7–10–97
Vol. 62 No. 132
Pages 36965–37124

federal register

Thursday
July 10, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 62, No. 132

Thursday, July 10, 1997

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service

Animal and Plant Health Inspection Service
RULES
Hawaiian and territorial quarantine notices:
Papaya, carambola, and litchi, 36967–36976
Plant-related quarantine, domestic:
Mediterranean fruit fly, 36976–36978
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37010
Environmental statements; availability, etc.:
Field testing vaccine containing canarypox-vectored rabies fraction, 37010–37011

Arms Control and Disarmament Agency
NOTICES
Meetings:
Director's Advisory Committee, 37012–37013

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37013–37014

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodificiency virus (HIV)—
Infection among U.S. blood and plasma donors; epidemiologic and laboratory characteristics, 37058–37062
Meetings:
Disease, Disability, and Injury Prevention and Control special emphasis panels, 37062

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37013

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 37035
India, 37036
Sri Lanka, 37036–37037

Commodity Credit Corporation
RULES
Loan and purchase programs:
Livestock indemnity program
Correction, 36978

Defense Department
NOTICES
Meetings:
Defense Intelligence Agency Science and Technology Advisory Board, 37037
Defense Reform Task Force, 37037
Science Board task forces, 37037
Senior Executive Service:
Performance Review Board; membership, 37038

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Butorphanol; placement into Schedule IV, 37004–37007
NOTICES
Applications, hearings, determinations, etc.:
Applied Science Labs, 37077
U.S. Drug Testing, Inc., 37077

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 37038

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 37038

Energy Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37039

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oregon, 36995–36997
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 36997–36998
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oregon, 37008
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 37007–37008
NOTICES
Meetings:
Industry-specific reporting guidance documents, 37053–37054

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Service Agency
NOTICES
Reporting and recordkeeping requirements:
Domestic sugar prices; comment request, 37011–37012

Federal Aviation Administration
RULES
Airworthiness directives:
Ayres Corp., 36978–36981
PROPOSED RULES
Airworthiness standards:
Transport category airplanes—
High-lift device controls; gate requirements; correction, 37124

Federal Communications Commission
RULES
Telecommunications Act of 1996; implementation:
Common carrier services—
Infrastructure sharing provisions, 36998
PROPOSED RULES
Radio stations; table of assignments:
Montana, 37008
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 37054–37055
Meetings:
Network Reliability and Interoperability Council, 37055–37056

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance regulations:
Prunes, 37000–37004

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 37056

Federal Energy Regulatory Commission
RULES
Filing fees:
Annual update, 36981–36982
NOTICES
Electric rate and corporate regulation filings:
Arizona Public Service Co. et al., 37048–37051
Environmental statements; availability, etc.:
Dakota & Goodhue Counties, 37051
Environmental statements; notice of intent:
GTXL, Inc., 37051–37052
Hydroelectric applications, 37052–37053
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 37039
CNG Transmission Corp., 37039–37040
Columbia Gas Transmission Corp., 37040
Columbia Gulf Transmission Co., 37040
Crossroads Pipeline Co., 37040–37041
Distrigas of Massachusetts Corp., 37041
Florida Keys Electric Cooperative Association, Inc., 37041
Kentucky West Virginia Gas Co., L.L.C., 37041
Keystone Energy Services, Inc., 37041–37042
Koch Gateway Pipeline Co., 37042
Logan Generating Co., L.P., 37042
Midwestern Gas Transmission Co., 37042
National Fuel Gas Supply Corp., 37042–37043
Nevada Power Co., 37043
Northern Natural Gas Co., 37043–37044
Pennsylvania Power & Light Co., 37044
PJM Interconnection Association, 37044
Sabine Pipe Line Co., 37044
Shell Gas Pipeline Co., 37044–37045
Southern Natural Gas Co., 37045
Steuben Gas Storage Co., 37046
Transcontinental Gas Pipe Line Corp., 37046
Trunkline Gas Co., 37046
UtiliCorp United Inc., 37047
UTIL Power Marketing, Inc., 37047
Virginia Electric & Power Co., 37047
Watt Works, L.L.C., 37047–37048
Williams Natural Gas Co., 37048
Wyoming Interstate Co., 37048

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 37056
Formations, acquisitions, and mergers, 37056–37057
Permissible nonbanking activities, 37057–37058

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 37072–37073
Environmental statements; availability, etc.:
Incidental take permits—
Kern County, CA; San Joaquin kit fox, 37073–37074
Marine mammal permit applications, 37074

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
4-nonylphenol, formaldehyde and 1-dodecanethiol, 36982–36984
NOTICES
Guidance documents; availability, etc.:
Frequently asked questions (FAQs) about tobacco regulations, 37062–37063
Human drugs:
New drug applications—
Global Pharmaceutical Corp. et al.; approval withdrawn, 37063–37064
Medical devices:
Ostomy pouch and accessories; classification change; petition denied, 37064–37066
Medical devices; premarket approval:
Angio-Seal Hemostatic Puncture Closure Device, 37066–37067
Econolith Extracorporeal Shock Wave Lithotripter, 37067
PALMAZ-SCHATZ Balloon-Expandable Stent, 37067–37068

Food Safety and Inspection Service
NOTICES
Meetings:
Microbiological Criteria for Foods National Advisory Committee, 37012

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Interior Department
See Fish and Wildlife Service

See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37120–37121
Organization, functions, and authority delegations:
Acting Commissioner, 37121

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipes and tubes from—
Mexico, 37014–37027
Fresh Atlantic Salmon from—
Chile, 37027–37030
Stainless steel bar from—
India, 37030–37031
International buyer program; domestic trade shows support, 37031–37032

Justice Department
See Drug Enforcement Administration
RULES
Classified national security information and access to classified information; Federal regulatory review, 36984–36993
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37076–37077

Land Management Bureau
NOTICES
Minerals management:
Mining claims under the general mining laws; surface management—
New Mexico; legal financial guarantees, 37074
Oil and gas leases:
Wyoming, 37075
Organization, functions, and authority delegations:
Nevada State Office; public room change of hours, 37075
Public land orders:
Alaska; correction, 37075
Colorado, 37076

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Surety bond coverage for leases
Correction, 36995

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Accuride Corp.; correction, 37115
Cooper Tire & Rubber Co.; correction, 37115
Small Business Regulatory Enforcement Fairness Act:
Policy statement—
Civil penalties, 37115–37118

National Institute of Standards and Technology
NOTICES
Meetings:
Transition-edge-sensor (TES) x-ray microcalorimeter technology, 37033

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37068–37069
Submission for OMB review; comment request, 37069
Meetings:
National Institute of Allergy and Infectious Diseases, 37070, 37071
National Institute of Neurological Disorders and Stroke, 37069–37070, 37070–37071
National Institute on Alcohol Abuse and Alcoholism, 37071
National Institute on Drug Abuse, 37071–37072
Research Grants Division special emphasis panels, 37072

National Oceanic and Atmospheric Administration
RULES
Tuna, Atlantic bluefin fisheries, 36998–36999
NOTICES
Permits:
Endangered and threatened species, 37033–37034
Experimental fishing, 37034–37035

National Science Foundation
NOTICES
Meetings:
Advanced Scientific Computing Special Emphasis Panel, 37077–37078

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37078–37079
Environmental statements; availability, etc.:
Dow Chemical Co., 37081–37082
GPU Nuclear Corp., 37082–37083
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 37079–37081

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
RULES
Civil monetary penalties; inflation adjustment, 36993–36995

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Eligibility of certain overseas employees for noncompetitive appointments (EO 13054), 36965

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
RULES
Fellowships, internships, training:
Health services research, evaluation, demonstration, and dissemination projects; peer review of grants and contracts
Correction, 37124

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37083
Meetings; Sunshine Act, 37083

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Underground storage of natural gas or hazardous liquids, 37008–37009
NOTICES
Pipeline safety:
Hazardous liquid transportation—
Underground storage of gas and hazardous liquids, other than in tankage; termination, 37118–37119

Securities and Exchange Commission
NOTICES
Self-regulatory organizations:
Clearing agency registration applications—
Emerging Markets Clearing Corp., 37093–37104
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 37104–37105
National Association of Securities Dealers, Inc., 37105–37108
Pacific Exchange, Inc., 37108–37109
Philadelphia Stock Exchange, Inc., 37109–37112
Applications, hearings, determinations, etc.:
Cascades Trust, et al., 37084–37086
Qualivest Funds, et al., 37086–37088
Reserve Investment Funds, Inc., et al., 37088–37093

Small Business Administration
NOTICES
License surrenders:
Falcon Capital Corp., 37112

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
West Virginia State Rail Authority, et al., 37119

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewal, termination, etc.:
World Trade Organization dispute settlement rosters of panel candidates; nomination opportunity, 37112–37114

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37114–37115

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 37119–37120

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Civic education institute for the Middle East, 37121–37123

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
12721 (See EO 13054) 36965
13054 36965

7 CFR
300 36967
301 36976
318 36967
1437 36978

Proposed Rules:
450 37000
457 37000

14 CFR
39 36978

Proposed Rules:
25 37124

18 CFR
381 36981

21 CFR
178 36982

Proposed Rules:
1308 37004

28 CFR
17 36984

29 CFR
4000 36993
4010 36993
4011 36993
4043 36993
4071 36993
4302 36993

30 CFR
256 36995

40 CFR
62 36995
300 36997

Proposed Rules:
52 37007
62 37008

42 CFR
67 37124

47 CFR
59 36998

Proposed Rules:
73 37008

49 CFR

Proposed Rules:
192 37008
195 37008

50 CFR
285 36998

Federal Register
Vol. 62, No. 132
Thursday, July 10, 1997

Presidential Documents

Title 3—

The President

Executive Order 13054 of July 7, 1997

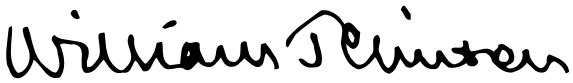
Eligibility of Certain Overseas Employees for Noncompetitive Appointments

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5 and section 301 of title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

Section 1. A United States citizen who is a family member of a Federal civilian employee and who has separated from Federal service to accept employment with the American Institute in Taiwan pursuant to section 11 of Public Law 96–8 (93 Stat. 18, 22 U.S.C. 3310(a)) may be appointed noncompetitively, in accordance with Executive Order 12721 and implementing regulations of the Office of Personnel Management, to a competitive service position in the executive branch, provided such family member meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory overseas employment with the American Institute in Taiwan.

Sec. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

Sec. 3. This order shall be effective upon publication in the **Federal Register.**



THE WHITE HOUSE,
July 7, 1997.

[FR Doc. 97–18288
Filed 7–9–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 62, No. 132
Thursday, July 10, 1997

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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 95–069–2]

Papaya, Carambola, and Litchi From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are increasing the irradiation treatment dose required for papayas intended for interstate movement from Hawaii and allowing carambolas to be moved interstate from Hawaii with irradiation treatment. We are also allowing litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and other plant pests and undergo irradiation or hot water treatment for fruit flies. We are allowing papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment either in Hawaii or in non-fruit fly supporting areas of the mainland United States. In addition, we are making several amendments to the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables. Finally, we are amending the definition for *inspector* to include State plant regulatory officials designated by the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. These actions will facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: July 10, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables, including papayas, from Hawaii. Regulation is necessary to prevent the spread of the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*), which occur in Hawaii. These types of fruit flies are collectively referred to in this document as Trifly.

The regulations allow papayas to be moved interstate from Hawaii to any destination in the United States if, among other things, they have been treated for Trifly. One approved treatment for Trifly in papayas is irradiation. Prior to the effective date of this final rule, § 318.13–4f provided for irradiation of papayas, but no other fruits, at an approved facility in Hawaii at an irradiation dose of 150 Gray (15 krad).

On July 23, 1996, we published in the **Federal Register** (61 FR 38108–38114, Docket No. 95–069–1) a proposal to amend the regulations by increasing the irradiation treatment dose required for papayas intended for interstate movement from Hawaii; allowing carambolas to be moved interstate from Hawaii with irradiation treatment; allowing litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and undergo irradiation or hot water treatment for fruit flies; allowing papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment either in Hawaii or in non-fruit fly supporting areas of the mainland United States; making several amendments to the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables; and amending the definition of *inspector* to include State plant regulatory officials designated by the Administrator of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture.

We solicited comments concerning our proposal for 30 days ending August 22, 1996. We received 45 comments by that date. They were from growers, producers, university personnel, and representatives of industry, irradiation associations, and State governments. One commenter supported the proposed rule in its entirety. The remaining 44 commenters had concerns about portions of the proposed rule. Their concerns are discussed below.

Comment: APHIS should not allow Trifly host fruit from Hawaii to be shipped to the mainland United States for treatment. Treatments should be conducted before the fruit leaves Hawaii. Arrival of untreated Trifly host material on the mainland United States, even in non-fruit fly supporting areas, would present too great a risk of Trifly being introduced into susceptible States. Factors contributing to this risk include misrouting, diversion of shipments, and repackaging and redistribution prior to treatment; the possibility of planes carrying untreated fruit crashing in susceptible States; and the possible establishment of Trifly in northern States during the summer months, with subsequent movement of infected host material into susceptible States.

Response: With the careful growing practices of Hawaii's commercial growers, such as administering pre-harvest chemical controls and keeping production fields clear of fallen fruit during harvest, we believe that occurrence of Trifly in cartons of untreated fruit from Hawaii will be rare. We believe that the packaging and movement provisions established by this rule for shipments of papaya, carambola, and litchi moving interstate to the mainland United States from Hawaii for treatment will further protect the mainland United States from the introduction of Trifly.

Specifically, untreated carambola, litchi, and papaya moving interstate to the mainland United States for treatment may not be moved with treated fruits or vegetables. This will prevent treated commodities from becoming infested with Trifly, and help ensure that untreated fruit is not inadvertently distributed in the United States with treated fruit. Although our rule allows untreated fruit bound for

treatment on the mainland United States to be packaged in either non-vented or vented cartons, any Trifly that might be present in the shipment would most likely be eggs and larvae, and it is unlikely that eggs and larvae would escape from normal vented packaging.

In addition, in the unlikely event that a shipment of untreated papaya, carambola, or litchi from Hawaii contains an injurious plant pest that escapes from a carton after arriving on the mainland United States, the areas into which shipments of untreated fruit from Hawaii may move are limited to those where Trifly would not be able to sustain a reproducing population. Irradiation treatment on the mainland United States may not be conducted in Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. Prior to treatment, the papaya, carambola, and litchi may not move into or through Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that Dallas/Fort Worth, Texas, is an authorized stop for air cargo and a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route. In addition, both treated and untreated litchi from Hawaii may not be moved into or distributed in the State of Florida.

Apart from restricting the movement into Florida of litchi from Hawaii, we are establishing these movement restrictions because cooler climates will not support the establishment of successive generations of fruit flies. All three species of fruit fly identified in this document are distributed around the world but only establish reproducing populations in tropical, subtropical, and Mediterranean climates. For example, these species of fruit fly have had ample opportunity to establish reproducing populations in more northern countries such as Canada, Germany, and The Netherlands, where untreated host material has been imported from countries with climates suitable for fruit fly establishment for many years; however, the cold climates of these three northern countries have prevented the establishment of successive populations of fruit flies. We are confident that these three species of fruit fly do not have a life stage that can survive the cold winters of our northern tier States. Additionally, we have been cold treating fruit fly host material from foreign countries in the northern United States for many years, and we have not recorded an established population of fruit flies in any northern State, during either the summer months or at any other time during the year, as a result of these imports. Therefore, we do not believe that the interstate movement of Hawaiian fruit for treatment on the mainland United States presents a risk of establishing Trifly in States into which Hawaiian fruit may move prior to treatment during the summer months or at other times during the year, and we, therefore, do not expect infested host material to move from northern States into more susceptible southern States prior to treatment for fruit flies.

Also, papaya, carambola, and litchi moved from Hawaii to the mainland United States for treatment must be treated prior to distribution on the mainland United States. The irradiation treatment for fruit flies, as well as the other treatments outlined in our proposal, meets probit 9 quarantine security. Probit 9 security means that no more than 32 per 1,000,000 treated individuals (such as fruit flies) will pass through treatment and still emerge as adults. Since it is extremely unlikely that a consignment of fruit from Hawaii could be infested at such a high rate, a probit 9 level treatment assures that essentially all target pests will be effectively treated so as to prevent their adult emergence. Probit 9 is a longstanding APHIS policy. We believe that probit 9 treatment procedures are sufficient to prevent the introduction and establishment of plant pests on the mainland United States.

We acknowledge that there is always the risk of misrouting, diversion of shipments, or a plane crash, but this risk is negligible. Further, in order to prevent the accidental misrouting or deliberate diversion of shipments of untreated fruit from Hawaii bound for treatment facilities on the mainland United States, each shipment of fruit from Hawaii requiring treatment on the mainland United States must move under limited permit. The limited permit will be issued by inspectors in Hawaii, who will notify APHIS personnel on the mainland United States of the issuance of the limited permit. The shipment of untreated fruit will then move interstate to a port staffed by APHIS personnel on the mainland United States. Therefore, at all points during the interstate movement, authorized personnel will be on hand to help prevent accidental misrouting, deliberate diversion, or repackaging and redistribution of untreated Hawaiian fruit.

Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: In the absence of an irradiation facility in Hawaii, APHIS should require other treatments, such as cold or heat treatments, before fruit from Hawaii is moved interstate to the mainland United States.

Response: We feel that such cold or heat treatments of papaya, carambola, and litchi from Hawaii are not necessary because, combined with the packaging and movement requirements proposed for fruit from Hawaii, the proposed irradiation treatment for papaya, carambola, and litchi from Hawaii is sufficient to mitigate the risk of the introduction and establishment of Trifly and other injurious plant pests on the mainland United States. Additionally, for some time, we have permitted the untreated fruit fly host material of a number of foreign countries to undergo treatment on the mainland United States. We do not believe that there is cause to ask more of Hawaii than we do of those foreign countries. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: APHIS should require litchis from Hawaii to be cold treated prior to arrival on the mainland United States. Cold treatment is now required for litchis imported from foreign countries, such as Taiwan.

Response: We require cold treatment for litchis imported from Taiwan because of Oriental fruit fly (*Bactrocera dorsalis*) and litchi fruit borer (*Conopomorpha sinensis*). Though litchi from Hawaii also must be treated for Oriental fruit fly, as well as other pests, we do not believe that cold treatment is necessary for Hawaiian litchi. The hot water and irradiation treatments for litchi provided by this rule, combined with the movement restrictions discussed previously and the required inspection for litchi fruit moth and other plant pests, are sufficient to prevent the introduction of Trifly, litchi rust mite, and other injurious plant pests into the United States. In the future, we will consider any request to allow the cold treatment of Hawaiian litchi as an alternative to irradiation or hot water treatment. At this time, however, we are making no changes to the proposed rule in response to this comment.

Comment: APHIS should prohibit litchis from moving into either Florida or California unless the risk of introducing litchi rust mite, litchi fruit moth, Koa seedworm (also known as Macadamia nut borer), and light brown apple moth can be addressed. Regulations and stamps prohibiting the

movement of litchis into Florida will not keep infested fruit out of Florida.

Response: Because of Florida's commercial production of litchi, litchi from Hawaii will not be allowed to move into or be distributed in Florida, and cartons of litchi from Hawaii will be stamped with that information so that they are not inadvertently shipped to Florida.

Though we do not currently have sufficient data to judge the effect on litchi rust mite (*Eriophyes litchi*) of the irradiation dose adopted in this final rule for Trifly (250 Gray), we do expect, based on the available information, some deleterious effect on any litchi rust mites in a shipment of litchi that undergoes an irradiation treatment according to the provisions outlined in the proposal. Yet APHIS is not relying upon irradiation treatment as the primary means of reducing the risk associated with the litchi rust mite. We have determined that there is little chance that a litchi rust mite will stay on a litchi fruit throughout the growth, harvest, and packing of the litchi fruit. Litchi rust mite is most closely associated with the leaves and other plant parts of the litchi. Because we are only allowing the fruit of the litchi to be moved interstate from Hawaii, we believe that there is only a remote chance that litchi rust mite will be associated with fruit that is packed in a shipment of litchi moving interstate from Hawaii. We believe that the inspection, movement, and treatment provisions established for litchi by this rule will prevent litchi rust mite from being introduced into the mainland United States. However, as an added precaution to ensure protection of Florida's litchi industry, APHIS is prohibiting movement of Hawaiian litchi into Florida.

Further, we believe that litchi moved interstate from Hawaii under this rule will present a negligible risk of introducing litchi fruit moth (*Cryptophlebia ombrodelta*), Koa seedworm (*Cryptophlebia illepida* [Butler]), or light brown apple moth (*Epiphyas postvittana*) anywhere on the mainland United States.

The cultural practices employed by Hawaiian tree fruit growers, such as administering pre-harvest chemical controls, keeping production fields clear of fallen fruit during harvest, and keeping field borders clear of hale koa (favored host of *Cryptophlebia* spp.), greatly reduce the possibility that litchi fruit moth, Koa seedworm, or light brown apple moth will be associated with Hawaiian litchi moving to the mainland United States. However, we are not depending on those growing practices alone to mitigate the risk of the introduction of these pests on the mainland United States. Our rule also requires litchi from Hawaii to be inspected and found free of litchi fruit moth and other pests (including Koa seedworm and light brown apple moth) prior to treatment in Hawaii or prior to interstate movement if the litchi will be treated on the mainland United States. Each of these pests is readily detectable by inspection. We believe that the control and suppression measures used by Hawaiian commercial growers and the inspection of the litchi will mitigate the risk of the introduction of these pests onto the mainland United States.

In the preamble of our proposal, we stated that each shipment of litchi, whether treated in Hawaii or moving to the mainland United States for treatment, would be inspected in Hawaii prior to treatment or interstate movement for litchi fruit moth and other pests of concern. However, in the rule portion of our proposal, we did not make the inspection provisions clear for litchi undergoing irradiation treatment. Therefore, we have revised § 318.13–4f(b)(7)(i) and (ii) to clarify that all litchi from Hawaii must be inspected in Hawaii and found free of litchi fruit moth and other pests of concern prior to treatment or interstate movement.

Comment: APHIS should require untreated fruit, as well as treated fruit, to be packaged in a pest-proof carton, and the carton to be sealed before the fruit is to be moved from Hawaii. This would provide additional quarantine security.

Response: We proposed that all treated carambola, litchi, and papaya be packaged in pest-proof cartons to protect the fruit from re-infestation by Trifly. We proposed to allow untreated carambola, litchi, and papaya moving interstate to the mainland United States to move in either non-vented or in vented cartons. We proposed this flexibility for the packaging of untreated fruit because prevention of reinfestation is not an issue and because, as explained earlier in this document, any Trifly that might be present in the shipment would most likely be eggs and larvae, and it is unlikely that eggs and larvae could escape from normal vented packaging. Additionally, if Trifly eggs and larvae were present in the shipment, and if they reached maturity and escaped, it is unlikely that they could establish a reproducing population in the areas in which movement of untreated fruit will be authorized under the regulations because of either the relatively cool climate or the lack of suitable commercial host material in those areas. Untreated carambola, litchi, and papaya must be treated before being distributed outside these areas.

We agree with the commenter that seals are a good way to help ensure the proper handling of shipments. Under our proposal, each carton of fruit treated in Hawaii that moves interstate to the mainland United States would be required to be sealed with seals that visually indicate if the cartons have been opened. However, we did not propose to require seals for cartons of untreated fruit. In response to this comment, we are requiring seals for shipping containers of untreated fruit moving interstate from Hawaii, as well as cartons of fruit treated in Hawaii. Because cartons of untreated Hawaiian fruit will be placed in sealed shipping containers prior to interstate movement to the mainland United States, we have determined that it is not necessary to seal each carton of untreated fruit. This provision would help ensure that no cartons within the sealed shipping container have been tampered with or removed. Therefore, we are amending § 301.13–4f(b)(4)(i) to require that shipping containers of untreated papaya, litchi, and carambola from Hawaii be sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened.

Comment: The requirement that each carton of treated fruit be stamped ''Treated—USDA, APHIS'' should be retained to ensure product differentiation at the treatment facility and in the distribution channels afterward.

Response: In order to ensure that no cartons are added to or removed from a pallet load of cartons of Hawaiian fruit moving to the mainland United States, we proposed that pallet loads be wrapped in one of the following ways: With polyethylene sheet wrap, with net wrapping, or with strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap. We further proposed to require that pallet loads of treated carambola, litchi, and papaya be marked with treatment lot numbers, packing and treatment facility identification and locations, and dates of packing and treatment so that an inspector could identify the treatment lots of shipments and trace shipments back to the facilities where they were packed and treated. We proposed this method of labeling to replace the requirement that individual cartons be marked with a ''Treated'USDA, APHIS'' stamp. We believe that our proposed method will offer more information than our current method about a shipment or shipments

of fruit from Hawaii if an infestation is detected on the mainland United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: Only fruit treated in Hawaii should be required to be packaged in pest-proof cartons.

