	9.50	July 1, 1995
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430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
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166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
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47 Parts:			
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48 Chapters:			
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49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
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[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, 1996. 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, 1995. The CFR volume issued July 1, 1991, should be retained.