Response: We agree. Under our proposal, only carambola, litchi, and papaya from Hawaii that are treated in Hawaii will have to move in pest-proof cartons, in accordance with § 318.13–4f(b)(4)(i)(A). Carambola, litchi, and papaya from Hawaii that are treated on the mainland United States, and carambola, litchi, and papaya moving to the mainland United States for treatment, will not have to move in pest-proof cartons. Carambola, litchi, and papaya from Hawaii that are treated on the mainland United States will not be subject to further possible invasion by pests of concern after treatment, so we do not believe that cartons carrying these treated fruits need to be pest-proof. Fruit moving to the mainland United States for treatment also does not need to be shipped in pest-proof cartons for reasons explained earlier in this document. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: If fruit is allowed to move to the mainland United States from Hawaii for treatment, the production areas in Hawaii should be required to undergo malathion bait spray treatments, beginning 30 days before harvest begins and continuing until harvest ends.

Response: Treating production areas with bait spray, consisting of 95 percent malathion ULV mixed with a protein hydrolyzate applied at the rate of 2.4 ounces of malathion mixed with 9.6 ounces of protein hydrolyzate per acre, applied at 7 to 10 day intervals, with treatments commencing 30 days prior to harvest and continuing until harvest is complete, was a common practice in APHIS' eradication of the Mediterranean fruit fly (Medfly) in California in the 1980s. Bait spray treatments would be effective in suppressing the fruit fly population in production areas of Hawaii; however, it does not seem necessary to require bait spray treatments in addition to the treatment and other procedures required by this rule, because we believe these procedures provide security against the introduction and establishment of fruit flies and other pests on the mainland United States. Therefore, we are making no changes to the proposal in response to this comment.

Comment: It is important that an inspector be physically present at the time of treatment either in Hawaii or on the mainland United States; therefore, the description of irradiation treatment procedures should include the phrase ''under the supervision of an inspector.''

Response: Regarding the phrase ''under the supervision of an inspector'' in relation to irradiation treatment, each and every irradiation treatment conducted on the mainland United States is not required to be directly supervised by an APHIS inspector. Instead, it is our intent to certify the irradiation facility and its operators initially and renew that certification every year. This certification, coupled with the placement of dosimeters, in accordance with ASTM standards, helps to ensure that the irradiation treatment process is completed carefully and accurately. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: If there are no dose indicators on a shipment, what will you do to be sure records will allow traceback?

Response: This rule requires a treatment facility to have dosimeters to accurately measure the absorbed irradiation dose for each lot of fruit treated at the facility. After the treatment is conducted, the shipment must be marked with its treatment lot number, packing and treatment facility identification and location, and date of packing and treatment so that an inspector can identify the treatment lot of the shipment and trace the shipment back to the facility where it was packed and treated. At the irradiation facility where the treatment took place, the records of irradiation treatment and the measurements of the dosimeters must be available for APHIS review and verification.

Comment: What is your rationale for increasing the irradiation dose from 150 Grays to 250 Grays?

Response: USDA scientists have done exhaustive reviews of the published research related to irradiation treatments for fruit flies. These scientists also have conducted research to prove the efficacy of quarantine treatments, including irradiation treatments. APHIS' adoption of 250 Gray as the minimum dose for the fruit flies of concern from Hawaii is based on the recommendation of these scientists after considering the level of quarantine security required by APHIS, the species of flies to be treated, and the level of confidence provided by current information.

Quarantine security involves defining two primary variables, the required endpoint and the level of efficacy. The endpoint for most quarantine treatments is mortality. However, an advantage associated with irradiation is the opportunity to select from a range of endpoints including mortality, the inability to mature, and the inability for pests to reproduce (sterility). The endpoint adopted by APHIS for fruit flies is ''preventing adult emergence.'' Mortality is deemed to be an excessive requirement that would result in significantly higher doses that are also more likely to cause damage to the commodity. Sterility as an endpoint provides quarantine security and is likely to require a lower dose, but it causes regulatory problems because the milder dose allows live flies to emerge from fruit. If detected, these flies could trigger regulatory actions because there is not currently a practical means to distinguish sterile flies from fertile flies. Therefore, the appropriate endpoint has been determined by APHIS to be ''preventing adult emergence.''

The level of efficacy required by APHIS is probit 9. As discussed above, a probit 9 level treatment assures that essentially all target pests will be effectively sterilized or destroyed.

The target pests for the treatment of Hawaiian fruit are the Trifly group, including the Oriental fruit fly, the Medfly, and the melon fly. The dose of 250 Gray has been determined by APHIS to be necessary to achieve quarantine security for the Oriental fruit fly. A dose of 225 Gray has been adopted by APHIS for Medfly, and a dose of 210 Gray has been adopted by APHIS for the treatment of melon fly (see a notice published in the **Federal Register** on Wednesday, May 15, 1996, 61 FR 24433–24439, Docket No. 95–088–1). Since any of the three species may be present in fruit for treatment from Hawaii, APHIS is requiring the dose for the most resistant species, the Oriental fruit fly.

A dose of 150 Gray has been widely recommended as a generic dose for all fruit flies. After consultation with USDA and other scientists, and careful review of the research, APHIS has determined that 150 Gray is an appropriate dose for several other species of fruit flies, including four species of *Anastrepha* and three other species of *Bactrocera*. However, we do not believe that the available information is adequate to support the adoption of 150 Gray as a generic dose for all fruit flies, given the level of quarantine security required by APHIS.

APHIS is hopeful that additional research and better information can be provided to support the adoption of lower doses, possibly below 150 Gray. Information of this nature will be considered by APHIS as it becomes

available, and treatment requirements will be adjusted to reflect the lowest possible effective dose that is deemed to be both operationally practical and scientifically supportable for the level of quarantine security required by APHIS for the pests of concern, including fruit flies. However, at this time, we have determined that, based on research, quarantine security requires an irradiation dosage of 250 Gray as an appropriate dose to achieve probit 9 efficacy. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: The increased irradiation dose of 250 Gray will not kill all fruit fly larvae in shipments of fruit from Hawaii and is not in line with the Notice of Policy, The Application of Irradiation to Phytosanitary Problems, as published in the **Federal Register** on May 15, 1996 (61 FR 24433–24439, Docket No. 95–088–1).

Response: We agree that a dose of 250 Gray will not kill all Trifly larvae in the shipments, but research and test treatments under commercial conditions demonstrate that a high percentage of larvae will in fact be killed when treated with a 250 Gray minimum dose. This is because, under commercial conditions, most of the treated lot will receive a dose two to three times the minimum in order to ensure that the low point in the load receives the minimum dose. However, the endpoint for quarantine security that has been adopted by APHIS is not larval mortality, but the inability of adults to emerge from fruit. We are confident that the research adequately supports 250 Gray as an appropriate dose to achieve probit 9 efficacy.

Regarding a possible contradiction of one or more of the policy statements contained in the Notice of Policy, The Application of Irradiation to Phytosanitary Problems, the policy notice referred to by the commenter states the intent of the Agency is to avoid regulatory overlap, conflict, and ambiguity through cooperation and by harmonizing requirements across agency, domestic, and international lines of authority. This is in recognition of the range of authorities involved with irradiation and the complexity of requirements placed on the irradiation industry. APHIS remains committed to this policy in the subject rule and as a standard for regulatory initiatives in general. For example, the role of the Food and Drug Administration and Nuclear Regulatory Commission is acknowledged and well-integrated into the authorization for the irradiation of Hawaiian fruits and vegetables (see § 318.13–4f(e)).

The issue of quarantine security, however, is clearly central to the charge and authority of APHIS. It is in this regard that the decision concerning dose becomes a function of APHIS' positions on the desired level of protection and the degree of confidence placed on information used to support various proposals. The primary principles to consider in this respect are consistency, equivalency, and the risk basis for requirements. However, the doses adopted by APHIS in some instances may vary from those adopted by other countries or the recommendations of international organizations when APHIS determines that there is a high risk which justifies and supports an increased level of protection. APHIS' doses are believed to be consistent with the level of quarantine security and the quality of supporting data used for similar treatment situations. APHIS remains open to any new information that may lead to lower dose levels and greater harmonization. However, at this time, we are making no changes to the proposed rule in response to this comment.

Comment: Technical corrections need to be made regarding the irradiation terminology (ASTM) in the proposal.

Response: We agree that technical corrections, including the replacement of the term ''dose indicator'' with the term ''dosimeter'' in § 318.13–4f(b)(6)(ii) and the amendment of footnote 6 of the rule portion of this document, need to be made in our irradiation terminology. Accordingly, we are amending § 318.13–4f(b)(6)(ii) to read ''dosimeter'' instead of ''dose indicator,'' and footnote 6 to read ''Designation E 1261, 'Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,' American Society for Testing and Materials, Annual Book of ASTM Standards.''

Comment: Only fruit (no leaves or stems) from Hawaii should be allowed to enter the mainland United States because fruit flies and other plant pests may hide in leaves and stems.

Response: We are only allowing the fruit of carambola, litchi, and papaya from Hawaii to move interstate to the mainland United States. It is customary in shipping such fruits that only the fruit, without leaves, stems, or other plant parts, be packaged in a shipment. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: Will you allow non-fruit fly host material, such as pineapples, in the same shipment as treated fruit?

Response: Untreated fruit, whether fruit fly host material or not, must not be packed in the same carton as treated fruit (see § 318.13–4f(b)(2)(ii)). Non-fruit fly host material may be moved in the same pallet load as treated fruit because there is negligible risk that non-fruit fly host material would contain fruit flies that could re-infest treated fruit and because treated fruit must move to the mainland United States in pest-proof cartons.

Comment: The criteria for the locations of future mainland irradiation treatment facilities should be in line with the criteria for locations of cold treatment facilities to prevent the introduction and establishment of fruit flies on the mainland United States.

Response: We believe that fruit fly host material moving to the mainland United States from Hawaii for irradiation treatment should be allowed to be treated only at those locations that will not support the establishment of successive generations of fruit flies. At this time, we are limiting the areas where irradiation treatment may be conducted on the mainland United States to States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. However, we are considering the possibility of allowing irradiation facilities to operate in other locations on the mainland United States where cold treatment of fruit flies has been approved.

Comment: Changing the definition of ''inspector'' will reduce the standard of inspection.

Response: Our proposed revision to the definition of ''inspector'' will allow State cooperators to inspect and issue limited permits for fruit moving interstate from Hawaii under our regulations. To be eligible for designation as an inspector under the regulations, a State plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying plant pests known to occur within Hawaii. Six years' experience in State plant regulatory activities may be substituted for the degree requirement. As explained in our proposed rule, these requirements are based on the qualifications in 7 CFR 353 for State plant regulatory officials who provide phytosanitary certification for plants and plant products exported from the United States. We believe our expanded definition of ''inspector'' will facilitate the inspection process while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Therefore, we are making no changes to the proposed rule in response to this comment.

We are also making nonsubstantive editorial changes for clarity.

We feel confident that with the provisions outlined in our proposal and in this document, carambola, litchi, and papaya can move interstate from Hawaii to the mainland United States without presenting a significant risk of pest introduction or establishment on the mainland United States.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed above.

Effective Date

Though this rule does change certain irradiation dosage and packaging requirements for papaya treated in Hawaii, there are currently no irradiation facilities in Hawaii to treat papaya; therefore, no one will be adversely affected by this rule. The other provisions contained in this rule relieve restrictions on the interstate movement of papaya, carambola, and litchi from Hawaii to the mainland United States. As such, this is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for litchi from Hawaii began in May and continues through August. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States.

This rule amends the regulations by increasing the irradiation treatment dose required for papayas intended for interstate movement from Hawaii, by allowing carambolas to be moved interstate from Hawaii with irradiation treatment, and by allowing litchis to be moved interstate from Hawaii if they are inspected and found free of the litchi fruit moth and other plant pests and undergo irradiation or hot water treatment for fruit flies. We are allowing papayas, carambolas, and litchis from Hawaii to undergo irradiation treatment either in Hawaii or in non-fruit fly supporting areas of the mainland United States. In addition, we are making several amendments to the requirements for irradiation procedures and facilities and the handling of treated and untreated fruits and vegetables. Finally, this rule amends the definition for *inspector* to include State plant regulatory officials designated by the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. These actions will facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States. Economic impacts associated with this rulemaking will largely be the result of untreated papayas, carambolas, or litchis being allowed to move to the mainland United States for irradiation treatment.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received one comment on the Initial Regulatory Flexibility Analysis contained in the proposed rule. The commenter said that our determination that the proposal was not economically significant was incorrect; the commenter remarked that the provisions of the proposal are economically significant, particularly if, after the adoption of the proposal, a pest eradication program must commence.

We believe that the treatment and other procedures established in this rule for the interstate movement of carambola, litchi, and papaya will mitigate the risk of pest introduction and establishment on the mainland United States. Therefore, we do not believe that a pest eradication program will be necessary as a result of this rule, or that the rule will otherwise have a significant economic impact on U.S. entities, large or small. As discussed below, Hawaii produces a small quantity of carambola and litchi when compared to the production of these commodities in the rest of the United States, and Hawaiian papaya shipments to the mainland United States totaled less than half of the quantity of papaya that the United States imported from foreign nations in 1994.

Papayas

Papayas are produced commercially on about 340 farms in Hawaii. Nearly 65 percent of those farms are owned by individuals whose major occupation is not farming, while the balance are operated by individuals whose major occupation is farming.

Papaya farms with average annual revenues of less than $500,000 are considered small. All papaya farms in Hawaii are therefore considered small.

In 1994, Hawaii produced 62 million pounds of papaya (valued at $15 million). Fresh papaya comprised 56.2 million pounds of this total. During that year, Hawaii shipped about 37.8 million pounds of papaya. Shipment of fresh papaya to the mainland totaled about 19.4 million pounds, and the remainder was exported to other countries. Of the approximately 19.4 million pounds of fresh papayas shipped from Hawaii to the mainland in 1994, most went to the West Coast. Seventy-five percent of them were sold directly to retailers, and the rest were sold to wholesalers.

The United States imported about 41.2 million pounds of fresh papaya (valued at $10.9 million) in 1994. Most of the imported papayas came from Mexico (80 percent), Belize (9.6 percent), Jamaica (6.3 percent), and the Dominican Republic (1.9 percent). The United States exported 18.4 million pounds of fresh papayas (valued at $15.4 million) in 1994. The major importers were Japan (66.8 percent) and Canada (27.1 percent). Almost all United States exports of papayas go out of Hawaii, while all imports come into the mainland United States.

There are five firms currently operating nine papaya treatment facilities in the State of Hawaii. Four firms use the vapor-heat treatment method and one uses the dry heat (or high-temperature forced air) method. The total capacity of these treatment chambers is 85,000 pounds per run.

Both heat treatment methods have the potential to damage the papayas. They require the center of each papaya fruit to reach about 47 °C (about 117 °F), a temperature sufficient to kill fruit fly eggs and larvae. Because of variation in fruit size and ripeness, the papayas may not be uniformly heated. This may result in the fruit becoming lumpy and losing flavor. For both methods, careful control of the uniformity of fruit size and ripeness is necessary for effective treatment. In addition, both methods require between 4 and 6 hours of treatment. Efforts to speed up the process result in fruit which is either scalded externally or hardened on the inside. The cost of treatment for both methods ranges from 9 to 23 cents per pound.

Although the regulations currently allow papayas to be treated by irradiation in Hawaii, there are no irradiation facilities in that State. Allowing irradiation to be performed on the mainland appears to be an attractive option. The subsequent diversion of untreated papayas from Hawaii to the mainland would likely result in loss of business to the existing vapor heat and dry heat facilities. This could result in lay-offs and possibly the shut-down of some of these facilities. However, if papaya producers respond by producing more papayas, continuing traditional treatment for some and shipping others for irradiation, this will not necessarily occur.

Carambolas

The United States produced about 6 million pounds of carambola in 1994, with a total value of approximately $4 million to $4.5 million. In the United States, carambola is grown on about 100 farms. All of these farms have a market value of less than $500,000 and are thus considered to be small businesses according to the Small Business Administration's size standards.

In 1994, Hawaii produced only about 50,700 pounds of carambola, valued at approximately $38,000, on 30 farms. The provisions proposed in this rule concerning irradiation treatment of carambola fruits by the mainland facilities are expected to stimulate growth of the carambola industry in Hawaii and provide greater access to the larger mainland market.

No economic impact on mainland carambola growers is anticipated, since the total Hawaii production of carambola is less than one percent of the mainland production. Therefore, even in the unlikely event that Hawaii could ship 100 percent of its production to the mainland, supply would only increase by less than one percent. However, mainland consumers would likely benefit from increased seasonal and regional availability, as well as from the increased variety of fresh carambola. Additionally, carambola growers in Hawaii would benefit from the opportunity to sell their product in a larger and more diverse market.

This rule will enable carambola from Hawaii to be irradiated at an existing irradiation facility on the mainland and is not expected to impose additional costs on carambola producers in Hawaii. We expect that carambola producers in Hawaii will benefit from the proposed irradiation treatment because this treatment can deliver better product quality, extended shelf life of the fruit, and cost effective treatment of the fruit. However, the overall impact of the carambola provisions of the proposed rule is expected to be insignificant.

Litchis

Litchis are produced commercially on 55 farms in Hawaii. In 1993, the United States produced about 770,000 pounds of litchi. Of that total, approximately 85,000 pounds was produced in Hawaii.

Litchi farms with average annual revenues of less than $500,000 are considered small. All litchi farms in Hawaii are considered small.

The litchi industry in Hawaii has been constrained by the lack of an approved treatment for fruit flies since the cancellation of ethylene dibromide in 1984. Approving irradiation treatment of litchis on the mainland is expected to stimulate growth of the industry and provide access to the larger mainland market. No information is available on the effect of approving inspection and hot water treatment as an alternative method for moving litchis interstate.

The United States is a net importer of fresh litchi, with a total import of about 165,000 pounds in 1994. In 1994, nearly 70 percent of imported litchi came from Mexico; the remainder came from Israel. The total supply of litchi on the mainland is about 850,000 pounds. Wholesale prices of litchi range between $1.00 per pound and $4.50 per pound.

The economic impact on mainland litchi growers and prices on the mainland will not be significant. Even in the unlikely event that Hawaii shipped 25 percent of its production to the mainland, supply will increase by only about 2.3 percent. However, mainland consumers will benefit from increased seasonal and regional availability, an increased variety of fresh litchi, and stable prices. Additionally, litchi growers in Hawaii will benefit from the increased opportunity to sell their product in a larger and more diverse market.

According to recent research conducted by the ARS, irradiation appears to be an effective treatment option that does not require control of either fruit size or ripeness. Irradiation typically requires only 40 minutes for treatment. The irradiation method may be more cost effective depending on volume treated, because it costs only about 5 to 12 cents per pound.

This rule is expected to benefit producers, since irradiation appears to offer a number of advantages over current treatment options, including greater flexibility of fruit size and ripeness, reduction in treatment time, improved effectiveness against pest infestation, better product quality, extended shelf life, and improved cost effectiveness. Consumers also may benefit from a better quality product. The overall impact upon supply, price, and competitiveness is expected to be insignificant.

This rule contains information collection requirements. These were described in detail in the proposed rule as required by the Paperwork Reduction Act of 1995. Further, as required by that Act, we solicited public comment on the proposed information collection requirements and submitted them to the Office of Management and Budget for approval. See the statement in this document under the heading ''Paperwork Reduction Act.''

The alternative to this rule is to take no action. We do not consider taking no action a reasonable alternative. Papayas may move interstate to the mainland United States only with thermal treatment, and carambolas and litchis are not currently moved interstate from Hawaii because of a lack of suitable treatment options. This rule will facilitate the interstate movement of papayas, carambolas, and litchis from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. State and local laws and regulations that are inconsistent with this rule will be preempted. No

retroactive effect will be given to this rule. Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0123.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR parts 300 and 318 are amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text is revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted on November 30, 1992, and includes all revisions through April 1997, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

4. In § 318.13–1, the definition for *Inspector* is amended to read as follows:

§ 318.13–1 Definitions.

* * * * *

Inspector. An employee of Plant Protection and Quarantine, or a State plant regulatory official designated by the Administrator to inspect and certify to shippers and other interested parties, as to the condition of the products inspected. To be eligible for designation, a State plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying plant pests known to occur within Hawaii. Six years' experience in State plant regulatory activities may be substituted for the degree requirement.

* * * * *

5. In § 318.13–3, a new paragraph (b)(3) is added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) * * *

(3) Untreated fruits and vegetables from Hawaii may be moved interstate for irradiation treatment on the mainland United States if the provisions of § 318.13–4f are met and if the fruits and vegetables are accompanied by a limited permit issued by an inspector in accordance with § 318.13–4(c). The limited permit will be issued only if the inspector examines the shipment and determines that the shipment has been prepared in compliance with the provisions of this subpart.

* * * * *

6. A new § 318.13–4e is added to read as follows:

§ 318.13–4e Administrative instructions governing the movement of litchis from Hawaii to other States.

(a) Litchis may be moved interstate from Hawaii only in accordance with this section or § 318.13–4f and all other applicable provisions of this part.

(b) To be eligible for interstate movement under this section, litchi must be inspected and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector and then treated for fruit flies under the supervision of an inspector with a treatment listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Litchi from Hawaii may not be moved interstate into Florida. All cartons in which litchi from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

7. Section 318.13–4f is revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: carambola, litchi, and papaya.

(b) *Conditions of movement.* Fruits and vegetables from Hawaii may be authorized for movement in accordance with this section only if the following conditions are met:

(1) *Location.* The irradiation treatment must be carried out at an approved facility in Hawaii or on the mainland United States. Fruits and vegetables authorized under this section for treatment on the mainland may be treated in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. Prior to treatment, the fruits and vegetables may not move into or through Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(2) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 250 Gray (25 krad) to the fruits and vegetables;[2]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence six or more feet high to prevent transfer of cartons. Untreated fruits and vegetables shipped to the mainland United States from Hawaii in

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

accordance with this section may not be packaged for shipment in a carton with treated fruits and vegetables;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 318.13–4(d) of this subpart; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(3) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspectional visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[3]

(4) *Packaging.* (i) Fruits and vegetables that are treated in Hawaii must be packaged in the following manner:

(A) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[4]

(B) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(1) With polyethylene sheet wrap;

(2) With net wrapping; or

(3) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(C) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(ii) Cartons of untreated fruits and vegetables that are moving to the mainland United States for treatment must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened.

(iii) Litchi from Hawaii may not be moved interstate into Florida. All cartons in which litchi from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

(5) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 250 Gray (25 krad).[5]

(6) *Dosimetry systems.* (i) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(ii) Absorbed dose must be measured using a dosimeter that can accurately measure an absorbed dose of 250 Gray (25 krad).

(iii) The number and placement of dosimeters used must be in accordance with American Society for Testing and Materials (ASTM) standards.[6]

(7)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of fruits and vegetables from Hawaii that have been treated and handled in Hawaii in accordance with this section. To be certified for interstate movement under this section, litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated fruits and vegetables from Hawaii for treatment on the mainland United States in accordance with this section. To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector.

(8) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(c) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (b)(2) of this section.

(d) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(e) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the Trifly complex. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator

[3] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[4] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Phytosanitary Issues Management Team, 4700 River Road Unit 140, Riverdale, Maryland 20737–1236.

[5] See footnote 2.

[6] Designation E 1261, ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, *Annual Book of ASTM Standards.*

and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

Done in Washington, DC, this 30th day of June 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–17672 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–3]

Mediterranean Fruit Fly; Additions to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the current quarantined area in Hillsborough County, FL, and adding areas in Manatee and Polk Counties, FL, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective July 3, 1997. Consideration will be given only to comments received on or before September 8, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

An interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in an additional area in Hillsborough County and in portions of Manatee and Polk Counties, FL.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half-miles from the detection sights. The boundary lines may vary due to factors such as the location of hosts, the location of transportation centers, such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly finding described above, we are amending § 301.78–3 by expanding the current quarantined area in Hillsborough County, FL, and adding portions of Manatee and Polk Counties, FL, to the list of quarantined areas. The resulting quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendment we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Medfly regulations by expanding the current quarantined area in Hillsborough County, FL, and adding areas in Manatee and Polk Counties, FL, to the list of quarantined areas. The regulations restrict the interstate

movement of regulated articles from the quarantined areas.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantining, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

Florida

Hillsborough and Polk Counties. That portion of Hillsborough and Polk Counties beginning at the intersection of the Hillsborough/Polk County line and the section line dividing sections 25 and 36, T. 27 S., R. 22 E.; then west along the section line dividing sections 25 and 36, T. 27 S., R. 22 E. to the Hillsborough River; then west along the Hillsborough River to I–75; then north along I–75 to the Hillsborough/Pasco County line; then west along the Hillsborough/Pasco County line to the section line dividing sections 5 and 6, T. 27 S., R. 18 E.; then south along the section line dividing sections 5 and 6, T. 27 S., R. 18 E., to Veterans Expressway; then south along Veterans Expressway to Erhlich Road; then west along Erhlich Road to Gunn Highway; the north along Gunn Highway to Mobley Road; then west along Mobley Road to Racetrack Road; then south and west along Racetrack Road to the Hillsborough County line; then south along the Hillsborough County line to I–275; then east along I–275 to the westernmost land mass at the eastern end of the Howard Franklin Bridge; then south, east, and north, along the shoreline of Old Tampa Bay, Tampa Bay, and Hillsborough Bay (including the Interbay Peninsula, David Island, Harbour Island, Hooker's Point, and Port Sutton) to the shoreline of the Alafia River's extension; then east along the shoreline of the Alafia River's extension to Highway 301; then south along Highway 301 to Balm-Riverview Road; then south and east along Balm-Riverview Road to Rhodine Road; then east along Rhodine Road to Boyette Road; then south, east, and north along Boyette Road to Dorman Road; then east along Dorman Road to Browning Road; then north along Browning Road to Lithia-Pinecrest Road; then east along Lithia-Pinecrest Road to Bryant Road; then north along Bryant Road to the Alafia River; then west along the Alafia River to the North Prong Alafia River; then north and west along the North Prong Alafia River to Poley Creek; then east and north along Poley Creek to Highway 60; then south and east along Highway 60 to Willis Road; then east along Willis Road to its end; then continue on an imaginary line extending east to Imperialakes Boulevard; then north and east along Imperialakes Boulevard to Shephard Road; then east along Shephard Road to Highway 37; then north along Highway 37 to Highway 540–A; then east along Highway 540–A to Yarborough Lane; then north Yarborough Lane to Clubhouse Road; then east along Clubhouse Road to the shoreline of Lake Hancock; then north and east along the shoreline of Lake Hancock to the section line dividing sections 31 and 32, T. 28 S., R. 25 E.; then north along the section line dividing sections 31 and 32, T. 28 S., R. 25 E., to the section line dividing sections 30 and 31, T. 27 S., R. 25 E.; then west along the section line dividing sections 30 and 31, T. 27 S., R. 25 E., to the intersection of I–4 and Highway 582; then south and west along I–4 to the section line dividing sections 9 and 16, T. 28 S., R. 23 E.; then west along the section line dividing sections 9 and 16, T. 28 S., R. 23 E., to the Polk County line; then north along the Polk County line to the point of beginning.

Manatee County. The portion of Manatee County beginning at the intersection of Highway 41 and Highway 301; then south across the Manatee River to the southern shoreline of the Manatee River; then west along the shoreline of the Manatee River to 9th Street; then south along 9th Street to 17th Avenue; then west along 17th Avenue to 26th Street; then south along 26th Street to 26th Avenue; then west along 26th Avenue in an

imaginary straight line to the shoreline of Palma Sol Bay; then north, west, and south along the shoreline of Palma Sola Bay to the southern shoreline the Perico Bayou; then north and west along the eastern shoreline of the Perico Bayou to Tampa Bay; then east along the northern shoreline of the mainland to a point due south of the westernmost end of Snead Island; then north along an imaginary line to Snead Island; then northeast along an imaginary line to the westernmost land mass of the southern end of the Sunshine Skyway (Highway 19); then east and south along Sunshine Skyway (Highway 19) to Highway 41; then south along Highway 41 to the point of beginning.

Done in Washington, DC, this 3rd day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18108 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AF15

Livestock Indemnity Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: This document contains corrections to the interim rule published in the **Federal Register** on Tuesday, June 24, 1997, regarding the Livestock Indemnity Program and the removal of obsolete program provisions. This correction reinstates 7 CFR Part 1437, which was incorrectly removed as an obsolete regulation.

DATE: This correction is effective on June 24, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Sharp, Director, Compliance and Production Adjustment Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20013–0517.

CORRECTION OF PUBLICATION: Accordingly, in the interim rule (FR Doc 97–16578) published on June 24, 1997, (62 FR 33984) make the following corrections:

1. On page 33984, in the first column list of subjects, remove the entry for Part 1437.

2. On page 33985, in the third column, amendatory instruction no. 2 is corrected by removing the reference to ''1437,''.

Signed at Washington, DC, on July 3, 1997.

Bruce R. Weber,

Acting Executive Vice President Commodity Credit Corporation.

[FR Doc. 97–17979 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–44–AD; Amendment 39–10071; AD 97–13–11]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–13–11, which was sent previously to known U.S. owners and operators of certain Ayres Corporation (Ayres) S2R series airplanes. This AD requires inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap if fatigue cracking is found. This AD results from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. The actions specified by this AD are intended to prevent fatigue cracking of the lower spar caps, which, if not detected and corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: Effective July 23, 1997, to all persons except those to whom it was made immediately effective by priority letter AD 97–13–11, issued June 20, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 1997.

Comments for inclusion in the Rules Docket must be received on or before September 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–44–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7357; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Discussion

On June 20, 1997, the FAA issued priority letter AD 97–13–11, which applies to certain Ayres S2R series airplanes. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. Investigation of all resources available to the FAA show nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the ¼-inch and 5⁄16-inch bolt holes. Although the investigation of the above-referenced accident is not complete, the FAA believes that the cause can be attributed to fatigue cracks emanating from the ¼-inch and 5⁄16-inch bolt holes in the left lower spar cap.

Data accumulated by the FAA indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, the FAA has categorized these airplanes into three groups:

—Group 1 airplanes have steel spar caps with aluminum webs. These airplanes are capable of carrying heavier loads and data indicates that inspections in the affected areas of the lower spar cap should begin upon the accumulation of 2,700 hours time-in-service (TIS);

—Group 2 airplanes have steel spar caps with steel webs. Because of the steel webs as opposed to aluminum, data indicates that inspections in the affected areas of the left lower spar cap should begin upon the accumulation of 4,300 hours TIS; and

—Group 3 airplanes, which are the ones manufactured first, have steel spars

with aluminum webs and low horsepower radial engines, and thus do not have the ability to carry as much weight as airplanes in the other two groups. Data indicates that inspections in the affected areas of the left lower spar cap should begin upon the accumulation of 9,000 hours TIS.

Manufacture of the affected airplanes began in 1965 with the airplanes incorporating the lower horsepower radial engines. Many of the airplane models referenced in this AD are still currently in production. These airplanes are used in agricultural operations and average 500 hours TIS annually. With this in mind, some of the earlier manufactured airplanes could have as many as 16,000 hours total TIS.

Discussion of the Applicable Service Information

Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996, includes procedures for accomplishing a magnetic particle inspection around the lower spar caps' bolt holes. This service bulletin also specifies replacement of any lower spar cap where fatigue cracking is found.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2R series airplanes of the same type design, the FAA issued priority letter AD 97–13–11 to prevent fatigue cracking of the lower spar caps, which, if not detected and corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane.

The AD requires inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking, and replacing any lower spar cap if fatigue cracking is found. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. This inspection utilizes magnetic particles procedures and must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 20, 1997, to known U.S. operators of certain Ayres S2R series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Possible Future Rulemaking

AD 97–13–11 covers all airplanes manufactured as of the date this AD was issued. The manufacturer is currently working on a modification that, if successful, would increase the fatigue life of the lower spar caps on the affected airplanes.

When the modification is complete and based on the FAA's subsequent evaluation of the modification described above, additional rulemaking action may be initiated in the future for the airplanes affected by this AD and airplanes currently being manufactured.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–44–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–13–11 Ayres Corporation: Amendment 39–10071; Docket No. 97–CE–44–AD.

Applicability: Airplanes with the following model and serial number designations with or without a -DC suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial numbers
S–2R	5000R through 5099R.
S2R–R1340	R1340–011, R1340–012, R1340–019, R1340–020, R1340–024, R1340–025, and R1340–027.
S2R–R1820	R1820–001 through 1820–035.
S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181*.
S2R–T15	T15–001 through T15–033**.
S2R–T11	T11–001 through T11–005.
S2R–G1	G1–101 through G1–108.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15-xx and T27-xx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial numbers
S2R–R1340	R1340–028 through R1340–035.
S2R–R1820	R1820–036.
S2R–T65	T65–001 through T65–017.
S2RHG–T65	T65–002 through T65–017.
S2R–T34	T–34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–226*.
S2R–T45	T45–001 through T45–014.
S2R–G6	G6–101 through G6–146.
S2R–G10	G10–101 through G10–138.
S2R–G5	G5–101 through G5–105.

* The serial numbers of the Model S2R–T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 3 AIRPLANES*

Model	Serial numbers
600 S2D	All serial numbers beginning with 600–1311D.
S–2R	1380R and 1416R through 4999R.
S2R–1340R	R1340–001 through R1340–010, R1340–013 through R1340–018, R1340–021 through R1340–023, and R1340–026.
S2R–R3S	R3S–001 through R3S–011.

*Any Group 3 airplane that has been modified with a hopper of a capacity over 400 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in the Compliance section of this AD.

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

Compliance: Inspections required as indicated below and any necessary replacement required prior to further flight as indicated in the body of this AD, except to those operators receiving this:

—Group 1 Airplanes: Required initially upon the accumulation of 2,700 hours time-in-service (TIS) on each lower spar cap or prior to further flight after the effective date of this priority letter AD, whichever occurs later, except to those operators receiving this action by priority letter issued June 6, 1997, which made the inspection effective prior to further flight after receipt of the priority letter on airplanes with 2,700 hours TIS or more.

—Group 2 Airplanes: Required initially upon the accumulation of 4,300 hours TIS on each lower spar cap or prior to further flight after the effective date of this AD receipt of this priority letter AD, whichever occurs later, except to those operators receiving this action by priority letter issued June 6, 1997, which made the inspection effective prior to further flight after receipt of the priority letter on airplanes with 4,300 hours TIS or more.

—Group 3 Airplanes: Required initially upon the accumulation of 9,000 hours TIS on each lower spar cap or prior to further flight after receipt of this priority letter AD, whichever occurs later, except to those operators receiving this action by priority letter issued June 6, 1997, which made the inspection effective prior to further flight after receipt of the priority letter on airplanes with 9,000 hours TIS or more.

To prevent fatigue cracking of the lower spar caps, which, if not detected and corrected, could result in the wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

(a) Inspect, using magnetic particle procedures, the ¼-inch and 5⁄16-inch bolt hole areas on each lower spar cap for fatigue cracking. Accomplishment of the inspection is in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996.

(1) The magnetic particle inspection must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

(2) This inspection is to be accomplished by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(b) If any cracking is found during the inspection required by this AD, prior to further flight, replace the affected lower spar cap in accordance with the affected maintenance manual. Upon replacement, total hours TIS starts over for that particular lower spar cap. Use the initial compliance time specified in the Compliance section of this AD to determine the next inspection interval.

(c) If cracks are found during any inspection required by this AD, submit a report of inspection findings to the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; facsimile (404) 305–7348; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include a description of any cracks found, the

airplane serial number, and the total number of flight hours on the lower spar cap found cracked. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after receipt of this priority letter AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the receipt of this priority letter AD: Submit the report within 10 days after receipt of this priority letter AD.

(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 to accomplish the modification requirements of this AD provided the following is followed:

(1) The hopper is empty.

(2) Vne is reduced to 126 miles per hour (109 knots).

(3) Flight into known turbulence is prohibited.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) The inspection required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. 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 the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10071) becomes effective on July 23, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–13–11, issued June 20, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on June 30, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17728 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM97–5–000]

Annual Update of Filing Fees

Issued July 3, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1996.

EFFECTIVE DATE: August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Olive Wallace, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–65, Washington, D.C. 20426, (202) 219–2903.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the ''Go to the FedWorld Telnet Site'' button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line then typing: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Annual Update of Filing Fees

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1996 costs. The fee for jurisdictional agency determinations (18 CFR 381.402) is removed, because the Commission no longer processes these filings. The adjusted fees announced in this notice are effective August 11, 1997. The new fee schedule is as follows.

Fees Applicable to the Natural Gas Policy Act

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). [18 CFR 381.403]	$6,920

Fees Applicable to General Activities

1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). [18 CFR 381.302(a)]	13,910
2. Review of a Department of Energy remedial order:	
Amount in Controversy	
$0–9,999. [18 CFR 381.303(b)]	100
$10,000–29,999. [18 CFR 381.303(b)]	600
$30,000 or more. [18 CFR 381.303(a)]	20,300

3. Review of a Department of Energy denial of adjustment:

Amount in Controversy	
$0–9,999. [18 CFR 381.304(b)]	100
$10,000–29,999. [18 CFR 381.304(b)]	600
$30,000 or more. [18 CFR 381.304(a)]	10,640
4. Written legal interpretations by the Office of General Counsel. [18 CFR 381.305(a)]	3,990
Fees Applicable to National Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. [18 CFR 381.207(b)]	1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. [18 CFR 381.505(a)]	11,960
2. Certification of qualifying status as a cogeneration facility. [18 CFR 381.505(a)	13,540
3. Applications for exempt wholesale generator status. [18 CFR 381.801]	1,560

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

James J. Hoecker,

Chairman.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing ''$12,790'' and inserting ''$13,910'' in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing ''$18,680'' and inserting ''$20,300'' in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing ''$9,790'' and inserting ''$10,640'' in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing ''$3,670'' and inserting ''$3,990'' in its place.

§ 381.402 [Removed]

6. Section 381.402 is removed.

§ 381.403 [Amended]

7. Section 381.403 is amended by removing ''$6,370'' and inserting ''$6,920'' in its place.

§ 381.505 [Amended]

8. In § 381.505, paragraph (a) is amended by removing ''$11,000'' and inserting ''$11,960'' in its place and by removing ''$12,450'' and inserting ''$13,540'' in its place.

§ 381.801 [Amended]

9. Section 381.801 is amended by removing ''$1,670'' and inserting ''$1,560'' in its place.

[FR Doc. 97–18096 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0324]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an alkylthiophenolic mixture formed by the acid-catalyzed condensation reaction of 4-nonylphenol, formaldehyde, and 1-dodecanethiol as an antioxidant for adhesives, pressure-sensitive adhesives, and rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Goodyear Tire & Rubber Co.

DATES: The regulation is effective July 10, 1997. Submit written objections and requests for a hearing by August 11, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 12, 1991 (56 FR 46439), FDA announced that a food additive petition (FAP 1B4259) had been filed by the Goodyear Tire & Rubber Co. (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additives regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of the acid-catalyzed condensation reaction product of *p*-nonylphenol, formalin, and 1-dodecanethiol as an antioxidant for adhesives, listed under 21 CFR 175.105, and repeat-use rubber articles, listed under 21 CFR 177.2600. In a notice published in the **Federal Register** of January 26, 1995 (60 FR 5184), corrected on February 9, 1995 (60 FR 7774), FDA amended the September 12, 1991, notice to state that upon further review of the petition, the agency noted that the petitioner intended to use the additive in pressure-sensitive adhesives rather than adhesives generally; however, the agency also stated the petitioner had subsequently amended the petition also to include the use of the additive in adhesives. Additionally, for clarification purposes, the nomenclature for the additive was being modified to ''alkylthiophenolics formed by the acid-catalyzed condensation reaction of *p*-nonylphenol, formaldehyde, and 1-dodecanethiol''. Upon further review, the agency has decided that the additive is more accurately described as alkylthiophenolics formed by the acid-catalyzed condensation reaction of 4-nonylphenol, formaldehyde, and 1-dodecanethiol.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive in adhesives, pressure-sensitive adhesives, and rubber articles intended for repeated use in contact with food is safe, that the food additive will achieve its intended technical effect, and that § 178.2010 should be amended as set forth below.

FDA's review of the subject petition indicates that the additive may contain

trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, that ''the data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde'' (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathologic conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before August 11, 1997 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, ''Formaldehyde: An Experimental Multipotential Carcinogen,'' *Toxicology and Industrial Health*, vol. 5, No. 5:699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, ''Two-Year Drinking Water Study of Formaldehyde in Rats,'' *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of conference concerning ''Formaldehyde,'' meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Alkylthiophenolics: acid-catalyzed condensation reaction products of 4-nonylphenol, formaldehyde, and 1-dodecanethiol (CAS Reg. No. 164907–73–7).	For use only at levels not to exceed 2 percent by weight of adhesives complying with § 175.105 of this chapter, of pressure-sensitive adhesives complying with § 175.125 of this chapter, and of rubber articles complying with § 177.2600 of this chapter.
* * *	* * *

Dated: June 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–17976 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 17

[A.G. Order No. 2091–97]

Classified National Security Information and Access to Classified Information

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule implements Executive Order No. 12958, entitled ''Classified National Security Information,'' and Executive Order No. 12968, entitled ''Access to Classified Information,'' by completely revising and updating the Department of Justice's classified national security information and access regulations.

DATE: This rule will become effective August 11, 1997.

FOR FURTHER INFORMATION CONTACT: D. Jerry Rubino, Director, Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: 202–514–2094 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The President issued Executive Orders. No. 12958 and 12968 to update and revise the standards and process for classification and declassification of, and access to, national security information. This rule implements these Presidential directives and completely revises part 17 in accordance with the Administration's priorities for regulatory reform and reinvention of government. The revised rule substantially shortens and simplifies the material contained in part 17, focusing on those matters that affect the general public and that should be published as a formal rule. The revised rule delegates to the Assistant Attorney General for Administration responsibility for developing the vast majority of information and internal operating instructions on classified information and access. This rule has been reviewed by the Information Security Oversight Office of the National Archives and Records Administration, pursuant to Executive Order No. 12958, and the rule was published as a proposed rule on July 12, 1996 at 61 FR 36678. One comment was received during the comment period, which ended September 10, 1996.

The one comment received on the proposed rule came from the Secretary of the Judicial Conference of the United States regarding § 17.46(c). Section 17.46(c) stated in part, Magistrate Judges' eligibility for access to classified information will be based on procedures approved by the Assistant Attorney General for Administration. The Secretary expressed concern that such procedures might delay litigation and impair the ability of Magistrate Judges to perform their statutory responsibilities.

In response to this concern, § 17.46(c) was modified so that Magistrate Judges' eligibility for access to classified information will be based on procedures approved by the Assistant Attorney General for Administration, in consultation with the Juridical Conference of the United States.

Executive Order 12866

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

Regulatory Flexibility Act

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

This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

List of Subjects in 28 CFR Part 17

Classified information, Foreign relations.

For the reasons set forth in the preamble, part 17 of title 28 of the Code of Federal Regulations is revised to read as follows:

PART 17—CLASSIFIED NATIONAL SECURITY INFORMATION AND ACCESS TO CLASSIFIED INFORMATION

Sec.

17.1 Purpose.
17.2 Scope.
17.3 Definitions.

Subpart A—Administration

17.11 Authority of the Assistant Attorney General for Administration.
17.12 Component head responsibilities.
17.13 Office of Intelligence Policy and Review responsibilities; interpretation of Executive Orders.
17.14 Department Review Committee.
17.15 Access Review Committee.
17.16 Violations of classified information requirements.
17.17 Judicial proceedings.
17.18 Prepublication review.

Subpart B—Classified Information

17.21 Classification and declassification authority.
17.22 Classification of information; limitations.
17.23 Emergency classification requests.
17.24 Duration of classification.
17.25 Identification and markings.
17.26 Derivative classification.
17.27 Delcassification and downgrading.
17.28 Automatic declassification.
17.29 Documents of permanent historical value.
17.30 Classification challenges.
17.31 Mandatory review for declassification requests.
17.32 Notification of classification changes.

Subpart C—Access to Classified Information

17.41 Access to classified information.
17.42 Positions requiring financial disclosure.
17.43 Reinvestigation requirements.
17.44 Access eligibility.
17.45 Need-to-know.
17.46 Access by persons outside the Executive Branch.
17.47 Denial or revocation of eligibility for access to classified information.

Authority: 28 U.S.C. 501, 509, 510, 515–519; 5 U.S.C. 301; E.O. 12958, 60 FR 7977; 3 CFR, 1995 Comp., p. 333 19825; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; 32 CFR part 2001.

§ 17.1 Purpose.

The purpose of this part is to ensure that information within the Department of Justice (the ''Department'') relating to the national security is classified, protected, and declassified pursuant to the provisions of Executive Orders 12958 (3 CFR, 1995 Comp., p. 333) and 12968 (3 CFR, 1995 Comp., p. 391) and implementing directives from the Information Security Oversight Office of the National Archives and Records Administration (''ISOO''). Executive Orders 12958 and 12968 made numerous substantive changes in the system of classification, declassification, and downgrading of classified National Security Information and the criteria for access to this information. Accordingly, this part is a revision of the Department's classified information security rules.

(a) Subpart A of this part prescribes the implementation of Executive Orders

12958 and 12968 within the Department through the Assistant Attorney General for Administration, as the senior responsible agency official. Subpart A of this part also provides for certain relationships within the Department between the Assistant Attorney General for Administration, other component heads, and the Office of Intelligence Policy and Review.

(b) Subpart B of this part prescribes an orderly and progressive system for ensuring that every necessary safeguard and procedure is in place to assure that information is properly classified and that classified information is protected from unauthorized disclosure. Subpart B of this part requires original classification authorities to make classification decisions based on specific criteria; provides that most newly created classified information be considered for declassification after 10 years; provides that historically valuable information that is more than 25 years old (including information classified under prior Executive Orders) be automatically declassified, with appropriate exceptions; and establishes procedures for authorized holders of classified information to challenge the classification of information.

(c) Subpart C of this part establishes substantive standards and procedures for granting, denying, and revoking, and for appealing decisions to deny access to classified information with an emphasis on ensuring the consistent, cost-effective, and efficient protection of classified information. Subpart C of this part provides a process that is fair and equitable to those with whom classified information is entrusted and, at the same time, assures the security of the classified information.

§ 17.2 Scope.

(a) All employees, contractors, grantees, and others granted access to classified information by the Department are governed by this part, and by the standards in Executive Order 12958, Executive Order 12968, and directives promulgated under those Executive Orders. If any portion of this part conflicts with any portion of Executive Order 12958, Executive Order 12968, or any successor Executive Order, the Executive Order shall apply. This part supersedes the former rule and any Department internal operating policy or directive that conflicts with any portion of this part.

(b) This part applies to non-contractor personnel outside of the Executive Branch and to contractor personnel or employees who are entrusted with classified national security information originated within or in the custody of the Department. This part does not affect the operation of the Department's participation in the National Industrial Security Program under Executive Order 12829 (3 CFR, 1993 Comp., p. 570).

(c) This part is independent of and does not affect any classification procedures or requirements of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq*).

(d) This part does not, and is not intended to, create any right to judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This part creates limited rights to administrative review of decisions pursuant to §§ 17.30, 17.31, and 17.47. This part does not, and is not intended to, create any right to judicial review of administrative action under §§ 17.14, 17.15, 17.18, 17.27, 17.30, 17.31 and 17.50.

§ 17.3 Definitions.

The terms defined or used in Executive Order 12958 and Executive Order 12968, and the implementing directives in 32 CFR 2001, are applicable to this part.

Subpart A—Administration

§ 17.11 Authority of the Assistant Attorney General for Administration.

(a) The Assistant Attorney General for Administration is designated as the senior agency official as required by § 5.6(c) of Executive Order 12958, and § 6.1(a) of Executive Order 12968 and, except as specifically provided elsewhere in this part, is authorized to administer the Department's national security information program pursuant to Executive Order 12958. The Assistant Attorney General for Administration shall appoint a Department Security Officer and may delegate to the Department Security Officer those functions under Executive Orders 12958 and 12968 that may be delegated by the senior agency official. The Department Security Officer may redelegate such functions when necessary to effectively implement this part.

(b) The Assistant Attorney General for Administration shall, among other actions:

(1) Oversee and administer the Department's program established under Executive Order No. 12958;

(2) Establish and maintain Department-wide security education and training programs;

(3) Establish and maintain an ongoing self-inspection program including the periodic review and assessment of the Department's classified product;

(4) Establish procedures to prevent unnecessary access to classified information, including procedures that:

(i) Require that a need for access to classified information is established before initiating administrative procedures to grant access; and

(ii) Ensure that the number of persons granted access to classified information is limited to the minimum necessary for operational and security requirements and needs;

(5) Develop special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(6) Assure that the performance contract or other system used to rate personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(i) Original classification authorities;

(ii) Security managers or security specialists; and

(iii) All other personnel whose duties significantly involve the creation or handling of classified information;

(7) Account for the costs associated with implementing this part and report the cost to the Director of the ISOO;

(8) Assign in a prompt manner personnel to respond to any request, appeal, challenge, complaint, or suggestion concerning Executive Order 12958 that pertains to classified information that originated in a component of the Department that no longer exists and for which there is no clear successor in function;

(9) Cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines;

(10) Conduct periodic evaluations of the Department's implementation and administration of Executive Orders 12958 and 12968;

(11) Establish a plan for compliance with the automatic declassification provisions of Executive Order 12958 and oversee the implementation of that plan; and

(12) Maintain a list of specific files series of records exempted from automatic declassification by the Attorney General pursuant to section 3.4(c) of Executive Order 12958.

(c) The Department Security Officer may grant, deny, suspend, or revoke employee access to classified information pursuant to and in accordance with Executive Order 12968. The Department Security Officer may delegate the authority under this paragraph to qualified Security

Programs Managers when the operational need justifies the delegation and when the Department Security Officer is assured that such officials will apply all access criteria in a uniform and correct manner in accord with the provisions of Executive Order 12968 and subpart C of this part. The fact that a delegation has been made pursuant to this section does not waive the Department Security Officer's authority to make any determinations that have been delegated.

(d) The Department Security Officer shall maintain a current list of all officials authorized pursuant to this part to originally classify or declassify documents.

(e) The Department Security Officer shall promulgate criteria and security requirements for the marking and safeguarding of information, transportation and transfer of information, preparation of classification guides, reporting of communications related to national security by persons granted access to classified information, reporting of information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security, and other matters necessary to the administration of the Executive Orders, the implementing regulations of the ISOO, and this part.

§ 17.12 Component head responsibilities.

The head of each component shall appoint and oversee a Security Programs Manager to implement this regulation. The Security Programs Managers shall:

(a) Observe, enforce, and implement security regulations or procedures pertaining to the classification, declassification, safeguarding, handling, and storage of classified national security information;

(b) Report violations of the provisions of this regulation to the Department Security Officer;

(c) Ensure that all employees acquire adequate security education and training as required by the provisions of the Department security regulations and procedures for classified information;

(d) Continuously review the requirements for personnel access to classified information as a part of the continuous need-to-know evaluation, and initiate action to administratively withdraw or reduce the level of access authorized, as appropriate; and

(e) Cooperate fully with any request from the Department Security Officer for assistance in the implementation of this part.

§ 17.13 Office of Intelligence Policy and Review responsibilities; interpretation of Executive Orders.

(a) The Counsel for Intelligence Policy shall represent the Attorney General at interagency meetings on matters of general interest concerning national security information.

(b) The Counsel for Intelligence Policy shall provide advice and interpretation on any issues that arise under Executive Orders 12958 and 12968 and shall refer such questions to the Office of Legal Counsel, as appropriate.

(c) Any request for interpretation of Executive Order 12958 or Executive Order 12968, pursuant to section 6.1(b) of Executive Order 12958, and section 7.2(b) of Executive Order 12968, shall be referred to the Counsel for Intelligence Policy, who shall refer such questions to the Office of Legal Counsel, as appropriate.

§ 17.14 Department Review Committee.

(a) The Department Review Committee (DRC) is established to:

(1) Resolve all issues, except those related to the compromise of classified information, that concern the implementation and administration of Executive Order 12958, implementing directives from the ISOO, and subpart B of this part, including those issues concerning over-classification, failure to declassify, classification challenges, and delays in declassification not otherwise resolved;

(2) Review all appeals from denials of requests for records made under section 3.6 of Executive Order 12958 and the Freedom of Information Act (5 U.S.C. 552), when the proposed denial is based on their continued classification under Executive Order 12958;

(3) Recommend to the Attorney General appropriate administrative sanctions to correct the abuse or violation of any provision of Executive Order 12958, the implementing directives or subpart B of this part, except as it relates to the compromise of classified national security information; and

(4) Review, on appeal, challenges to classification actions and mandatory review requests.

(b)(1) The DRC shall consist of a senior representative designated by the:

(i) Deputy Attorney General;

(ii) Assistant Attorney General, Office of Legal Counsel;

(iii) Assistant Attorney General, Criminal Division;

(iv) Assistant Attorney General, Civil Division;

(v) Assistant Attorney General for Administration;

(vi) Director, Federal Bureau of Investigation; and

(vii) Counsel for Intelligence Policy.

(2) Each such official shall also designate in writing an alternate to serve in the absence of his or her representative. Four representatives shall constitute a quorum of the DRC. The Attorney General shall designate the Chairman of the DRC from among its members.

(c) The Office of Information and Privacy (OIP) shall provide the necessary administrative staff support for the DRC.

§ 17.15 Access Review Committee.

(a) The Access Review Committee (ARC) is hereby established to review all appeals from denials or revocations of eligibility for access to classified information under Executive Order 12968. Unless the Attorney General requests recommendations from the ARC and personally exercises appeal authority, the ARC's decisions shall be final.

(b) The ARC shall consist of the Deputy Attorney General or a designee, the Counsel for Intelligence Policy or a designee, and the Assistant Attorney General for Administration or a designee. Designations must be approved by the Attorney General.

(c) The Department Security Officer shall provide the necessary administrative staff support for the ARC.

§ 17.16 Violations of classified information requirements.

(a) Any person who suspects or has knowledge of a violation of this part, including the known or suspected loss or compromise of national security information, shall promptly report and confirm in writing the circumstances to the Department Security Officer. Any person who makes such a report to the Department Security Officer shall promptly furnish a copy of such report:

(1) If the suspected violation involves a Department attorney (including an Assistant United States Attorney or Special Assistant United States Attorney) while engaged in litigation, grand jury proceedings, or giving legal advice, or a law enforcement officer assisting an attorney engaged in such activity, to the Office of Professional Responsibility;

(2) If the suspected violation involves an employee of the Federal Bureau of Investigation (FBI) or the Drug Enforcement Administration, other than a law enforcement officer in paragraph (a)(1) of this section, to the Office of Professional Responsibility in that component; or

(3) In any other circumstance, to the Office of the Inspector General.

(b) Department employees, contractors, grantees, or consultants

may be reprimanded, suspended without pay, terminated from classification authority, suspended from or denied access to classified information, or subject to other sanctions in accordance with applicable law and Department regulation if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information classified under Executive Order 12958 or predecessor orders;

(2) Knowingly, willfully, or negligently classify or continue the classification of information in violation of Executive Order 12958 or its implementing directives; or

(3) Knowingly, willfully, or negligently violate any other provision of Executive Order 12958, or knowingly and wilfully grant eligibility for, or allow access to, classified information in violation of Executive Order 12968, or its implementing directives, this part, or security requirements promulgated by the Department Security Officer.

§ 17.17 Judicial proceedings.

(a)(1) Any Department official or organization receiving an order or subpoena from a federal or state court to produce classified information, required to submit classified information for official Department litigative purposes, or receiving classified information from another organization for production of such in litigation, shall immediately determine from the agency originating the classified information whether the information can be declassified. If declassification is not possible, the Department official or organization and the assigned Department attorney in the case shall take all appropriate action to protect such information pursuant to the provisions of this section.

(2) If a determination is made to produce classified information in a judicial proceeding in any manner, the assigned Department attorney shall take all steps necessary to ensure the cooperation of the court and, where appropriate, opposing counsel in safeguarding and retrieving the information pursuant to the provisions of this regulation.

(b) The Classified Information Procedures Act (CIPA), Pub. L. 96–456, 94 Stat. 2025, 18 U.S.C. App., and the ''Security Procedures Established Pursuant to Pub. L. 96–456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information'' may be used in Federal criminal cases involving classified information. (Available from the Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.)

(c) In judicial proceedings other than Federal criminal cases where CIPA is used, the Department, through its attorneys, shall seek appropriate security safeguards to protect classified information from unauthorized disclosure, including, but not limited to, consideration of the following:

(1) A determination by the court of the relevance and materiality of the classified information in question;

(2) An order that classified information shall not be disclosed or introduced into evidence at a proceeding without the prior approval of either the originating agency, the Attorney General, or the President;

(3) A limitation on attendance at any proceeding where classified information is to be disclosed to those persons with appropriate authorization to access classified information whose duties require knowledge or possession of the classified information to be disclosed;

(4) A court facility that provides appropriate safeguarding for the classified information as determined by the Department Security Officer;

(5) Dissemination and accountability controls for all classified information offered for identification or introduced into evidence at such proceedings;

(6) Appropriate marking to indicate classified portions of any and any the maintenance of any classified under seal;

(7) Handling and storage of all classified information including classified portions of any transcript in a manner consistent with the provisions of this regulation and Department implementing directives;

(8) Return at the conclusion of the proceeding of all classified information to the Department or the originating agency, or placing the classified information under court seal;

(9) Retrieval by Department employees of appropriate notes, drafts, or any other documents generated during the course of the proceedings that contain classified information and immediate transfer to the Department for safeguarding and destruction as appropriate; and

(10) Full and complete advice to all persons to whom classified information is disclosed during such proceedings as to the classification level of such information, all pertinent safeguarding and storage requirements, and their liability in the event of unauthorized disclosure.

(d) Access to classified information by individuals involved in judicial proceedings other than employees of the Department is governed by § 17.46(c).

§ 17.18 Prepublication review.

(a) All individuals with authorized access to Sensitive Compartmented Information shall be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of Sensitive Compartmented Information and other classified information. Sensitive Compartmented Information is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision will require Department of Justice employees and other individuals who are authorized to have access to Sensitive Compartmented Information to submit certain material, described further in the agreement, to the Department prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of Sensitive Compartmented Information or other classified information would occur as a consequence of it publication.

(b) Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (j) of this section for FBI personnel, all questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530. The official views of the Department on whether specific materials require prepublication review may be expressed only by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

(c) Prepublication review is required only as expressly provided for in a nondisclosure agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information. Therefore, persons who have such access but are not otherwise required to submit to prepublication review under the terms of an employment or other nondisclosure agreement are encouraged to submit material for prepublication review voluntarily if they believe that such material may contain classified information.

(d) The nature and extent of the material that is required to be submitted for prepublication review under nondisclosure agreements is expressly provided for in those agreements. It should be clear, however, that such requirements do not extend to any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the United States Government or that contain information exclusively acquired outside the scope of employment.

(e) A person's obligation to submit material for prepublication review remains identical whether such person prepares the materials or causes or assists another person (such as a ghost writer, spouse, friend, or editor) in preparing the material. Material covered by a nondisclosure agreement requiring prepublication review must be submitted prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information. See *Snepp* v. *United States,* 444 U.S. 507 (1980).

(f) The requirement to submit material for prepublication review is not limited to any particular type of material or disclosure or methods of production. Written materials include not only book manuscripts but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, scholarly papers, and fictional material.

(g) Oral statements are also within the scope of a prepublication review requirement when based upon written materials, such as an outline of the statements to be made. There is no requirement to prepare written materials for review, however, unless there is reason to believe in advance that oral statements may contain Sensitive Compartmented Information or other information required to be submitted for review under the terms of the nondisclosure agreement. Thus, a person may participate in an oral presentation where there is no opportunity for prior preparation (e.g., news interview, panel discussion) without violating the provisions of this paragraph.

(h) Material submitted for republication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical of or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

(i) The Counsel for Intelligence Policy (or, in the case of FBI employees, the FBI's Office of Congressional and Public Affairs) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 days of receipt of the appeal. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or giving the Department notice of their intention to proceed despite the Department's request for deletions of classified information, and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Employees and other affected individuals remain obligated not to disclose or publish information determined by the Government to be classified until any civil action is resolved.

(j) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the FBI with following exceptions and provisos:

(1) Nothing in this subpart shall supersede or alter obligations assumed under the basic FBI employment agreement.

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Assistant Director, Office of Congressional and Public Affairs. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Office for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Assistant Director, Office of Congressional and Public Affairs, shall consult with the Counsel for Intelligence Policy prior to responding to the inquiry.

(3) Decisions of the Assistant Director, Office of Congressional and Public Affairs, concerning the deletion of classified information, may be appealed to the Director, FBI, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (i) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director or, if the appeal process in paragraph (i) of this section is pursued, the Deputy Attorney General.

Subpart B—Classified Information

§ 17.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Attorney General, the Assistant Attorney General for Administration, and officials to whom such authority is delegated in writing by the Attorney General. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Assistant Attorney General for Administration may delegate original Secret and Confidential classification authority to subordinate officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§ 17.22 Classification of information; limitations.

(a) Information may be originally classified only if all of the following standards are met:

(1) The information is owned by, produced by or for, or is under the control of the United States Government;

(2) The information falls within one or more of the categories of information

specified in section 1.5 of Executive Order 12958; and

(3) The classifying official determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and such official is able to identify or describe the damage.

(b) Information may be classified as Top Secret, Secret, or Confidential according to the standards established in section 1.3 of Executive Order 12958. No other terms shall be used to identify United States classified national security information except as otherwise provided by statute.

(c) Information shall not be classified if there is significant doubt about the need to classify the information. If there is significant doubt about the appropriate level of classification with respect to information that is being classified, it shall be classified at the lower classification of the levels considered.

(d) Information shall not be classified in order to conceal inefficiency, violations of law, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay release of information that does not require protection in the interest of national security. Information that has been declassified and released to the public under proper authority may not be reclassified.

(e) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after the Department has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of § 17.31. When it is necessary to classify or reclassify such information, it shall be forwarded to the Department Security Officer and classified or reclassified only at the direction of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for Administration.

(f) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that meets the standards for classification under Executive Order 12958 and that is not otherwise revealed in the individual items of information.

§ 17.23 Emergency classification requests.

(a) Whenever any employee, contractor, licensee, certificate holder, or grantee of the Department who does not have original classification authority originates or develops information that requires immediate classification and safeguarding, and no authorized classifier is available, that person shall:

(1) Safeguard the information in a manner appropriate for its classification level;

(2) Apply the appropriate overall classification markings; and

(3) Within five working days, securely transmit the information to the organization that has appropriate subject matter interest and classification authority.

(b) When it is not clear which Department organization would be the appropriate original classifier, the information shall be sent to the Department Security Officer to determine the appropriate organization.

(c) The organization with classification authority shall decide within 30 days whether to classify information.

§ 17.24 Duration of classification.

(a) At the time of original classification, original classification authorities shall attempt to establish a specific date or event for declassification not more than 10 years from the date of the original decision based on the duration of the national security sensitivity of the information. If the original classification authority cannot determine an earlier specific date or event for declassification, the information shall be marked for declassification 10 years from the date of the original decision.

(b) At the time of original classification, an original classification authority may exempt specific information from declassification within 10 years in accordance with section 1.6(d) of Executive Order 12958.

(c) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time if such action is consistent with the standards and procedures established under, and subject to the limitations of, Executive Order 12958.

§ 17.25 Identification and markings.

(a) Classified information must be marked pursuant to the standards set forth in section 1.7 of Executive Order 12958; ISOO implementing directives in 32 CFR 2001, subpart B; and internal Department of Justice direction provided by the Department Security Officer.

(b) Foreign government information shall be marked or classified at a level equivalent to that level of classification assigned by the originating foreign government.

(c) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification.

§ 17.26 Derivative classification.

(a) Persons need not possess original classification authority to derivatively classify information based on source documents or classification guides.

(b) Persons who apply derivative classification markings shall observe original classification decisions and carry forward to any newly created documents the pertinent classification markings.

(c) Information classified derivatively from other classified information shall be classified and marked in accordance with the standards set forth in sections 2.1–2.3 of Executive Order 12958, the ISOO implementing directives in 32 CFR 2001.22, and internal Department directions provided by the Department Security Officer.

§ 17.27 Declassification and downgrading.

(a) Classified information shall be declassified as soon as it no longer meets the standards for classification. Declassification and downgrading is governed by § 3.1–3.3 of Executive Order 12958, implementing ISOO directives at 32 CFR 2001, subpart E, and applicable internal Department of Justice direction provided by the Department Security Officer.

(b) Information shall be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position, the originator's successor, or a supervisory official of either, or by officials delegated such authority in writing by the Attorney General or the Assistant Attorney General for Administration.

(c) It is presumed that information that continues to meet the classification requirements under Executive Order 12958 requires continued protection. In some exceptional cases during declassification reviews, the need to protect classified information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. If it appears that the public interest in disclosure of the information may outweigh the need to protect the information, the declassification reviewing official shall refer the case with a recommendation for decision to the DRC. The DRC shall review the case and make a recommendation to the Attorney General on whether the public interest in disclosure outweighs the

damage to national security that might reasonably be expected from disclosure. The Attorney General shall decide whether to declassify the information. The decision of the Attorney General shall be final. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural rights subject to judicial review.

(d) Each component shall develop schedules for declassification of records in the National Archives. The Department shall cooperate with the National Archives and Records Administration and the Presidential Libraries to ensure that declassification is accomplished in a timely manner.

§ 17.28 Automatic declassification.

(a) Subject to paragraph (b) of this section, all classified information contained in records that are more than 25 years old that have been determined to have permanent historical value shall be declassified automatically on April 17, 2000. Subsequently, all classified information in such records shall be automatically declassified not later than 25 years after the date of its original classification with the exception of specific information exempt from automatic declassification pursuant to section 3.4 (b) and (d) of Executive Order 12958.

(b) At least 220 days before information is declassified automatically under this section, the respective component head shall notify the Assistant Attorney General for Administration through the Department Security Officer of any specific information they propose to exempt from automatic declassification. The notification shall include:

(1) A description of the information;

(2) An explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) A specific date or event for declassification of the information whenever the information exempted does not identify a confidential human source or human intelligence source.

(c) Proposed exemptions under this section shall be forwarded to the DRC, which shall recommend a disposition of the exemption request to the Assistant Attorney General for Administration. When the Assistant Attorney General for Administration determines the exemption request is consistent with this section, he or she will submit it to the Executive Secretary of the Interagency Security Classification Appeals Panel.

(d) Declassification guides that narrowly and precisely define exempted information may be used to exempt information from automatic declassification. Declassification guides must include the exemption notification information detailed in paragraph (b) of this section, and be approved pursuant to paragraph (c) of this section.

§ 17.29 Documents of permanent historical value.

The original classification authority, to the greatest extent possible, shall declassify classified information contained in records determined to have permanent historical value under title 44 of the United States Code before they are accessioned into the National Archives. The Department shall cooperate with the National Archives and Records Administration in carrying out an automatic declassification program involving accessioned Department records, presidential papers, and historical materials under the control of the Archivist of the United States.

§ 17.30 Classification challenges.

(a) Authorized holders of information classified by the Department who, in good faith, believe that specific information is improperly classified or unclassified are encouraged and expected to challenge the classification status of that information pursuant to section 1.9 of Executive Order 12958. Authorized holders may submit classification challenges in writing to the DRC, through the Office of Information and Privacy, United States Department of Justice, Washington, DC 20530. The challenge need not be more specific than a question as to why the information is or is not classified, or is classified at a certain level.

(b) The DRC shall redact the identity of an individual challenging a classification under paragraph (a) of this section and forward the classification challenge to the original classification authority for review and response.

(c) The original classification authority shall promptly, and in no case later than 30 days, provide a written response to the DRC. The original classification authority may classify or declassify the information subject to challenge or state specific reasons why the original classification determination was proper. If the original classification authority is not able to response within 30 days, the DRC shall inform the individual who filed the challenge in writing of that fact, and the anticipated determination date.

(d) The DRC shall inform the individual challenging the classification of the determination made by the original classification authority and that individual may appeal this determination to the DRC. Upon appeal, the DRC may declassify, or direct the classification of, the information. If the DRC is not able to act on any appeal within 45 days of receipt, the DRC shall inform the individual who filed the challenge in writing of that fact, and the anticipated determination date.

(e) The DRC shall provide the individual who appeals a classification challenge determination with a written explanation of the basis for the DRC decision and a statement of his or her right to appeal that determination to the Interagency Security Classification Appeals Panel (ISCAP) pursuant to section 5.4 of Executive Order 12958 and the rules issued by the ISCAP pursuant to section 5.4 of Executive Order 12958.

(f) Any individual who challenges a classification and believes that any action has been taken against him or her in retribution because of that challenge shall report the facts to the Office of the Inspector General or the Office of Professional Responsibility, as appropriate.

(g) Requests for review of classified material for declassification by persons other than authorized holders are governed by § 17.31.

§ 17.31 Mandatory review for declassification requests.

(a) Any person may request classified information be reviewed for declassification pursuant to the mandatory declassification review provisions of section 3.6 of Executive Order 12958. After such a review, the information or any reasonably segregable portion thereof that no longer requires protection under this part shall be declassified and released to the requester unless withholding is otherwise warranted under applicable law. If the information, although declassified, is withheld, the requester shall be given a brief statement as to the reasons for denial and a notice of the right to appeal the determination to the Director, Office of Information and Privacy (OIP), United States Department of Justice, Washington, DC 20530. If the mandatory review for declassification request relates to the classification of information that has been reviewed for declassification within the past two years or that is the subject of pending litigation, the requester shall be informed of that fact and the administrative appeal rights.

(b) Request for mandatory review for declassification and any subsequent appeal to the DRC shall be submitted to

the Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530, describing the document or material containing the information with sufficient specificity to enable the Department to locate that information with a reasonable amount of effort. The OIP shall promptly forward the request to the component that originally classified the information, or the DRC in the case of an appeal, and provide the requester with an acknowledgement of receipt of the request.

(c) When the description of the information in a request is deficient, the component shall solicit as much additional identifying information as possible from the requestor. Before denying a request on the basis that the information or material is not obtainable with a reasonable amount of effort, the component shall ask the requestor to limit the request to information or material that is reasonably obtainable. If the information or material requested cannot be described in sufficient particularity, or if it cannot be obtained with a reasonable amount of effort, the component shall provide the requestor with written notification of the reasons why no action will be taken and the right to appeal the decision to the DRC.

(d) The component that originally classified the information shall provide a written response to requests for mandatory review within 60 days whenever possible, or shall inform the requester in writing why additional time is needed. Unless there are unusual circumstances, the additional time needed by the component originally classifying the information shall not extend beyond 180 days from the receipt of the request. If no determination has been made at the end of the 180 day period, the requester may apply to the DRC for a determination.

(e) If the component that originally classified the information determines that continued classification is warranted, it shall notify the requester in writing of the decision and the right to appeal the decision to the DRC no later that 60 days after receipt of the notification of the decision.

(f) The DRC shall determine the appeals of the components' mandatory declassification review decisions within 60 days after receipt of the appeal, or notify the requester why additional time is needed. In making its determinations concerning requests for declassification of classified information, the DRC, for administrative purposes, shall impose the burden of proof on the originating component to show that continued classification is warranted. The DRC shall provide the requester with a written statement of reasons for its decisions.

(g) If the individual requesting review of a classification is not satisfied with the DRC's decision, he or she may appeal to the ISCAP pursuant to section 5.4 of Executive Order 12958 and rules issued by the ISCAP pursuant to that section.

§ 17.32 Notification of classification changes.

All known holders of information affected by unscheduled classification changes actions shall be notified promptly of such changes by the original classifier or the authority making the change in classification.

Supart C—Access to Classified Information

§ 17.41 Access to classified information.

(a) No person may be given access to classified information or material originated by, in the custody, or under the control of the Department, unless the person—

(1) Has been determined to be eligible for access in accordance with sections 3.1–3.3 of Executive Order 12968;

(2) Has a demonstrated need-to-know; and

(3) Has signed an approved nondisclosure agreement.

(b) Eligibility for access to classified information is limited to United States citizens for whom an appropriate investigation of their personal and professional history affirmatively indicated loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to classified information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States and any doubt shall be resolved in favor of the national security. Sections 2.6 and 3.3 of Executive Order 12968 provide only limited exceptions to these requirements.

(c) The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. However, the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No negative inferences concerning the standards for access may be raised solely on the basis of the sexual orientation of the employee or mental health counseling.

(d) An employee granted access to classified information may be investigated at any time to ascertain whether he or she continues to meet the requirements for access.

(e) An employee granted access to classified information shall provide to the Department written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to:

(1) Financial records maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in 12 U.S.C. 3401;

(2) Consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); and

(3) Records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(f) Information may be requested pursuant to the employee consent obtained under paragraph (e) of this section only where:

(1) There are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(2) Information the Department deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(3) Circumstances indicate that the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

§ 17.42 Positions requiring financial disclosure.

(a) The Assistant Attorney General for Administration, in consultation with the Counsel for Intelligence Policy, shall designate each employee, by position or category where possible, who has a regular need for access to any of the categories of classified information described in section 1.3(a) of Executive Order 12968.

(b) An employee may not hold a position designated as requiring a regular need for access to categories of classified information described in section 1.3(a) of Executive Order 12968 unless, as a condition of access to such information, the employee files with the Department Security Officer:

(1) A financial disclosure form developed pursuant to section 1.3(c) of Executive Order 12968 as part of all background investigations or reinvestigations;

(2) The same financial disclosure form, if selected by the Department Security Officer on a random basis; and

(3) Relevant information concerning foreign travel, as determined by the Department Security Officer.

§ 17.43 Reinvestigation requirements.

Employees who are eligible for access to classified information shall be subject to periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access.

§ 17.44 Access eligibility.

(a) Determinations of eligibility for access to classified information are separate from suitability determinations with respect to the hiring or retention of persons for employment by the Department or any other personnel actions.

(b) The number of employees eligible for access to classified information shall be kept to the minimum required for the conduct of Department functions.

(c) Eligibility for access to classified information shall be limited to classification levels for which there is a need for access. No person shall be granted eligibility higher than his or her need.

§ 17.45 Need-to-know.

No person shall be granted access to specific classified information unless that person has an actual need-to-know that classified information, pursuant to section 2.5 of Executive Order 12968.

§ 17.46 Access by persons outside the Executive Branch.

(a) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the Executive Branch.

(b) Classified information originated by or in the custody of the Department may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Federal Government will derive a benefit or advantage and that the release is not prohibited by the originating department or agency (or foreign government in the case of Foreign Government Information). Before such a release is made, the head of the Office, Board, Division, or Bureau making the release shall determine the propriety of such action, in the interest of the national security, and must approve the release. Prior to the release, the Department Security Officer must confirm that the recipient is eligible for access to the classified information involved and agrees to safeguard the information in accordance with the provisions of this part.

(c) Members of Congress, Justices of the United States Supreme Court, and Judges of the United States Courts of Appeal and District Courts do not require a determination of their eligibility for access to classified information by the Department. Federal Magistrate Judges must be determined eligible for access to classified information by the Department Security Officer pursuant to procedures approved by the Assistant Attorney General for Administration in consultation with the Judicial Conference of the United States. All other Legislative and Judicial personnel including, but not limited to, congressional staff, court reporters, typists, secretaries, law clerks, and translators who require access to classified information must be determined eligible by the Department Security Officer consistent with standards established in this regulation.

(d) When other persons outside the Executive Branch who are not subject to the National Industrial Security Program require access to classified information originated by or in the custody of the Department, but do not otherwise possess a proper access authorization, an appropriate background investigation must be completed to allow the Department Security Officer to determine their eligibility for access to classified information. The length of time it generally takes to complete an expedited background investigation is 90 days. Therefore, all persons requiring access to classified information to participate in congressional or judicial proceedings should be identified and the background investigation initiated far enough in advance to ensure a minimum impact on such proceedings.

(e) Personnel who are subject to a Department contract or grant or who are rendering consultant services to the Department and require access to classified information originated by or in the custody of the Department shall be processed for such access pursuant to procedures approved by the Assistant Attorney General for Administration.

(f)(1) The requirement that access to classified information may be granted only as is necessary for the performance of official duties may be waived, pursuant to section 4.5(a) of Executive Order 12958, for persons who:

(i) Are engaged in historical research projects; or

(ii) Have previously occupied policymaking positions to which they were appointed by the President.

(2) All persons receiving access pursuant to this paragraph (f) must have been determined to be trustworthy by the Department Security Officer as a precondition before receiving access. Such determinations shall be based on such investigation as the Department Security Officer deems appropriate. Historical researchers and former presidential appointees shall not have access to Foreign Government Information without the written permission from an appropriate authority of the foreign government concerned.

(3) Waivers of the ''need-to-know'' requirement under this paragraph (f) may be granted by the Department Security Officer provided that the Security Programs Manager of the Office, Board, Division, or Bureau with classification jurisdiction over the information being sought:

(i) Makes a written determination that such access is consistent with the interest of national security;

(ii) Limits such access to specific categories of information over which the Department has classification jurisdiction;

(iii) Maintains custody of the classified information at a Department facility;

(iv) Obtains the recipient's written and signed agreement to safeguard the information in accordance with the provisions of this regulation and to authorize a review of any notes and manuscript for determination that no classified information is contained therein; and

(v) In the case of former presidential appointees, limits their access to items that such former appointees originated, reviewed, signed, or received while serving as a presidential appointee and ensures that such appointee does not remove or cause to be removed any classified information reviewed.

(4) If access requested by historical researchers and former presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and fees may be imposed.

§ 17.47 Denial or revocation of eligibility for access to classified information.

(a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of Executive order 12968 shall be:

(1) Provided with a comprehensive and detailed written explanation of the basis for that decision as the national security interests of the United States and other applicable law permit and informed of their right to be represented by counsel or other representative at their own expense;

(2) Permitted 30 days from the date of the written explanation to request any documents, records, or reports including the entire investigative file upon which a denial or revocation is based; and

(3) Provided copies of documents requested pursuant to this paragraph (a) within 30 days of the request to the extent such documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), and as the national security interests and other applicable law permit.

(b) An applicant or employee may file a written reply and request for review of the determination within 30 days after written notification of the determination or receipt of the copies of the documents requested pursuant to this subpart, whichever is later.

(c) An applicant or employee shall be provided with a written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal.

(d) Within 30 days of receipt of a determination under paragraph (c) of this section, the applicant or employee may appeal that determination in writing to the ARC, established under § 17.15. The applicant or employee may request an opportunity to appear personally before the ARC and to present relevant documents, materials, and information.

(e) An applicant or employee may be represented in any such appeal by an attorney or other representative of his or her choice, at his or her expense. Nothing in this section shall be construed as requiring the Department to grant such attorney or other representative eligibility for access to classified information, or to disclose to such attorney or representative, or permit the applicant or employee to disclose to such attorney or representative, classified information.

(f) A determination of eligibility for access to classified information by the ARC is a discretionary security decision. Decisions of the ARC shall be in writing and shall be made as expeditiously as possible. Access shall be granted only where facts and circumstances indicate that access to classified information is clearly consistent with the national security interest of the United States, and any doubt shall be resolved in favor of the national security.

(g) The Department Security Officer shall have an opportunity to present relevant information in writing or, if the applicant or employee appears personally, in person. Any such written submissions shall be made part of the applicant's or employee's security record and, as the national security interests of the United States and other applicable law permit, shall also be provided to the applicant or employee. Any personal presentations shall be, to the extent consistent with the national security and other applicable law, in the presence of the applicant or employee.

(h) When the Attorney General or Deputy Attorney General personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This is a discretionary and final decision not subject to further review.

(i) This section does not limit the authority of the Attorney General pursuant to any other law or Executive Order to deny or terminate access to classified information if the national security so requires and the Attorney General determines that the appeal procedures set forth in this section cannot be invoked in a manner that is consistent with the national security. Nothing in this section requires that the Department provide any procedures under this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any reason other than denial of eligibility for access to classified information. Suitability determinations shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

Dated: July 1, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–17925 Filed 7–9–97; 8:45 am]

BILLING CODE 4410–AR–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4010, 4011, 4043, 4071, and 4302

RIN 1212–AA86

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule adjusts for inflation the maximum amount specified in two civil monetary penalty provisions, as required by the Debt Collection Improvement Act of 1996. The maximum daily penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act of 1974 are adjusted, respectively, from $1,000 to $1,100 and from $100 to $110.

EFFECTIVE DATE: This rule is effective August 11, 1997, and is applicable to violations (including continuing violations) that occur after that date.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 amended the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 to require Federal agencies to regularly adjust certain civil monetary penalties for inflation. Agencies must increase the maximum amounts of civil monetary penalties by an initial cost-of-living adjustment and make further adjustments at least once every four years thereafter.

The cost-of-living adjustment is defined as the percentage by which the Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the civil monetary penalty was last set or adjusted. The calculated increase is subject to a specific rounding formula and a ten percent limitation for the initial adjustment.

Section 4071 of the Employee Retirement Income Security Act of 1974 (ERISA) authorizes the PBGC to assess a penalty against any person who fails to provide any notice or other material information required under various statutory or regulatory provisions within

the applicable specified time limit. The maximum amount of the penalty, which was last set when it was established by law in 1987, is $1,000 per day for each day the failure continues. This final rule adds to the PBGC's regulations a new Part 4071 that provides that the maximum amount of the penalty under ERISA section 4071 will be $1,100.

Section 4302 of ERISA provides that a person who fails, without reasonable cause, to provide a notice required under Subtitle E of Title IV of ERISA (''Special Provisions for Multiemployer Plans'') or any implementing regulations is liable to the PBGC for a penalty. The maximum amount of the penalty, which was last set when it was established by law in 1980, is $100 per day for each day the failure continues. This final rule adds to the PBGC's regulations a new Part 4302 that provides that the maximum amount of the penalty under ERISA section 4302 will be $110.

This rule also amends three existing regulatory provisions that refer to PBGC assessment of penalties under ERISA 4071 of up to $1,000 per day for failures to provide certain notices or other information:

- 29 CFR 4010.13, dealing with annual financial and actuarial information;
- 29 CFR 4011.3, dealing with participant notices; and
- 29 CFR 4043.3, dealing with reportable event notices.

These provisions are amended to provide that the penalty assessed under ERISA section 4071 may not exceed $1,100 per day.

The PBGC has issued three recent policy statements dealing with the application of penalties under ERISA section 4071 (on July 18, 1995 (60 FR 36837), December 17, 1996 (61 FR 66338), and March 14, 1997 (62 FR 12521)). In applying those policy statements to violations occurring after the effective date of this final rule, the maximum assessable penalty referred to in the policy statements will be considered to be $1,100 rather than $1,000. (The guideline amounts in the July 18, 1995, policy statement remain unchanged.)

Compliance With Rulemaking Guidelines

The PBGC has determined that there is good cause for dispensing with notice and comment rulemaking as unnecessary. 5 U.S.C. 553(b). This rulemaking is required by the Debt Collection Improvement Act of 1996, and the PBGC has no discretion in determining the amount of the published adjustment. Accordingly, the PBGC is issuing this amendment as a final rule.

The PBGC has determined that this rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this rulemaking, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4000

Administrative practice and procedure.

29 CFR Parts 4010, 4011, and 4043

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Parts 4071 and 4302

Penalties.

For the reasons set forth above, Chapter XL of Title 29 of the Code of Federal Regulations is amended as follows:

Subchapter K—[Redesignated]

1. Subchapter K Internal and Administrative Rules and Procedures (parts 4901—4907) is redesignated as ''Subchapter L—Internal and Administrative Rules and Procedures''.

PART 4000—FINDING AIDS

2–3. The authority citation for Part 4000 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

4. In § 4000.2, the table ''Subchapter H—Enforcement Provisions'' is amended by adding a new entry after the entry for ''4068''; the table heading ''Subchapter K—Internal Administrative Rules and Procedures'' is revised to read ''Subchapter L—Internal Administrative Rules and Procedures''; and a new table ''Subchapter K—Multiemployer Enforcement Provisions'' is added after the table ''Subchapter J—Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans'', to read as follows:

§ 4000.2 Derivation table.

* * * * *

Ch. XL Part subpart/section(s)	Ch. XXVI Part(s) subpart/section(s)
* * * * *	
Subchapter H—Enforcement Provisions	
* * * * *	
4071	[new]
* * * * *	
Subchapter K—Multiemployer Enforcement Provisions	
4301	[new]
Subchapter L—Internal Administrative Rules and Procedures	
* * * * *	

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

5. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

§ 4010.13 [Amended]

6. Section 4010.13 is amended by removing the figure ''$1,000'' and adding in its place the figure ''$1,100.''

PART 4011—DISCLOSURE TO PARTICIPANTS

7. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 4011.3 [Amended]

8. In § 4011.3, paragraph (c) is amended by removing the figure ''$1,000'' and adding in its place the figure ''$1,100.''

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

9. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

§ 4043.3 [Amended]

10. In § 4043.3, paragraph (e) is amended by removing the figure ''$1,000'' and adding in its place the figure ''$1,100.''

11. Part 4071 is added to subchapter H to read as follows:

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION:

Sec.
4071.1 Purpose and scope.
4071.2 Definitions.
4071.3 Penalty amount.

Authority: 28 U.S.C. 2461 note, as amended by sec. 31001(s)(1), Pub.L. 104–134, 110 Stat. 1321–373; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.1 Purpose and scope.

This part specifies the maximum daily amount of penalties that may be assessed by the PBGC under ERISA section 4071 for certain failures to provide notices or other material

information, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

§ 4071.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA and PBGC.

§ 4071.3 Penalty amount.

The maximum daily amount of the penalty under section 4071 of ERISA shall be $1,100.

12. A new subchapter K consisting of part 4302 is added to read as follows:

Subchapter K—Multiemployer Enforcement Provisions

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

Sec.
4302.1 Purpose and scope.
4302.2 Definitions.
4302.3 Penalty amount.

Authority: 28 U.S.C. 2461 note, as amended by sec. 31001(s)(1), Pub.L. 104–134, 110 Stat. 1321–373; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.1 Purpose and scope.

This part specifies the maximum daily amount of penalties for which a person may be liable to the PBGC under ERISA section 4302 for certain failures to provide multiemployer plan notices, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

§ 4302.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, multiemployer plan, and PBGC.

§ 4302.3 Penalty amount.

The maximum daily amount of the penalty under section 4302 of ERISA shall be $110.

Issued in Washington, DC, this 3rd day of July, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–18078 Filed 7–9–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AB92

Surety Bonds for Outer Continental Shelf Leases; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice of final rulemaking concerning surety bond provisions of Minerals Management Service (MMS). MMS published the final rule in the **Federal Register** of May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Engineering and Operating Division, at (703) 787–1607.

Correction

This document corrects the final rule published on May 22, 1997 (62 FR 27948). On page 27956 in the sixth line of the amendatory language number 11, ''paragraph (e), (f), and (g)'' should read ''paragraphs (e) and (f).''

Dated: June 27, 1997.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–18058 Filed 7–6–97; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# OR–1–0001; FRL–5852–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by Oregon on December 31, 1996, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This action is effective on September 8, 1997 unless significant, material, and adverse comments are received by August 11, 1997. If significant, material, and adverse comments are received by the above date, this direct final rule will be withdrawn, and timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and at Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), the EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), as amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires States to submit to the EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective

as the emission guidelines, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under Section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by Oregon to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

The Oregon Department of Environmental Quality (ODEQ) submitted to EPA the following in their 111(d)/129 State Plan for implementing and enforcing the emission guidelines for existing MWCs in the State: Emission Standards and Limitations; Compliance Schedule; Emission Inventory; Source Surveillance, Compliance Assurance and Enforcement; and applicable State regulations (OAR 340–025–0557, and OAR 340–025–0950 through 1010) on December 31, 1996. ODEQ submitted its plan before the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, ODEQ's plan covers both large and small MWC units. As a result of the Davis decision and subsequent vacatur order, there are no emission guidelines promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of ODEQ's State Plan for MWCs addresses only those parts of ODEQ's Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates emission guidelines for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of ODEQ's State Plan is based on finding that: (1) ODEQ provided adequate public notice of public hearings for the proposed rulemaking which allows Oregon to implement and enforce the EG for large MWCs, and (2) ODEQ also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Attachment 3a of the State Plan, ODEQ cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations are approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

ODEQ also submitted Oregon Administrative Rule (OAR) 340–025–0110, which includes a compliance schedule and legally enforceable increments of progress for each large MWC. The State Rule has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

Oregon's Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and the compliance status of the facilities. Oregon also cites its legal authority to provide periodic inspection and testing, as necessary. OAR 340–025–1000 was submitted as evidence of Oregon's authority to require public disclosure of MWC emissions data. Oregon submitted the following State rules to support the requirements of monitoring, reporting, and compliance assurance: OAR 340–025–0970, Operating Practices; OAR 340–025–0980, Operator Training and Certification; and OAR 340–025–0990, Monitoring and Testing. All of these State rules have been reviewed and approved as meeting Federal requirements for existing large MWC units.

All measures and other elements in the State Plan must be enforceable by ODEQ and EPA. (See Sections 111(d), 129 and 40 CFR part 60.) During EPA's review of a previous State Implementation Plan revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because a five-day advance notice provision required by Oregon Revised Statute (ORS) 468.126(1) (1991) can bar civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain State Plan submittal, as specified in Section 111(d) of the Clean Air Act and 40 CFR part 60. Accordingly, the requirement to provide such notice would preclude Federal approval of the State Plan.

However, following EPA notification to Oregon, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from Federal approval or delegation. ODEQ responded to EPA's interpretation of the application of 468.126(2)(e) and agreed that, if Federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of the State Plan requirements. Because the five-day notice provision in ORC 468.126 could preclude enforcement of the State Plan in some instances, application of the notice provision would preclude approval of the State MWC Plan. Accordingly, pursuant to ORS 468.126(2)(e), the five-day notice will not be required for permit violations of the State Plan.

As stated in Attachment 6 of the State Plan, Oregon plans to provide progress of plan updates on a semi-annual basis as well as provide progress in the required annual report pursuant to 40 CFR 51.321. This meets the minimum requirement for State reporting, and this is approved.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA has included a parallel proposal to approve the ODEQ State Plan. If no significant, material, and adverse comments are received by August 11, 1997, this action will be effective September 8, 1997.

If the EPA receives significant, material, and adverse comments by the above date, this action will be withdrawn before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. All public comments received will be addressed in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 8,1997.

III. Administrative Requirements

A. 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 (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

C. 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 on by the rule.

EPA has determined that the approval action promulgated 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added 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 today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the 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), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Municipal Waste Combustors, Reporting and recordkeeping requirements.

Dated: June 24, 1997.

Chuck Clarke,

Regional Administrator.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Part 62.9350 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.9350 Identification of plan.

* * * * *

(b)* * *

(4) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors was submitted by Oregon Department of Environmental Quality on December 31, 1996.

(c)* * *

(4) Existing municipal waste combustors.

3. Subpart MM is amended by adding a new § 62.9505 and a new undesignated heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions Frp, Existing Municipal Waste Combustors With the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.9505 Identification of sources.

The plan applies to existing facilities at the following municipal waste combustor sites:

(a) Ogden Martin Systems, Marion County, Oregon.

(b) Coos County, Coos Bay, Oregon.

[FR Doc. 97–18082 Filed 7–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5854–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Middletown Air Field site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Middletown Air Field Superfund site in Middletown, Pennsylvania from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Pennsylvania 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 Commonwealth of Pennsylvania have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas J. DiNardo, Remedial Project Manager, U.S. Environmental Protection Agency, Regional III, (215) 566–3365.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Middletown Air Field, Middletown, Pennsylvania

A Notice of Intent to Delete for this site was published May 23, 1997 (62 FR 28407). The closing date for comments on the Notice of Intent to Delete was June 23, 1997. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. 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 states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Hazardous substances, Hazardous waste, Intergovernmental relations, Superfund, Water supply.

Dated: June 30, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator for Solid Waste and Emergency Response.

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., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Appendix B of part 300 is amended by removing the site ''Middletown Air Field, Middletown, Pennsylvania''.

[FR Doc. 97–17955 Filed 7–9–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 59

[CS Docket No. 96–237; FCC 97–36]

Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The rules, requirements, and regulations established in *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket 96–237, FCC 97–36 and the Commission's adoption of 47 CFR 59.1, 59.2, 59.3, 59.4 became effective May 6, 1997. These rules, requirements and regulations were published in the **Federal Register** of March 4, 1997. See 62 FR 9704, March 4, 1997.

EFFECTIVE DATE: The rules, requirements, and regulations established in the Report and Order and the Commission's adoption of 47 CFR 59.1, 59.2, 59.3, 59.4 became effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Deputy Chief, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0952, or Scott Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102. For additional information concerning the information collections in the Report and Order, contact Dorothy Conway, at (202) 418–0217, or via the Internet at <dconway@fcc.gov>.

SUPPLEMENTARY INFORMATION:

1. On February 7, 1997, the Commission released *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket 96–237, FCC 97–36, to implement new section 259 of the Communications Act of 1934, as added by the Telecommunications Act of 1996, a summary of which was published in the **Federal Register**. See 62 FR 9704, March 4, 1997. As stated in the **Federal Register** summary, the requirements and regulations established in the Report and Order were to become effective upon approval by the Office of Management and Budget (OMB) of the new or modified information collection requirements, but no sooner than April 3, 1997. OMB approved these rule changes on May 6, 1997. See 62 FR 27735, May 21, 1997.

2. The March 4, 1997 **Federal Register** summary stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules and regulations following OMB approval of the information collections in the Report and Order. Because this statement might be read to suggest that further action by the Commission was necessary to establish the effective date, this publication clarifies that the rules, requirements, and regulations established in the Report and Order and the Commission's adoption of 47 CFR 59.1, 59.2, 59.3, 59.4 became effective May 6, 1997. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 59

Antitrust, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Rural areas, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18070 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 070197B]

Atlantic Tuna Fisheries; Harpoon Category

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) Harpoon category annual quota for 1997 will be attained by July 7, 1997. Therefore, the 1997 Harpoon category fishery will be closed effective at 11:30 p.m. on July 7, 1997. This action is being taken to prevent overharvest of the Harpoon category quota.

DATES: Effective 11:30 p.m. local time on July 7, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Harpoon Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 53 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the Harpoon category. Based on reported catch and effort, NMFS projects that this quota will be reached by July 7, 1997. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the Harpoon category must cease at 11:30 p.m. local time July 7, 1997.

The intent of this closure is to prevent overharvest of the quota established for the Harpoon category.

Classification

This action is taken under §§ 285.20(b) and 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 3, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–17982 Filed 7–3–97; 4:20 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 132
Thursday, July 10, 1997

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

Federal Crop Insurance Corporation

7 CFR Parts 450 and 457

Prune Crop Insurance Regulations; and Common Crop Insurance Regulations, Prune Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of prunes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Prune Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Prune Crop Insurance Regulations to the 1997 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business August 11, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations are being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0053.

Section 7 of the proposed 1998 Prune Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop and does not adversely affect the insured crop. This practice was not insurable under the previous Prune Crop Insurance Policy. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately two percent of the insureds who interplant their prune crop. Standard interplanting language has been added to most perennial crops to make insurance available for more perennial crop producers and reduce the acreage that will need to be placed into the noninsured crop disaster assistance program (NAP).

The title of this information collection is ''Multiple Peril Crop Insurance.''

The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of prunes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

The title of this information collection is ''Multiple Peril Crop Insurance.''

The burden associated with the written agreement is estimated at 19 minutes per response from approximately 4,864 respondents each year for a total number of 1,571 hours.

FCIC is requesting comments on the following: (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 gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

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. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of

power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

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

National Performance Review

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

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.133, Prune Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring prunes found at 7 CFR part 450 (Prune Crop Insurance Regulations). FCIC also proposed to amend 7 CFR part 450 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 450.

This rule makes minor editorial and format changes to improve the Prune Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring prunes as follows:

1. Section 1—Add the definition for the terms ''days,'' ''direct marketing,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee,'' ''ton,'' ''written agreement,'' and change the definition of ''prunes'' for clarification.

2. Section 2(e)—Change provisions to allow optional units on non-contiguous land and for land located in separate sections. Previous regulations provided basic units for land located on contiguous land. This change will standardize these provisions with the provisions contained in other perennial crop policies.

3. Section 3(a)—Specify that the insured may select only one price election for all the prunes in the county insured under the policy, unless the Special Provisions provide different price elections by varietal group, in which case the insured may select one price election for each prune varietal group designated in the Special Provisions.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, change in practices or any other circumstance that may reduce yields. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and varietal group, if applicable, of any interplanted crop, its planting pattern, and any other information that the insurer requests in order to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurer of any circumstance that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of the circumstance. Current regulations provide that production guarantees will be reduced when the number of bearing trees has been reduced by more than 10 percent from the preceding year. This change will standardize these provisions with provisions contained in other perennial crop policies.

5. Section 6(c)—Clarify that the insured crop must be grown on prune tree varieties that were commercially available when the trees were set out and on rootstock that is adapted to the area.

6. Section 7—Add provisions to make interplanted prunes insurable if planted with another perennial crop unless the insurance provider inspects the acreage and determines it does not qualify to be accepted for insurance coverage. This provision was added to provide insurance coverage to the maximum extent to all prune producers, and to reduce the number of acres that would require coverage under the Non-insured Assistance Program (NAP).

7. Section 8—Add provisions to clarify the procedure when an insurable share is acquired or relinquished on or before the acreage reporting date.

8. Section 9(a)—Remove direct Mediterranean Fruit Fly damage as an insured cause of loss. Effective control measures are now available; therefore, damage due to Mediterranean Fruit Fly is no longer needed as a separate cause of loss.

9. Section 9(b)(1)—Add disease and insect infestation to the excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or no effective control mechanism is available for such disease or insect infestation. These exclusions need to be added for clarification so that insurance coverage is not provided for causes of loss that could be prevented.

10. Section 9(b)(2)—Clarify that insurance is not provided against damage or loss of production due to the inability to market the prunes for any reason other than actual physical damage to the prunes from an insurable cause.

11. Section 10(a)—Require that the insured give notice of loss within 3 days of the date harvest should have started if the crop is not to be harvested. Previous regulations required written notice if during the period before harvest, any prunes would not be harvested or further cared for. This change will standardize the notice of loss requirements utilized in other perennial crops.

12. Section 10(b)—Require notice of loss be provided at least 15 days prior to harvest if production will be sold by direct marketing or sold as fresh fruit. This change will assure that a timely notice of loss is provided so that a pre-harvest inspection can be made to determine the total amount of production to count when the prunes

will be harvested for direct marketing or fresh fruit.

13. Section 10(c)—Change the notice of loss requirements when the insured intends to claim an indemnity. Require that notice of loss be provided at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest. Previous prune regulations required notice of loss not later than 10 days after harvest or the end of the insurance period. This change will incorporate and standardize the notice of loss requirements utilized for other perennial crops.

14. Section 10(d)—Specifies that the insured cannot destroy the damaged crop until we have given written consent to do so. However, the insured may sell or dispose of the damaged crop if there is a market for it. Previous regulations required written consent before the insured destroyed any of the prunes which were not to be harvested. This change conforms with the requirements contained in other crop policies.

15. Section 11(c)(1)(i)(B)—Specify that production to count will not be less than the production guarantee per acre for any acreage that is marketed directly to consumers or sold as fresh fruit if the producer fails to meet the notification requirements contained in section 10.

16. Section 11(c)(1)(iv)—Require the insured to continue to provide sufficient care for the insured crop when the insured does not agree with the appraisal on that acreage. Production to count for such acreage will be determined using the harvested production if the crop is harvested, or our reappraisal if the crop is not harvested.

17. Section 11(d)—Clarify that the total harvested production to count will include prune production harvested for fresh fruit. Such fresh fruit production will be converted to a dried prune weight basis by dividing the total amount of fresh fruit production by 3.1.

18. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

19. Remove the date for submitting an acreage report. In accordance with the Common Crop Insurance Policy, Basic Provisions, the acreage reporting date instead will be contained in the Special Provisions. This change conforms the prune crop provisions to other crop provisions.

List of Subjects in 7 CFR Parts 450 and 457

Crop insurance, Prunes.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 450 and 457 as follows:

PART 450—PRUNE CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 450 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. Subpart Heading ''Subpart—Regulations for the 1986 through the 1997 Crop Years'' is removed.

4. Section 450.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 450.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400–General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Prune Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

5. Section 457.133 is added to read as follows:

§ 457.133 Prune crop insurance provisions.

The Prune Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Prune Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include: selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Picking of mature prunes from the trees or ground either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Market price for standard prunes. The price per ton shown on the processor's settlement sheet for each size count of standard prunes.

Natural condition prunes. The condition of prunes in which they are normally delivered from a dehydrator or dry yard.

Non-contiguous land. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre). The number of tons determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Prunes. Any type or variety of plums that are grown in the area for the production of prunes and that meets the requirements defined in the applicable Federal Marketing Agreement Dried Prune Order.

Standard prunes. Any natural condition prunes:

(a) That grade ''C'' or better in accordance with the United States Standards for grades of prunes; or

(b) That meet or exceed the grading standards in effect for the crop year, if a Federal Marketing Agreement Dried Prune Order has been established for the area in which the insured crop is grown.

Substandard prunes. Any natural condition prunes failing to meet the applicable grading specifications for standard prunes.

Ton. Two thousand (2000) pounds avoirdupois.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, that can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, you must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us;

(3) Each optional unit must also meet one or more of the following criteria as applicable unless otherwise allowed by a written agreement:

(i) *Optional units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exists but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the prunes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each prune varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yields below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and varietal group if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the prunes in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for the production of natural condition prunes;

(c) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area;

(3) Are grown on rootstock that is adapted to the area; and

(4) Are irrigated (except where otherwise provided in the Special Provisions);

(d) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(e) That are grown on trees that have reached at least the seventh growing season after being set out.

7. Insurable Acreage

As an exception to the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, prunes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins for each crop year on March 1.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) October 1 for California; or

(ii) October 15 for Oregon.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of prunes on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the prunes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing or sold as fresh fruit. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing or is sold as fresh fruit production. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing or sold as fresh fruit will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest, so that we may inspect the damaged production.

(d) You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each varietal group, if applicable, by its respective production guarantee;

(2) Multiplying the result in 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each varietal group, if applicable, (see sections 11 (c) through (e)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that grade substandard or better and any production that is harvested and intended for use as fresh fruit. The total production to count will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing or sold as fresh fruit if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Any prune production harvested for fresh fruit will be converted to a dried prune weight basis by dividing the total amount (in tons) of fresh fruit production by 3.1.

(e) Any production of substandard prunes resulting from damage by insurable causes will be adjusted based on the average size count as indicated on the applicable Dried Fruit Association (DFA) Inspection Report and Certification Form. Any insurable damage will be adjusted by:

(i) Dividing the value per ton of such substandard prunes by the market price per ton for standard prunes (of the same size count); and

(ii) Multiplying the result by the number of tons of such prunes.

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or varietal group, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on July 3, 1997.

Suzette Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–18060 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 166P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Butorphanol into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance butorphanol, including its salts and optical isomers, into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) that butorphanol be added to Schedule IV and on an evaluation of the relevant data by the DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on

those who handle butorphanol and products containing butorphanol.

DATES: Comments, objections and requests for a hearing must be submitted on or before August 11, 1997.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Butorphanol, currently a non-controlled substance is classified as an opioid agonist-antagonist analgesic that is marketed as a prescription drug under the trade name Stadol® for the relief of moderate to severe pain in humans. It is also marketed as a veterinary product under the trade names Torbugesic® and Torbutrol® for use in horses and dogs. It was first marketed as an injectable product in 1979. Although there was limited abuse of the injectable product among certain populations, significant abuse was not observed until after the nasal spray was introduced in 1992.

The Acting Deputy Administrator of the DEA received a letter dated September 30, 1996, from the Assistant Secretary for Health, on behalf of the Secretary of the DHHS, recommending that the drug product, Stadol NS Nasal Spray, be placed into Schedule IV of the CSA. Enclosed with the September 30, 1996 letter from the Assistant Secretary was a scientific and medical evaluation prepared by the Food and Drug Administration (FDA). The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)]. Correspondence from the Acting Assistant Secretary for Health dated June 19, 1997, confirmed that the DHHS recommendation included the substance butorphanol and its salts and isomers.

The factors considered by the Assistant Secretary for Health and the DEA with respect to butorphanol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

The following are summaries of the abuse potential and actual abuse of butorphanol based on the information reviewed by the DEA, including the scientific and medical evaluation of the DHHS.

Summary of Abuse Potential

Butorphanol's profile of effects resembles that of an opioid with either mixed agonist-antagonist actions or partial agonist effects, rather than full mu agonist effects, like morphine. Butorphanol's actions are mediated via three different opioid receptor subtypes: mu, kappa, and delta opioid receptors, showing a 12:1 mu:kappa and 34:1 mu:delta selectivity. Butorphanol's selectivity for mu receptors is consistent with its mu agonist discriminative stimulus, self-administration and antinociceptive profile of effects which are similar to those of morphine, codeine and fentanyl, all Schedule II controlled substances. Butorphanol's selectivity for kappa receptors is consistent with its sedation and respiratory depression which are similar to those of kappa agonists such as pentazocine, a Schedule IV substance under the CSA.

Preclinical and clinical studies show that butorphanol produces reinforcing effects that are less than those of morphine. Butorphanol administered transnasally, intramuscularly, or intravenously in either normal volunteers or former opioid abusers produces positive mood and reinforcing effects in humans (i.e., high, drug-liking). In both opiate-abusing and normal volunteer subjects, butorphanol's subjective effects differ from those of full mu opiate agonists. Compared to an equivalent dose of morphine, butorphanol produces equivalent positive subjective effects, but greater aversive or dysphoric effects, including greater disruption of behavior, sedation, confusion, and difficulty concentrating. Butorphanol administered transnasally or intramuscularly produces similar onsets of effects, rates of elimination, and profiles of effects, however, the magnitudes of effects were greater after intramuscularly administered butorphanol. These studies show that the abuse potential of butorphanol does not differ depending upon the route of administration or preparation, and that the abuse potential of butorphanol is lower than that of morphine and similar to that of pentazocine.

Butorphanol can induce physical and psychological dependence in animals and humans. There is evidence that use of butorphanol produces tolerance and dependence, results in drug-seeking and craving, and its abrupt discontinuation produces an opioid-like withdrawal syndrome. During clinical trials, three percent of the 161 patients who used butorphanol for two months or longer reported behavioral symptoms suggesting possible abuse, and approximately one percent of these patients reported significant overuse. Chronic use of butorphanol results in reports of abuse and self-reported addiction and discontinuation results in a mild withdrawal syndrome. Withdrawal such as anxiety, agitation, and diarrhea are observed. The physical dependence and withdrawal syndrome produced by butorphanol are similar to those observed after long term administration of pentazocine. Consistent with its partial antagonist effects, butorphanol can precipitate withdrawal in animals and humans maintained on mu agonists.

Summary of Actual Abuse and Diversion

For about a decade after butorphanol was first approved for marketing as an injectable product in the United States, reports of abuse were received only occasionally. This was likely due to its limited availability and therapeutic indication. However, following the introduction of the nasal spray product in the United States in 1992, abuse dramatically increased. Many of the abuse reports came from state authorities. At their November 1996 annual meeting, the National Association of State Controlled Substances Authorities (NASCA) recognized that the increasing abuse and diversion of butorphanol warranted its scheduling. Furthermore at this meeting, NASCA passed a resolution urging FDA and DEA to expeditiously place butorphanol into Schedule III of the CSA.

Butorphanol has been a source of increasing incidents of abuse and diversion since 1992. DEA has received reports from 44 states indicating that butorphanol is being abused, diverted and trafficked. These reports have been received from DEA Diversion Investigators, physicians, State Boards of Pharmacies, the National Association of State Controlled Substances Authorities, and State Drug Enforcement officials. They show that butorphanol is stolen from retail and hospital

pharmacies and is diverted through forged and altered prescriptions, improper prescribing and inappropriate dispensing, doctor shopping, and requests for early refills. Additionally, butorphanol abuse is associated with escalating use and drug seeking behavior.

In response to increasing reports of abuse and diversion, six U.S. states and Canada have administratively scheduled butorphanol, and several other states have proposals pending to schedule butorphanol. Some individual hospital pharmacies handle butorphanol as a controlled substance requiring the same recordkeeping, change of shift audits, and security as though the products were already scheduled. In many cases, the initial use of butorphanol is for pain relief, however, escalation of dose and drug seeking of butorphanol have been reported.

In 1994 the FDA, in consultation with the DEA, conducted a survey of State Drug Program Directors, Boards of Pharmacy, and Drug Enforcement officials to provide information on the abuse, trafficking, and diversion of butorphanol. The results of the FDA's survey of the states on the ''Abuse, Misuse, Diversion of Stabol Injectable and Stadol Nasal Spray'' confirm the reports of increasing abuse of butorphanol. State Boards of Pharmacy, State Drug Program Directors, and State Drug Enforcement officials from 46 states and Guam responded to the survey. In November 1995, the FDA issued a final report on this survey. Eighty-three percent of the respondents stated that they were aware of non-medical use, diversion or abuse of butorphonol in their state. Fifteen percent of the states have attempted to regulate butorphanol as a controlled substance, and 44 percent of the states reported that non-regulatory entities, such as hospitals, nursing homes, and clinics have found it necessary to institute special controls beyond those of normal prescription drugs to limit access to the drug. Of the states that responded, 74 percent reported that the nasal spray was abused and 52 percent reported that the injectable was abused. Approximately 60 percent of the states cited that the drug's source was from overprescribing, 55 percent from forged or altered prescriptions and six percent from ''the street''. Twenty-five percent of the states were aware of excessive prescription refill data from health insurance payment plans. Forty-eight percent of the states were aware of thefts of butorphanol and 11 percent of the states reported product tampering. The survey provided information that butorphanol abusers crossed all socioeconomic levels.

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with section 201 (b) of the Act (21 U.S.C. 811 (b)), and the independent review of the DEA, the Acting Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, butorphanol has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Butorphanol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of butorphanol may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Acting Deputy Administrator of the DEA concludes that butorphanol, including its salts and isomers, warrants control in Schedule IV of the CSA.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections, or requests for a hearing raise one or more issues which the Acting Deputy Administrator finds warrants a hearing, the Acting Deputy Administrator shall other a public hearing by notice in the **Federal Register,** summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. Butorphanol products are prescription drugs used to treat moderate to severe pain. Handlers of butorphanol also handle other opiate analgesics which are controlled substances and are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competitions, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule 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 E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, drug traffic control, narcotics, prescription drugs.

Under the authority vested in the Attorney General by section 210(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Acting Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is proposed to be amended by adding a new paragraph (f)(2) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(f) * * *

(2) Butorphanol (including its optical isomers).

* * * * *

Dated: July 2, 1997.

James S. Milford,

Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 97–17961 Filed 7–9–97; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI53–03–7301; FRL–5855–9]

Public Hearing and Comment Period on the Proposed Redesignation of the Forest County Potawatomi Community to a PSD Class I area; State of Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) under its Prevention of Significant Deterioration (PSD) Program proposed to redesignate a portion of the Forest County Potawatomi (FCP) Community's lands to Class I for PSD purposes on June 29, 1995, (60 FR 33779). EPA is now holding two informational meetings and public hearings on the FCP redesignation request, and is establishing a new close of the public comment period on its proposed approval of the FCP's redesignation request.

DATES: A general informational meeting and public hearing on the redesignation will be held in Carter, Wisconsin, starting at 4:00 pm CDT on August 12, 1997. The second meeting and public hearing will be held in Rhinelander, Wisconsin, starting at 1:00 pm CDT on August 13, 1997.

All written comments on the FCP redesignation must be received by September 15, 1997 to be considered by EPA in making its final decision on the redesignation request.

ADDRESSES: The August 12, 1997 meeting and public hearing will be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin, and the August 13, 1997, meeting and public hearing will be held at the Holiday Inn Rhinelander, 668 West Kemp Street, Highway 8 and 47, Rhinelander, Wisconsin.

All written comments on this redesignation request and proposed approval should be addressed to: Carlton Nash, Chief, Regulation Development Section, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Additional information used in developing the proposal is available during normal business hours for public inspection and copying at the Air Programs Branch, Region 5, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of these documents is also available for inspection at the Crandon Public Library, 104 South Lake Avenue, Crandon, Wisconsin 54520–1458, (715) 478–3784.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, EPA Region 5 (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

SUPPLEMENTARY INFORMATION: The EPA under its PSD Program (Part C of the Clean Air Act) proposed to redesignate a portion of the FCP Community's lands to Class I for PSD purposes in the June 29, 1995, **Federal Register** (60 FR 33779). The intent of the PSD program is to prevent deterioration of existing air quality. The Act provides for three basic classifications, with Class I being the designation which allows the least amount of degradation. States and Indian governing bodies may request reclassification of areas under their jurisdiction to accommodate the social, economic, and environmental needs and desires of the local population.

On February 14, 1995 the FCP Tribal Council submitted to EPA a proposal to redesignate certain FCP Reservation lands from Class II to Class I. These lands are limited to parcels over 80 acres, only in Forest County, and held in trust for the Tribe by the Federal government. EPA evaluated the FCP request in relationship to the requirements of the Act and proposed for public comment to approve it. EPA scheduled in its June 29, 1995 proposal a public hearing and established a public comment period. Based on a request by the Governors of Wisconsin and Michigan to enter into negotiations on the proposed redesignation, EPA subsequently canceled the public hearing and left open the public comment period until further notice (60 FR 40139).

EPA is now scheduling two informational meetings on Class I PSD redesignations in general, each immediately followed by a public hearing on the FCP redesignation request in particular. The first meeting and public hearing will be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin, starting at 4:00 pm CDT, on August 12, 1997; and the second meeting and public hearing will be held at the Holiday Inn Rhinelander, 668 West Kemp Street, Highway 8 and 47, Rhinelander Wisconsin, starting at 1:00 pm CDT on August 13, 1997.

EPA is also establishing a new close of the pubic comment period. All written comments on the proposed FCP redesignation must now be received by September 15, 1997 to be considered by EPA in making its final decision on the redesignation request. For additional information on the EPA's proposed approval of the FCP redesignation request, please see EPA's proposal in the June 29, 1995 **Federal Register** and/or the additional material available at both the Region 5 offices and the Crandon Public Library.

Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a PSD Class I redesignation. Each request for redesignation shall be considered separately and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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. The proposed action does not have a significant direct impact on small entities and may only prospectively affect the amount of air quality deterioration that is allowed from major stationary sources and major modifications, as defined by 40 CFR 52.21, and will not result in any significant additional requirements for small entities. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

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 the request for redesignation, the Tribal government has elected to adopt an option allowed them under Section 164 of the Act. The redesignation being proposed for approval in this action may bind State, local, and Tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. However, EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or Tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Date: June 30, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–18093 Filed 7–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket #OR–1–0001; FRL–5853–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Section 111(d)/129 State Plan submitted by Oregon on December 31, 1996. The State Plan was submitted by Oregon to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If the 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.

DATE: Comments on this proposed rule must be received in writing by August 11, 1997.

ADDRESSES: Written comments should be addressed to Catherine Woo, Environmental Protection Specialist, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: June 24, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–18081 Filed 7–9–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–51; RM–8983]

Radio Broadcasting Services; Alberton, Montana

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: Action in this document denies the proposed allotment of FM Channel 284A at Alberton, Montana. The Notice of Proposed Rule Making was issued in response to a petition filed by Vixon Valley Broadcasting. *See* 62 FR 6927, February 14, 1997. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–51, adopted June 18, 1997, and released June 27, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–17882 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–137, Notice 2]

Underground Storage of Natural Gas or Hazardous Liquids

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

ACTION: Proposed rule proceeding; termination.

SUMMARY: RSPA terminates its proposed rule proceeding on underground gas and hazardous liquid storage facilities. The proceeding yielded information on current safety practices and the extent of safety guidance and state regulation. Considering this information, RSPA has decided not to take rulemaking action.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366–4595.

SUPPLEMENTARY INFORMATION: For more information about the proposed rule proceeding and issuance of an advisory bulletin, see the notice published in today's issue of the **Federal Register**.

(49 U.S.C. Chapter 601; 49 CFR 1.53)

Issued in Washington DC on July 2, 1997.

Cesar DeLeon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–17932 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 62, No. 132

Thursday, July 10, 1997

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

Animal and Plant Health Inspection Service

[Docket No. 97–051–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of credit account approval for reimbursable services.

DATES: Comments on this notice must be received by September 8, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–051–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–051–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding credit account approval for reimbursable services, contact Ms. Donna J. Ford, User Fees Section Head, FSSB, APHIS, 4700 River Road, Unit 54, Riverdale, MD 20737–1232, 301) 734–5752; or e-mail:dford@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Agency Support Service Specialist, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Credit Account Approval for Reimbursable Services.

OMB Number: 0579–0055.

Expiration Date of Approval: November 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The services of an Animal and Plant Health Inspection Service (APHIS) inspector to clear imported and exported commodities requiring release by APHIS personnel are covered by user fees during regular working hours. If an importer wishes to have a shipment of cargo cleared at other hours, such services will usually be provided on a reimbursable overtime basis, unless already covered by a user fee. Exporters wishing cargo certified during nonworking hours may also utilize this procedure.

Requestors of our services are usually repeat customers and request that we bill them for our services. We need to collect certain information in order for our Field Servicing Office to conduct a credit check on prospective applicants to ensure credit worthiness prior to extending credit services, and to prepare billings for such services performed. This is a one-time information collection using APHIS Form 192.

Also, the 1996 Debt Improvement Collection Act requires that agencies collect tax identification numbers from all persons doing business with the Government for purposes of collecting delinquent debts. This is one field on the APHIS Form 192, and it must be completed before credit is extended.

We are asking the Office of Management and Budget (OMB) to extend approval of this information collection.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Importers/exporters who wish to have a shipment of cargo or animals cleared during nonworking hours.

Estimated Number of Respondents: 480.

Estimated Numbers of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 120 hours.

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.

Done in Washington, DC, this 3rd day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18106 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–055–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Vaccine Containing Canarypox-Vectored Rabies Fraction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment for field testing of an unlicensed veterinary vaccine containing a canarypox-vectored rabies fraction for use in cats. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that shipment of this veterinary vaccine for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. With this notice, we state our intention to authorize shipment of this combination vaccine product for field testing 14 days after the date of this notice, unless new substantial issues bearing on the effects of the action contemplated here are brought to our attention. We also intend to issue a veterinary biological product license for this product and three additional products containing the same canarypox-vectored rabies fraction, provided the field trial data support the conclusions of the environmental assessment and finding of no significant impact and the products meet all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, Veterinary Services, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–8400; fax (301) 734–8910; or e-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting a field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological product referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of this product on the safety of animals, the public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that shipment of the unlicensed veterinary biological product for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement. An EA and FONSI have been prepared by APHIS for the shipment of the following unlicensed veterinary biological product for field testing:

Requester: Rhone Merieux, Inc., Establishment License No. 298.

Product: Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia-Chlamydia Psittaci-Rabies Vaccine, Modified Live and Killed Virus and Chlamydia, Canarypox Vector (Code 16A9.R0).

Field test locations: California, Florida, Georgia, Illinois, New York, Pennsylvania, Texas, and Wisconsin.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize the shipment of the above product and the initiation of the field tests after 14 days from the date of this notice.

Because the issues raised by authorization of a field trial and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for the field trial would also be applicable to the proposed licensing action. Provided that the field trial data support the conclusions of the original EA and FONSI, APHIS does not intend to generate a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. Therefore, APHIS intends to issue a veterinary biological product license for this product following the completion of the field trial, provided no adverse impacts on the human environment are identified as a result of field testing this product and provided the product meets all other requirements for licensure.

Simultaneously, APHIS intends to issue licenses for three additional combination vaccines produced by Rhone Merieux, Inc., also for use in cats. These three vaccines (each of which contains the same canarypox-vectored rabies fraction but lacks one or two components present in the above-mentioned product) are as follows:

Product: Feline Rhinotracheitis-Calici-Panleukopenia-Chlamydia Psittaci-Rabies Vaccine, Modified Live Virus and Chlamydia, Canarypox Vector (Code 1619.R1);

Product: Feline Rhinotracheitis-Calici-Panleukopenia-Rabies Vaccine, Modified Live Virus, Canarypox Vector (Code 16T9.R0); and

Product: Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia-Rabies Vaccine, Modified Live and Killed Virus, Canarypox Vector (Code 16S9.R0).

Except for the canarypox-vectored rabies fraction, all components of the four products discussed in this notice are represented in currently licensed products.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 3rd day of July 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–18107 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Collecting Data on Domestic Sugar Prices

AGENCY: Farm Service Agency, USDA.

ACTION: Advance notice with request for comments.

SUMMARY: The Farm Service Agency (FSA) continually encounters problems in responding to internal and external requests for reliable raw cane sugar and refined sugar price data. Sugar price data are used in the administration of the sugar program to forecast the likelihood of loan collateral forfeitures and to determine the adequacy of domestic sugar supply to meet demand at reasonable prices. Buyers and sellers of sugar and sugar-containing products also are interested in obtaining additional price data for gauging market activities. Comments are solicited from all parties on the collection of monthly average sugar prices, the value of publishing aggregate price data, as well as the costs and benefits of this data collection.

EFFECTIVE DATE: Comments on this advance notice must be received on or before August 8, 1997 to be assured of consideration.

ADDRESSES: Submit written comments to the Director, Dairy and Sweeteners Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency, U.S. Department of Agriculture, STOP 0516, 1400 Independence Avenue, S.W., Washington, DC 20250–0516 or fax (202) 690–1480.

FOR FURTHER INFORMATION CONTACT: Daniel Colacicco at the above address or fax, or telephone (202) 690–0734.

SUPPLEMENTARY INFORMATION: Section 156(h) of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. § 7272, authorizes the Department of Agriculture to collect, on a monthly basis, information as the Secretary may require to administer sugar programs, including sales of sugarcane, sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar. The Department is authorized to collect such data from sugarcane processors, sugar beet processors, and cane sugar refiners. Data presently available to FSA and the public to forecast loan collateral forfeitures, to determine the adequacy of domestic sugar supply, and to develop price forecasting models is considered less than adequate.

To improve data availability, FSA could collect price data from sugarcane processors, sugar beet processors, and cane sugar refiners. Such data could represent the monthly average selling prices of raw sugar and refined sugar sold in bulk, or, spot prices could be collected. Prices could be f.o.b. plant or destination. Bulk sales could be defined as only unpackaged sugar sales. Alternatively, bulk sales could include sales made in 100 pound bags, or larger, adjusting these sales prices to exclude package costs.

Comments are invited on: (1) Whether the collection of raw and refined sugar price data is necessary for the proper administration of the sugar program; (2) the price data to be collected; (3) estimates of the burden of price reporting on cane processors, sugar beet processors, and cane sugar refiners; (4) ways to enhance the quality, utility, and clarity of price information from those who would respond; and (5) the advantages and disadvantages of publishing aggregate price data.

After the consideration of comments received in response to this advance notice, FSA will publish a notice.

Signed in Washington, DC, on July 3, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–17978 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–043 N]

Meeting; Fresh Produce Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Fresh Produce Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods will hold a public meeting on July 24 and 25, 1997, to discuss detection and control of *Cyclospora,* a pathogen found on fresh fruits and vegetables.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on July 24 and 25, 1997.

ADDRESSES: The meeting will be held at the Marriott Hotel at Metro Center, 775 12th Street, NW, Washington, DC 20005; telephone (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: Interested persons may file comments before and after the meeting. Address all comments to Dr. Richard L. Ellis, Director, Scientific Research Oversight Staff, Department of Agriculture, FSIS, Suite 6913 Franklin Court Building, 1099 14th Street NW, Washington, DC 20250–3700 or FAX to (202) 501–7628.

SUPPLEMENTARY INFORMATION: The subcommittee will be discussing *Cyclospora* on fresh produce and the draft white paper on foodborne outbreaks related to raspberries, lettuce, and other produce that the subcommittee is preparing. A final research paper will be presented at the next full session of the Committee in August 1997. The Subcommittee meeting is open to the public on a space available basis.

The Committee provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed.

Done at Washington, DC, on July 7, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–18080 Filed 7–9–97; 8:45 am]

BILLING CODE 3410–DM–P

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

The Director's Advisory Committee; Notice of Closed Meetings

July 7, 1997.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Advisory Committee meetings:

Name: The Director's Advisory Committee (DirAC).

Dates: July 16, 17 and 18, 1997, August 18 and 19, 1997, September 29 and 30, 1997.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, N.W., Room 4930, Washington, D.C.

Type of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Director's Advisory Committee, Room 5844, Washington D.C. 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meetings: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. All meetings will be held in Executive Session.

Reason for Closing: The DirAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meetings: The closing of the meetings is in accordance with a

determination by the Director of the U.S. Arms Control and Disarmament Agency dated July 1, 1997 made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

[FR Doc. 97–18230 Filed 7–8–97; 1:08 pm]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Application for Designation of a Fair.

Agency Form Number: ITA 4135P.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 100 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration's Tourism Industries office offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel and trade oriented groups. These fairs open doors to promising travel markets around the world. The ''Application for Designation of a Fair'' is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the U.S. Department of Commerce sponsorship, the fair organizer must have all of the components of the application in order. Then, with the approval, the organizer is able to bring in their products in accordance with Customs laws. Articles which may be brought in include, but are not limited to, actual exhibit booths, exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a fair, and material for use in constructing, installing, or maintaining foreign exhibits at a fair.

Affected Public: Businesses or other for-profit, not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230

Written comments and recommendations for the proposed information collection should be sent to Victoria Beacher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 3, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18052 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Single Audit Questionnaire

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before September 8, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jerry Keffer, Bureau of the Census, Governments Division, Washington, DC 20233–6800, (301) 457–1522.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Single Audit Act Amendments of 1996 and OMB Circular A–133 require state and local governments and non-profit organizations expending $300,000 or more in Federal financial aid to have an annual audit of their financial operations. OMB has designated the Census Bureau as the Federal Audit Clearinghouse for these audits. We use the Single Audit Questionnaire to contact those entities that have not sent in their audit reports to request that they forward the report or clarify their reporting status.

Under the Single Audit Act Amendments of 1996 and OMB Circular A–133, both state and local governments and non-profit institutions are subject to the same requirements. Therefore, it is no longer necessary to maintain two separate forms. [We are dropping the SAC–2, previously sent only to non-profit institutions, and are revising upward our estimate of the time necessary to complete form SAC–1 based on the expanded usage of the form.]

Under the higher $300,000 reporting threshold imposed by the Single Audit Act Amendments of 1996, fewer entities will be required to submit Single Audits, thus the estimated number of respondents has decreased since the Single Audit Questionnaire was last approved by OMB.

II. Method of Collection

The SAC–1 Single Audit Questionnaire is mailed to panels of state and local governments and non-profit organizations throughout the year based on fiscal year ending dates.

Periodically, we update information for the Federal Inspector General's offices on governmental and non-profit audits which have been completed or are delinquent. A report listing governments delinquent in providing audits to the Federal Audit Clearinghouse is provided to the OMB in April as required under the Single Audit Act Amendments of 1996.

III. Data

OMB Number: 0607–0518.

Form Number: SAC–1.

Type of Review: Regular.

Affected Public: States, Local Governments, Indian Tribes, and non-profit organizations.

Estimated Number of Respondents: 12,500.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 4,166 hours.

Estimated Total Annual Cost: We do not expect respondents to incur any costs other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: The Single Audit Act Amendments of 1996 (Pub. L. 104–156) and Revised OMB Circular No. A–133.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18051 Filed 7–9–97; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube 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 December 30, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on circular welded non-alloy steel pipe from Mexico covering exports of this merchandise to the United States by certain manufacturers. Based on our preliminary review of these exports during the period November 1, 1994 through October 31, 1995, we found margins for all reviewed companies. We invited interested parties to comment on the preliminary results. We received comments and rebuttals from petitioners and from TUNA and Hylsa (respondents). We have now completed our final results of review and determine that the results have changed with respect to one respondent.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: John Drury, Robin Gray or Linda Ludwig, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0414 (Drury), (202) 482–0196 (Gray), or (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

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, unless otherwise indicated, all references to the Department's regulations are to Part 353 of 19 CFR (1997).

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1994/95 review period on November 1, 1995 (60 FR 55541). On November 29, 1995, respondent Hylsa S.A. de C.V. (''Hylsa'') requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. On November 30, 1995, respondent Tuberia Nacional S.A. de C.V. (''TUNA'') requested that the Department conduct an administrative review of this order. We initiated this review on December 8, 1995. *See* 60 FR 44414 (September 15, 1995).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On July 19, 1996, the Department extended the time limits for preliminary and final results in this case. *See Extension of Time Limit for Antidumping Duty Administrative Reviews,* 61 FR 40603 (August 5, 1996).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The review of ''circular welded non-alloy steel pipe and tube'' covers products of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this review, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. In accordance with the Final Negative Determination of Scope Inquiry (56 FR 11608, March 21, 1996), pipe certified to the API 5L line pipe specification, or pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A–53 standard pipe specifications, which fall within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, are outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.3010.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results of the reviews. We received both comments and rebuttals from petitioners, TUNA, and Hylsa. The

following is a summary of comments by company.

Hylsa

Comment 1: Stating that Hylsa's responses contained numerous errors and unverifiable information, petitioners believe that the Department should base the final results on total facts available under sections 776 and 782 of the Act. Petitioners cite numerous alleged errors and omissions on the part of Hylsa as support for their contention that the response as a whole should be rejected and the results based on facts available. The examples include allegations that Hylsa did not provide actual dates of payment and thus distorted credit costs; that it failed to report packing expenses in either market; that it did not properly report freight charges; that it did not properly match CONNUMs; that the Department was unable to verify advertising and warranty expenses; that certain sales traces contained errors; and that comparisons between actual and theoretical weight were distortive.

In addition, petitioners state that the cost response and the information found at verification also contained numerous errors, specifically in the proper allocations and use of costs. The sum of the errors and the quality of information presented, according to petitioners, is sufficient for the Department to find that Hylsa failed to cooperate by not acting to the best of its ability to comply with the Department's information requests. Petitioners cite Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 24271 at 24274 (May 14, 1996) as precedent to support this course of action.

Hylsa maintains that the verification conducted by the Department affirmed the overall accuracy of its responses, and that any actual problems can be easily remedied with minor programming changes. Hylsa maintains that it has cooperated to the best of its ability to comply with the Department's requests for information, and that the application of facts available is not warranted. Hylsa states that, even if petitioners had been able to demonstrate that Hylsa had not acted to the best of its ability to comply with the Department's information requests, section 776(b) of the Act indicates merely that the Department may make an adverse inference, not that it is obligated to do so.

DOC Position: We agree with respondent that the final results should not be based on total facts available. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties. Accordingly, in using the facts available, the Department may disregard information submitted by a respondent if any of the five criteria has not been met.

While the Department agrees that there are errors and omissions in Hylsa's responses, we do not believe that the scope and impact of the errors in question are sufficient to warrant the application of facts available to the case as a whole. In Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 24271 at 24274 (May 14, 1996), the Department noted that errors in the sales traces drew into question the completeness and accuracy of the respondent's remaining sales. The Department also noted that certain home market and U.S. sales were not reported, and concluded that ''[t]he misreporting and inaccuracies of the information were so material and pervasive as to make the responses unreliable within the meaning of section 782(e)(3) of the Act.'' In this case, the quantity and value of sales reported are not under contention. With appropriate corrections, the Department believes that Hylsa's responses are sufficiently usable for the purpose of margin calculations. Pursuant to sections 776(a) and 782(d) and (e) of the Act, the Department will use the facts otherwise available when necessary. The Department will address each of the comments stated by petitioners below.

Comment 2: Petitioners contend that the Department should base Hylsa's home market credit expense on facts available. Petitioners believe that Hylsa has over-reported or has otherwise distorted home market credit expense in three different ways. First, petitioners contend that the calculation of a hypothetical date of payment by Hylsa for home market sales with multiple payment dates distorts credit expenses in a hyperinflationary environment. Petitioners believe that the methodology used by Hylsa is contrary to the Department's instructions and that Hylsa had the ability to report separate payment dates without undue burden. Second, petitioners contend that Hylsa erred in calculating credit expenses by including the IVA (VAT tax) in the base price for such calculations. In other words, Hylsa included the VAT tax in the total amount due to them by their customers for the purposes of calculating the credit expense on each transaction. Petitioners state that section 773 (a)(6)(B)(iii) requires that the Department deduct any taxes included in the price of a foreign like product from normal value so that the Department calculates a tax-neutral margin. Petitioners cite the Statement of Administrative Action to the Uruguay Round Agreements Act (''the SAA'') (H. Doc. No. 316 (Vol. 1), 103d Cong., 2d Sess. (1994) at 827) in support of their contention. Third, petitioners state that the calculation of the credit expense using a 360-day year for home market sales and a 365-day year for U.S. sales results in a similar overstatement of home market credit expenses. Therefore, petitioners believe that the Department should not deduct home market credit expenses from normal value, nor make a circumstance-of-sale adjustment, but should deduct corrected U.S. credit expenses from export price. If the Department does use Hylsa's reported credit expense, petitioners recommend that the Department correct for the existing problems by reducing the base rate on which credit is calculated by the IVA and by applying a credit calculation based on a 365-day year.

Hylsa answers, first, that it followed the Department's instructions in the original questionnaire to calculate credit expense on a transaction-by-transaction basis, and in a supplemental questionnaire to calculate this expense using monthly interest rates. Second, Hylsa contends that since it extends credit to its customers on the IVA amount, it should be used in the credit calculation as the Department did for the preliminary results. Hylsa cites Certain Fresh Cut Flowers from Mexico, 56 FR 1794 at 1798 (January 17, 1991) and Shop Towels from Bangladesh, 57 FR 3996 at 4001 (February 3, 1992) in support of its position. Third, Hylsa states that it adjusted for the difference in the 360/365 day credit calculations for home market sales and that the Department verified that adjustment while examining home market sales traces. Therefore, in respondent's view, no changes should be made to the credit calculation methodology used by the Department in the preliminary determination.

DOC Position: We agree in part with petitioners. Concerning the issue of the

360/365 days used to calculate credit expense, the worksheet in Exhibit 27 indicates that Hylsa did make the adjustment so that it calculated credit expense in both markets using the same number of days as the denominator. As to the inclusion of IVA in the basis for the credit calculation, while we disagree with petitioners' claims that this is a tax neutrality issue, the Department believes that the methodology used by Hylsa is incorrect and should be exclusive of the IVA. Finally, the Department believes that the calculation of an average date of payment for home market sales in instances of multiple payments is distortive and contrary to the instructions of the Department (see discussion below). Therefore, the Department has used facts available for the credit expense as outlined below.

Hylsa's statement that the credit expense ''reflects the opportunity cost when potential revenues from an immediate cash-for-goods sale are exchanged for receipt of payment after some extended period'' (Hylsa's March 11 brief at 6) supports the Department's position on the VAT tax. The collection and payment of the IVA is not a revenue for the company, but for the government. The calculation of a credit expense for the company on what is plainly government revenue is inconsistent with the intent of the adjustment.

In Certain Cut-to-Length Carbon Steel Plate from Brazil, the Department stated that ''[i]t is not the Department's current practice to impute credit expenses related to VAT payments. We find that there is no statutory or regulatory requirement for making the proposed adjustment.'' Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486 at 18488 (April 15, 1997). *See also* Steel Wire Rope from Korea, 58 FR 11029 at 11032 (February 23, 1993).

Concerning the reporting of a weighted-average hypothetical date of payment by Hylsa for certain home market sales, Hylsa has not complied completely with the Department's requests in this matter. The original questionnaire states in part that, when calculating credit expense, the respondent must ''[e]xplain the calculation and *any other factors that affect net credit costs* * * * '' (emphasis added). Obviously, multiple payments will affect net credit costs, especially in economies experiencing high inflation. Since the Department determined that Mexico experienced high inflation during the period of review, the proper reporting of expenses that reflect the effects of inflation is of paramount importance.

Hylsa did report credit expense on a transaction-specific basis, and did use monthly interest rates as requested by the Department. However, Hylsa did not indicate that it received multiple payments until verification. It was also at verification that Hylsa first explained its methodology with regard to multiple payments. Of the three home market sales examined by the Department during verification, one of these had multiple payment dates. (See Sales Verification Exhibit 6.) As discovered at verification, Hylsa had the ability to report each separate payment and calculate a separate credit expense, but chose not to do so. Given that one-third of the sales traces examined by the Department contained multiple payments, the potential for distortion of credit expense using Hylsa's methodology is significant.

Section 776(b) states that the Department has the authority to use an adverse inference in selecting from among facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department believes that the failure to report multiple payments, and the subsequent calculation of credit expense, constitutes grounds for the use of adverse facts available under this section. Therefore, as facts available, we calculated the lowest non-zero reported credit expense per ton by Hylsa and used this expense in all home market sales for purposes of calculating normal value. We have not made any adjustments to the credit expense calculation for U.S. sales for calculating export price.

Comment 3: Petitioners state that, in accordance with the decision in the preliminary determination, the Department should not make an adjustment for a steel supplier rebate.

DOC Position: We agree with petitioners, and have not altered our decision from the preliminary determination. *See* Circular Welded Non-Alloy Steel Pipe from Mexico, 61 FR 68708 at 68710 (December 30, 1996).

Comment 4: Petitioners argue that, to the extent that Hylsa acts as the importer of record on certain of its U.S. sales of subject merchandise and/or pays all duties due, the Department should presume reimbursement under 19 CFR 353.26 and deduct any duties paid by Hylsa from export price. Petitioners cite section 353.26(a) as applying directly to Hylsa's responsibilities for the payment of antidumping duties, stating that ''[w]hen Hylsa pays antidumping duties on its own behalf it is a producer paying the antidumping duties on behalf of the importer (itself) within the unambiguous meaning of 19 CFR 353.26(a)(i). There is no requirement in the regulation that the importer and producer be separate entities.'' In arguing that the regulation should be applied to non-separate entities, petitioners state that ''[i]t would be ludicrous to apply the regulation where the producer and importer are affiliated (i.e., are related closely enough to be treated as a single entity for the purposes (of) calculating United States price) but not apply it where the producer and importer are a single entity in fact.'' Petitioners cite Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 61 FR 65022 at 65023 (December 10, 1996) (prelim.) (''British Bar'') as demonstrating that where a producer/exporter and importer are the same entity, the Department treats them as being ''affiliated'' under the statutory provision on duty absorption (section 751(a)(4) of the Act). If a producer/exporter is deemed to be ''affiliated'' with itself for the purposes of duty absorption, reason petitioners, there is no reason why the same conclusion cannot be reached for the reimbursement provision.

Petitioners contend that a requirement that the producer and importer be separate entities to apply section 353.26 is inconsistent with both the SAA and Department practice. In citing the SAA, petitioners concentrate on the statement that Commerce has full authority to increase duties ''[w]hen an exporter directly pays the duties due * * *,'' and state that the regulation applies as long as the producer pays the duties on behalf of the importer. Petitioners also cite Color Television Receivers from the Republic of Korea, 61 FR 4408 at 4411 (February 6, 1996) as supporting their position. Petitioners further state that the provisions for duty absorption and duty reimbursement are separate and do not preclude the Department from applying section 353.26. Should the Department apply section 353.26, petitioners urge the Department to deduct the amount of antidumping duties paid from export price as required by the regulation.

Hylsa counters that when it acts as importer of record, it does not, under any sense of the word, ''reimburse'' itself or pay the duties on behalf of another party. In addition, Hylsa states that any such adjustment must be made against antidumping duties assessed and reimbursed, rather than against cash deposits of estimated antidumping duties. Therefore, making any adjustment at this time would be improper.

DOC Position: The Department closely analyzed all sales made by Hylsa to the U.S. during the period of review. In our analysis, we found that none of the sales where Hylsa acted as its own importer were sold at less than normal value. Therefore, the issue is moot in this instance.

Comment 5: Petitioners contend that, as in the preliminary determination, the Department should not adjust normal value for additional inland freight. Petitioners believe that the methodology presented by Hylsa is inaccurate and distortive, given that Hylsa could not tie specific freight charges to certain sales, that the amount of total additional inland freight allocated to all home market sales was questionable due to the non-reporting of certain small freight charges, and that additional inland freight was allocated to certain home market sales that would not normally incur freight (*e.g.,* pick-up by the customer). In addition, petitioners note that the verification report indicated that it was possible for Hylsa to tie specific freight charges to specific sales transactions. As a result, petitioners argue that the Department should not make an adjustment to home market sales. For the purposes of the cost-price comparison, petitioners believe that the Department should allocate a minimum amount to all sales where the reported freight was zero, and increase the overall value of home market freight by taking the percentage of such sales that had additional unreported freight, multiplying that by the total freight charges, and allocating the result over all sales. These extra charges should be deducted from all home market sales in the cost-price comparison.

Hylsa contends that while it was possible to tie specific freight charges to individual sales transactions, the lack of computerized records of inland freight at the time of the review would have necessitated a level of preparation that would be unreasonable. Furthermore, Hylsa asserts that the allocation of additional inland freight charges to sales that would incur no freight can be corrected easily by setting the additional inland freight field to zero and calculating additional freight using the cost methodology advocated by petitioners in their case brief. Finally, Hylsa states that the methodology of allocating additional inland freight, using the corrections mentioned above, is the only reasonable method of making an adjustment for the freight charges incurred.

DOC Position: We disagree with respondent in part. While the Department agrees that requiring Hylsa to manually tie specific freight charges to sales in this proceeding would be an undue burden, due to the lack of computer records, the problems which still exist with the data submitted on the record render it impossible to clarify these freight charges. Even if they could be corrected, there would still be unacceptable distortions.

As mentioned in the verification report, Hylsa has five separate categories of freight charges. Additional inland freight was allocated over all home market sales, regardless of the category of freight charge. One of the freight categories is for pick-up, which would by definition not incur a freight charge. Therefore, the allocation of additional inland freight to these sales is inappropriate. We also note that the total additional inland freight figure to be allocated is incorrect, because Hylsa did not take into account certain freight charges for local delivery sales. While included in Hylsa's calculation for the total freight, these local delivery charges were not reported for individual sales. Therefore, the total additional inland freight figure (total freight incurred by Hylsa minus total freight charged to customer) is inaccurate. Consequently, we agree with petitioners and are disallowing the adjustment.

Finally, we note that Hylsa does maintain computer records that would allow the company to tie freight charges to individual sales, but that these records are usually destroyed after a short period of time. The Department intends to examine this issue more closely in future reviews.

Comment 6: Petitioners argue that the Department should not adjust normal value for either advertising or warranty expenses. Petitioners cite the verification report as indicating that the Department was unable to verify the accuracy of these expenses.

Hylsa argues that Verification Exhibit 25 demonstrates that the expenses were calculated accurately and that the Department verified their accuracy.

DOC Position: We agree with petitioners. Hylsa prepared verification Exhibit 25 and submitted it late on the last day of verification. As stated in the verification report, ''[t]he verification team sampled the calculation of advertising and warranty for this sale. After attempting to calculate advertising and warranty expenses, the company indicated that it could not reconcile the amounts reported for this transaction. Company officials submitted a hand-written calculation sheet which they stated showed the correct calculation for these expenses.'' (Sales Verification Report, sales trace at 20.) The verifiers did not have sufficient time to check the accuracy and completeness of the worksheet. Therefore, we are disallowing these adjustments.

Comment 7: Petitioners assert that the Department must adjust all home market sales prices and adjustments for A–500 pipe to a theoretical weight basis for comparison to the U.S. price. Petitioners point to the verification report as affirming the fact that Hylsa made sales of A–500 pipe in one market on a theoretical weight basis and in the other on an actual weight basis. Since the variance between actual and theoretical weight could be as much as ten percent, petitioners advocate a specific adjustment based on the actual size of the pipe sold in the home market.

Hylsa counters that petitioners assume that all pipe sold in the home market is undersized, and that petitioners wish to penalize Hylsa for information that it does not have on actual weights. In fact, Hylsa states that pipe sold in the home market can be undersized or oversized and still be within tolerance specifications. Therefore, no adjustment should be made.

DOC Position: We disagree with petitioners. Hylsa is correct in stating that the tolerances for A–500 pipe allow for both the under- and over-statement of weight on a theoretical basis. Information on the record is insufficient to indicate that Hylsa systematically produces pipe which is undersized. Consequently, we are not making any adjustment.

Comment 8: Petitioners assert that the Department must use facts available for both U.S. and home market packing expenses. Petitioners note that, while Hylsa claims that it uses only three straps for packing a bundle of merchandise, the verification team observed identical merchandise with different numbers of straps per bundle. Petitioners also refer to Hylsa's U.S. product brochure, which indicates that a bundle of pipe could have between six and eight straps (see April 22, 1996 Section A questionnaire response, Exhibit 18). Finally, petitioners state that Hylsa had the ability to calculate actual packing costs. As facts available, petitioners advocate that the Department calculate one packing cost for three straps for home market sales, and a separate one for eight straps for U.S. sales.

Hylsa states that it could not report a separate packing cost for different types of pipe. Regardless of the number of straps per bundle, Hylsa maintains that the costs of packing for both the home and U.S. markets are identical. Hylsa questions the observations of the

verification team, and states that the problem was not brought to the attention of company officials. Therefore, Hylsa maintains that there are a number of scenarios that could disprove the observations of the team. Such scenarios include the possibility that the bundles may have been wrapped with less than the normal number of straps while the pipes were still in process, or that the pipes were bundled with fewer straps than should have been used. Finally, Hylsa notes that the number of straps per bundle is eight only when the bundle in question is double-length pipe. Since the cost of packing is the same in both markets, Hylsa continues to maintain that no further adjustment is necessary.

DOC Position: We agree with petitioners in part. As noted in the sales verification report at 31, Hylsa stated that ''[i]n all instances, each bundle of pipes is supposed to have three straps. However, during the plant and storage facility tour, we noted that two bundles of identical merchandise had different types of packing. One bundle had three straps, while a second one had five. Company officials had no explanation as to why this difference existed.'' On the other hand, the U.S. product brochure indicates that six straps per bundle are used for normal lengths of pipe for ASTM A–53 and A–500 (Hylsa April 22 Sec. A response, Exhibit 18 at 7 and 20) (''Hylsa uses high strength galvanized metal straps, 1.25 in (31.8 mm) wide. Single Length: 6 Straps (double straps on each end and 2 single straps distributed at the middle)''). Eight straps are used for double lengths, according to the brochure. We also note that the brochure states that A–500 is oiled and wrapped in paper. Information on the record therefore indicates that the number of straps (and possibly other packing materials) is different depending upon the market. Since the number of straps is different, it is reasonable to assume that labor and materials costs will be greater with the greater number of straps. Therefore, total packing costs for each market are different.

Section 776(b) states that the Department has the authority to use an adverse inference in selecting from among facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department believes that the failure to report packing costs for both markets constitutes grounds for the use of adverse facts available under this section. Therefore, in accordance with section 776(b) of the Act, the Department has examined cost verification Exhibit 19 and taken the total historical peso figures for all cost centers involved in packing, summed the total, and divided it by the total production of pipe and tube as derived from sales Exhibit 19. The result is a per-ton peso cost, which we have applied as adverse facts available to home market sales and doubled for U.S. market sales.

Comment 9: Petitioners believe that the Department should make a circumstance-of-sale adjustment for certain differences in discounts between the U.S. and Mexico under 19 CFR 353.56. The differences, argue petitioners, are clearly attributable to the differences between the two markets with respect to the higher rates of interest in Mexico and the attendant higher cost of carrying accounts receivable.

Hylsa states that petitioners assume that discounts are adjustments to a price which has already been determined, while in reality they determine the actual price. Hylsa cites previous Department rulings that categorized discounts as reductions in the prices paid by consumers, and not circumstances-of-sale adjustments. In particular, Hylsa points to Industrial Belts from Italy, 57 FR 8295 (March 9, 1992) to support its position.

DOC Position: We agree with respondent, and have not made any circumstance-of-sale adjustments for differences in discounts. As Industrial Belts from Italy states, ''[c]ash discounts represent reductions in the price paid by the customer; they are not circumstance of sale adjustments.'' (57 FR 8295, Comment 3). The CIT decision in *Mantex* v *United States,* 841 F. Supp. 1290 at 1300 (CIT 1993) also supports this position: ''This Court has consistently interpreted the ''directly related'' standard (under section 353.56(a)(1)) to require (an interested party) to show the item for which the claim a COS adjustment accounts for the differences in the prices of the sales under review. In other words, to be entitled to a COS adjustment, an (interested party) must demonstrate a '' 'causal link' * * * between the differences in circumstances of sale and the differential between United States price and foreign market value''.'' Petitioners have not established this link.

Comment 10: Petitioners believe that the Department should not compare U.S. sales to home market sales which received the co-export rebate, and that the Department may exclude such sales because they are not sold for consumption in the exporting country and/or are not made within the ordinary course of trade. As proof, petitioners cite the nature of the co-export rebate program that these sales are neither home market sales nor sales within the ordinary course of trade. The fact that the price is lower for such sales, conditioned upon export of a non-subject product, is evidence enough that these sales are not normal home market sales and should be excluded.

Specifically, petitioners argue that the program is not a rebate at all, but a separate price list for customers that prove they have exported the transformed product to the U.S. Therefore, the co-export price is not ''the price at which the foreign like product is first sold * * * for consumption in the exporting country'' within the section 773(a)(1)(B)(i) of the Act. Petitioners reason that since the statute does not define 'consumption in the exporting country, the Department may give that phrase meaning at its discretion within the antidumping law. In citing *Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 842–43 (1984), petitioners argue that the meaning of ''consumption in the exporting country'' is ambiguous and that the Department should not apply a rigid and unchanging set of criteria to each and every case when deciding whether or not a product is ''consumed'' in the exporting country. Rather, the Department should examine each case and set of circumstances with the intention of upholding the purpose of the antidumping statute, which is to prevent injurious price discrimination on sales to the U.S. from foreign countries.

Alternatively, petitioners argue that co-export sales were not made in the ordinary course of trade. In defining ordinary course of trade as ''the conditions and practices, which for a reasonable period of time prior to the exportation of subject merchandise, have been normal in the trade under consideration with respect to merchandise of same class or kind,'' petitioners assert that the normal practice for Hylsa's sales of standard pipe is to provide different prices for the same product in the foreign market based upon subsequent re-export of a transformed product. Petitioners further outline a set of criteria for consideration of whether standard pipe is outside of the ordinary course of trade based on the criteria that the Department used in *Laclede Steel Co.* v. *United States,* Slip Op. 95–144 (CIT, August 11, 1995), 17 ITRD 2184 at 2187. That case involved sales of circular welded non-alloy steel pipe from Korea. Those criteria included differences in prices, profit, the number of customers who purchase

the product, the types of assurances given to these customers, the basis of how the merchandise is sold, whether the end-users of the merchandise are different from other sales, the quantity and size of the sales, the percentage of such sales to all sales in the home market, and the type of markings. According to petitioners, the co-export rebate sales differ in price, the percentage of home market sales, profitability, and the number of customers. Additionally, petitioners propose that dual invoicing and the recording of such sales on the ledgers separate from other domestic sales means that the bookkeeping system is different for these sales.

Finally, petitioners state that even if the Department does not consider these sales to be outside of the ordinary course of trade, it has the authority under 19 CFR § 353.44(b) or (c) to exclude sales from consideration if their inclusion would not serve the purposes of the antidumping statute. It then states, without further elaboration, that the exclusion of co-export sales would be consistent with the statute in this case.

Hylsa counters that the merchandise is clearly sold for consumption in the home market, and that such consumption occurs (*i.e.*, a transformation of the product) prior to exportation. Hylsa also maintains that other aspects of the sales, such as the quality assurance, size of pipe, etc., are the same as other home market sales. Finally, Hylsa notes that this program has been in existence for some time and that the Department verified it during the original investigation without making any further adjustments. Therefore, these are ordinary home market sales and should be used in the calculation.

DOC Position: The Department closely analyzed all sales made by Hylsa to the U.S. and in the home market during the period of review. In our analysis, we found that none of the co-export sales by Hylsa in the home market were used for the purposes of calculating normal value. Specifically, they did not occur in the same months as the U.S. sales and were not used for matching purposes. Therefore, the issue is moot in this instance.

Comment 11: Petitioners state that, due to its finding that Mexico experienced high inflation during the period of review, the Department must compare U.S. sales to home market sales made in the same month.

DOC Position: We agree with petitioners and have correspondingly adjusted the programming to compare U.S. sales to home market sales made in the same month.

Comment 12: Petitioners note that the home market database for Hylsa shows certain sales that are outside of the reporting window. Petitioners request that the Department exclude these sales from its analysis.

Hylsa notes that these are all co-export rebate sales, and that, in following the guidelines set forth by the Department, the first invoice date is reported as well as the second invoice date. Hylsa explains that it is for this reason that these sales appear to be outside of the reporting window. Hylsa argues that the actual date of sale is the second invoice date, which is within the reporting window; therefore the sales should not be excluded.

DOC Position: We agree with respondent. The Department has consistently set the date of sale as the date when all terms of the sale are finalized. Due to the nature of the co-export rebate program, certain items (*e.g.* freight) might be modified or changed at the time that the second invoice is issued. Therefore, we are not excluding these sales on the basis of the date of the original invoice.

Comment 13: Hylsa states that the unit prices which it reported for U.S. sales are net of movement charges. Therefore, respondent argues that the Department should not deduct these charges a second time. Hylsa indicates that its questionnaire response of June 24, 1996, for this, the third administrative review, makes plain that the unit price on U.S. sales listings is net of movement charges. It also points to documents observed at verification, which indicate that the invoice format breaks out the movement expenses. Hylsa provides an equation in its case brief which it states proves that the gross unit price is reported net of movement charges.

Petitioners note that the record is unclear, but that Hylsa's responses strongly suggest that movement charges are included in the unit price. Petitioners in particular point to Hylsa's May 30, 1996 submission as making statements in two instances that, in effect, the gross unit prices of the U.S. sales were not net of movement charges. While petitioners acknowledge that one verification exhibit seems to indicate that the unit price is net of movement expenses, it also stated that just because ''a single sale (Verification Exhibit 30) appears to be listed without freight charges * * *'' does not mean that the Department should assume that all other U.S. sales have the same circumstances.

DOC Position: We reviewed Hylsa's questionnaire responses, the verification report and the accompanying exhibits, and both Hylsa's and petitioners' briefs on the issue. We can find no record of a June 24, 1996 submission by Hylsa for this review, as it references in its March 3, 1997 brief. There is, however, a June 24, 1996 submission for the first and second reviews. Furthermore, an examination of Hylsa's May 30, 1996 submission for this review presents an unclear picture. In describing the gross unit price for the U.S. sales, Hylsa stated that the gross unit price ''[r]epresents the invoiced price to the customer for one meter of material.''

At verification, the Department examined two sales by Hylsa to the United States. Only one of these sales shows U.S. inland freight charges on the invoice. As Hylsa noted in its March 3, 1997 brief, the gross unit price reported to the Department for this one sale is net of U.S. movement charges.

For these final results, the Department will not deduct U.S. movement expenses for this single U.S. sale. Otherwise, the Department will not deviate from its methodology in the preliminary results of review of deducting inland freight charges from all of Hylsa's U.S. sales where the reported terms of sale indicated that freight was included in the price paid by the customer. This methodology is consistent with Hylsa's statements on the record that the gross unit price is the priced for one meter of pipe invoiced to the customer, and with the terms of sale reported to the Department.

Comment 14: Petitioners argue that, since Hylsa did not report packing costs for either market, and U.S. packing costs are significantly different from those in the home market, the Department should assign additional packing costs to constructed value on a facts available basis. Barring the assignment of additional packing costs, petitioners maintain that the Department should base the entire constructed value figures on facts available. As previously stated, petitioners rely in part on the observations of the verification team as written in the verification report and on Hylsa's product brochure to note that the difference between packing costs in the U.S. and home market could be as great as 8/3 (eight straps used for bundling as opposed to three). Petitioners also assert that Hylsa was able to calculate packing costs, but chose not to do so. Finally, petitioners state that all sales that must be compared to constructed value should receive the original investigation rate as facts available.

Hylsa asserts, first, that it was not possible to calculate packing for each individual product. Second, Hylsa states

that the Department's verification team did not raise the issue of apparently identical merchandise with different straps and that it was thus unable to substantiate whether the bundles in question were indeed the same merchandise or in the same stage of production. Regardless, Hylsa states that only the total aggregate cost of packing is important to them and that there is no difference between the packing methods used for identical merchandise sold in both markets. In addition, Hylsa states that its brochure indicates that eight straps are used only for bundles of double-length pipe. Finally, Hylsa states that the Department can calculate normal value by using packed home-market prices to compare to a packed U.S. price since the two packing costs are identical.

DOC Position: We agree with petitioners. As partial adverse facts available, we have calculated an average per-ton cost of packing in the home market (as discussed in comment 8 above) and doubled it in the U.S. market for the purposes of calculating both normal value and export price. Rather than having no packing cost for the U.S., we have included a figure that is twice that of the calculated packing cost in the home market. For Cost of Production (''COP'') and Constructed Value (''CV''), since the cost of packing is already incorporated indirectly into the RCOM and CVCOP figures, we have not added additional packing to the TOTCOM but have added half of the PACKU costs to CV to reflect the doubling of packing costs in the United States.

Comment 15: Petitioners state that, since Hylsa did not report all freight costs, or assign the freight costs properly when it had the means to do so, the Department should base the entire cost-price comparison on facts available and assume that all home market sales were made at less than the cost of production. Barring this action, petitioners believe that the Department should assign a minimum freight cost to certain home market sales and increase the overall freight charges by the percentage of home market sales with additional unreported freight and deduct this from all home market sales.

Hylsa maintains that while it is able to assign freight accurately on a transaction-specific basis, to do so would be labor intensive and would not be a reasonable reporting option. In addition, Hylsa believes that ''minor'' adjustments by the Department to the reported additional inland freight charges will correct many of the extant problems.

DOC Position: As stated above, we agree with petitioners in part. While we agree with Hylsa that assigning additional inland freight accurately on a transaction-specific basis would be an undue burden for this review, we believe that the reporting of all inland freight is distortive for the reasons cited in comment 5 above. As noted in the sales verification report (at 19), Hylsa had the ability to accurately report certain types of freight unrelated to the additional inland freight. In particular, the company did not report freight charges for local delivery. Therefore, as adverse facts available, we are increasing the movement expenses deducted from home market sales in the cost/price comparison by a minimum freight charge where the reported freight charge was zero for local delivery sales.

Comment 16: Petitioners argue that respondent's cost and constructed values should be rejected as not properly capturing accurate costs for the period. Petitioners cite a number of alleged problems in support of their argument. First, petitioners state that Hylsa did not calculate monthly costs of production properly. Rather than calculating the costs based on the cost of iron ore through to the finished pipe production, which petitioners believe is the proper method of calculating said costs, petitioners allege that Hylsa used the cost of coil transferred from the flat-rolled division and built its cost calculation from that point. Petitioners note that this does not represent a fully loaded monthly cost of production.

Second, petitioners maintain that the adjustments to the monthly cost of the flat coil products were based on average annual data, rather than monthly replacement costs, and thus result in a mis-allocation of costs. Third, petitioners argue that Hylsa did not correctly calculate the costs for iron ore purchased from affiliated suppliers. Petitioners cite a loss made by one supplier in one month of 1995 and the effects of inflation.

Fourth, petitioners argue that Hylsa did not include scrap costs in raw materials but rather in overhead. Petitioners assert that this means that the coil cost adjustments in Appendix D–10 of the November 5, 1996 submission are not being applied to a fully yielded material cost. Fifth, petitioners note that all costs were based on a single average monthly coil cost (for all characteristics and grades of coil), which, the petitioners assert, means Hylsa's cost are distorted since thinner coil used for thinner pipe costs more than thicker coil for thicker pipe.

Sixth, petitioners maintain that the flat products division allocated all indirect costs in 1995 based on budgeted direct costs for that year. Petitioners note that budgeted costs for 1995 were based on the actual costs for 1994. Petitioners point out that actual direct costs for 1995 were available at the time Hylsa submitted its section D response. Petitioners maintain that Hylsa should have allocated indirect steelmaking and rolling costs using its actual direct costs for 1995, and that the failure to use these figures distorts the reported costs, but it is impossible to determine how much.

Finally, petitioners believe that the allocation of product-specific costs in the tubular products division by tonnage, rather than by processing time or some other manner that acknowledges the extra time needed to produce small diameter pipe, distorts the tube processing costs. The sum of these errors and omissions, according to petitioners, materially distorts the reported costs of production and constructed value figures to the point that it renders them unusable for the final results. Therefore, the Department should assign to Hylsa the margin from the original investigation.

Respondent counters by stating that, contrary to petitioners' claims, Hylsa began its calculation with the Flat Product division's actual costs of manufacturing steel coil in each month. The calculation, according to Hylsa, was based on the actual amounts paid by the Flat Products division for raw materials inputs in the current month, as well as actual fabrication costs incurred in the month. Respondent notes that G&A and exchange gains and losses on purchases were added to get a fully loaded cost of manufacturing for coil for the month. Once this cost is transferred to the tubular products division, respondent notes that it is used as the basis for calculating the reported cost of materials for pipe production, as well as to determine the scrap loss at each production stage. In summary, the respondent asserts that the calculation is based on all actual costs incurred by Hylsa starting with raw materials purchased from outside suppliers.

Respondent also counters that the costs of a raw material supplied by an affiliate have been properly calculated. Respondent notes that one affiliated iron ore supplier was profitable throughout the period and for all of 1995. Respondent notes that there was a loss in only one month and that the loss was not due to unrealistically low transfer prices but an unscheduled disruption of production. Respondent goes on to point out that the suppliers unit costs were 50 percent above average during that month, since fixed costs were allocated over a small quantity. Respondent argues that the

Department has held that fixed costs should be calculated in a manner to avoid disruption of production quantities. The respondent cites Gray Portland Cement and Clinker from Mexico, 58 FR 47253 at 47256 (September 8, 1993) and Gray Portland Cement and Clinker from Japan, 56 FR 12156 at 12165 (March 22, 1991). Respondent argues that the Department should examine whether the affiliate recovered its costs over an extended period of time rather than base the affiliates profitability on one distortive month. Since the affiliate earned a profit on eleven of the twelve months in the POR and for the year as a whole, respondent argues that there is no reason to disregard the transfer prices reported by Hylsa.

Respondent also states that it properly calculated the scrap cost based on actual cost of steel coil obtained from the flat products division. Respondent notes that it calculated the scrap loss amount for each process by applying the percentage scrap loss rate to the adjusted steel coil costs. The result is ''fully yielded materials costs.'' The fully yielded cost of actual material was reported in direct materials costs, the respondent notes, while the fully yielded cost of materials lost during production was included in the overhead costs of the appropriate process and allocated to products as they passed through the production process.

Finally, respondent states that it used the normal accounting system and normal cost calculations for both the Tubular (regarding allocation based on tonnage rather than time) and Flat Rolled (regarding differentiation of coil costs by size of coil and allocation of certain overhead costs by standard percentages) divisions in calculating its reported costs. Respondent refers to section 773(f)(1) of the Act as evidence that the statute generally directs the Department to use a company's normal cost accounting system, and to Erasable Programmable Read-Only Memories from Japan, 51 FR 39680, 39688 (October 30, 1986) as evidence that the Department is generally reluctant to deviate from a company's normal system.

Respondent argues that it in no way hid or mis-described the methodologies used in its normal cost calculations. In closing, respondent notes that its normal accounting system does not result in the amount of distortion that petitioners suggest. Respondent notes its product-specific cost calculation does allocate overhead based on tonnage; however, the pipe sizes in each process are limited. Respondent argues that Hylsa does not assign the same pipe forming costs to all sizes of pipe. Respondent contends that each forming mill is a separate process and each handles a limited range of pipe sizes.

DOC Position: We disagree with petitioners that Hylsa's COP and CV should be rejected. We address each of petitioners comments below.

We found that Hylsa did report the actual cost of manufacturing coil by the flat products division and not the transfer price. It adjusted the cost of coil manufacturing by the flat product division's exchange loss, its G&A, and another loss adjustment from a related supplier, since these items were not included in the flat product division's COM.

Second, while the above-mentioned exchange loss and G&A adjustments to COM for coil were based on annual rather than monthly data, the data were taken from constant currency financial statements. G&A is a period expense, so using an entire year eliminates seasonal fluctuations. Moreover, the respondent's use of constant currency financial statements in determining the G&A expense ratio neutralizes the effects of inflation in the calculation.

Regarding the adjustments for loss by an iron ore producing affiliate, we asked the respondent to report the higher of the transfer price, market price or cost for all major inputs obtained from affiliated parties (including iron ore). The respondent used transfer price with one adjustment for loss. The loss adjustment was based on a constant currency financial statement, which takes into account the effects of inflation. The respondent noted that another supplier's loss in one month was caused by an unscheduled disruption.

We have asked for monthly reporting in this case to account for the effects of inflation. We have taken reported conversion costs and indexed them to the end of the period, weight-averaged them, and then indexed the average unit cost for each product back to the month in question. This approach accounts for inflation and smooths out the conversion costs over the reporting period. We therefore have allowed Hylsa to apply the same approach to the loss adjustment by the affiliated supplier. Since the constant currency financial statements indicate no loss for the year, we are not making an adjustment.

With respect to the issue of scrap cost accounting, the scrap used as input to the coil manufacturing process would be reported in direct materials. The scrap yield costs (less related revenue) were reported in variable overhead. The scrap yield percentage at the first stage was divided by cumulative yield and multiplied by the adjusted input coil costs (direct materials costs). The result was reported in variable overhead.

Regarding the accounting for various costs, it is the Department's practice to calculate costs based on the records of the producer if such records are kept in accordance with the GAAP of the producing country and reasonably reflect the costs associated with the production of the merchandise. *See* New Minivans from Japan, 57 FR 21937, Comment 21 (''The Department typically allows individual respondent companies to report the production costs of subject merchandise as valued under their normal accounting methods and following GAAP of their home country.'') At verification, the Department verified Hylsa's cost methodology and, based on the information on the record, found that it was in accordance with Mexican GAAP.

We found at verification that Hylsa's pipe and tube division keeps in its records one cost for hot-rolled coil. Hylsa's flat product division's reported costs were based on its accounting system. Therefore, the allocation of indirect costs is based on Hylsa's books kept in the normal course of business. Regarding allocation of product-specific costs on the basis of tonnage rather than time, based on the information on the record, we found that Hylsa's methodology was in again accordance with Mexican GAAP. In all three cases, we found no evidence that this methodology materially distorts the production costs for sales during this period of review. However, we intend to continue to examine these issues closely in future reviews.

The respondent also used surface area to allocate zinc costs. Once again, the Department normally calculates costs based on the records of the producer if such records are kept in accordance with the GAAP of the producing country and reasonably reflect the costs associated with the production of the merchandise.

For the above-mentioned reasons, the Department agrees with respondent and has used the submitted cost of production figures

Comment 17: Petitioners argue that the Department should reject Hylsa's COP/CV response as unverified. Petitioners state that at the outset of verification Hylsa submitted a revised cost database that allegedly corrected errors. Petitioners note that this database did not correct an error in production quantities identified by the Department at verification. Petitioners state that the Department could not

verify the first database, after which Hylsa submitted another database which also corrected other un-described minor errors. Petitioners argue that it is the Department's policy not to accept ''substantially new'' information at verification. Petitioners cite as precedent Circular Welded Carbon Steel Pipes and Tubes from Thailand, 51 FR 3384, 3386 (January 27, 1986). Petitioner note that the Department's regulations state that new factual information will not be accepted more than 180 days after the initiation of the review. Petitioners assert that the Department should therefore base the final results on facts available.

Respondent counters that its errors were not intentional and do not call into question the integrity of Hylsa's response. Respondent notes that the product specific cost calculation, used to calculate individual pipe product costs, was not operational during 1995 because of a change in Hylsa's accounting system. Respondent asserts that to report costs to the Department Hylsa had to convert the product specific cost calculation to work with new accounting numbers on the new system, in place of old accounting numbers, and that this matching process took a lot of effort. Respondent notes that for a variety of reasons Hylsa was unable to completely check all account conversions before verification. Respondent goes on to note that some minor mistakes were discovered and promptly brought to the Department's attention. The respondent further argues that in the end it was able to provide corrected cost calculations. Respondent cites Ferrosilicon from Brazil, 59 FR 732, 736 (January 6, 1994) as precedent for accepting corrections to errors ''as long as those errors are minor and do not exhibit a pattern of systematic misstatement of fact.''

DOC Position: We disagree with petitioners that Hylsa's cost response should be rejected as unverified. The practice of the Department is to accept minor corrections at the start of verification. When we received the first revised database at the outset of verification, Hylsa noted that it contained all minor error corrections which were due mainly to the account number conversion as cited by respondent above.

The Department accepted a revised database (fixing the first and second set of minor errors, as well as the production quantity error) from the respondent, since the first and second set of errors were minor in nature and the production quantity error appeared to be inadvertent. In Ferrosilicon from Brazil, the Department found that the respondents mistakes found during the course of the investigation, when taken as a whole, did not support a claim of respondent's non-cooperation. The Department also stated in that case that it followed its practice of correcting errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact. Therefore in the present case, we are continuing to use Hylsa's revised cost database.

Comment 18: Petitioners assert that Hylsa misreported G&A expenses by reporting the G&A only for the Tubular Products division rather than the company as a whole. Petitioners cite to the Cost Verification report at 2 and 36–37. The petitioners note that Hylsa did this even though Hylsa claims that for coil cost reporting purposes the Tubular and Flat Product divisions are not separate entities. Petitioners argue that it is the Department's policy to use the G&A for the entire operating entity. Petitioners believe that G&A has thus been misreported, and asserts that if the Department does not base the final results on facts available, it should adjust G&A costs based on the reported unconsolidated G&A for Hylsa and corporate charges from the parent companies.

Hylsa counters that it reported G&A expenses on a ''layered'' calculation that allocated G&A expenses for each company and division over the sales to which those G&A expenses related. Hylsa argues that petitioners' argument mis-describes Hylsa's G&A calculation and is also contrary to the Department's established practice.

Hylsa states that there may have been some confusion due to the fact that the allocated G&A expenses of the Flat Products division were not included in the G&A expenses reported in the original cost submission. However, Hylsa states that the G&A expenses related to the Flat Products division were included in the cost of the coil produced and subsequently included into the Tubular Products division's cost of materials. Furthermore, Hylsa states that the Department has never held that G&A expenses at all levels of a corporation should be lumped together and allocated over the total cost of goods sold.

Hylsa asserts that the Department has routinely adopted a layered approach in the past that allocates G&A expenses at each corporate level over the cost of goods sold at the same level, citing Flat Panel Displays from Japan, 56 FR 32376, 32398–99 (July 16, 1991) as an example. Therefore, Hylsa argues that there is no basis for rejecting the G&A calculation.

DOC Position: We agree with petitioners that an adjustment to Hylsa's G&A is necessary. In the preliminary results of this review, we calculated an adjusted G&A as follows: Hylsa's unconsolidated G&A less corporate charges from Hylsa's parents, divided by Hylsa's unconsolidated cost of goods sold; plus a portion of the two parent companies' G&A (as calculated by Hylsa). We allowed the deduction of corporate charges from Hylsa's G&A since we were separately including a portion of each parent's G&A into the calculation. The Department's questionnaire stated that G&A expenses relate to the activities of the company as a whole rather than to the production process alone. It also stated that Hylsa should include an amount for administrative services performed on the company's behalf by its parent company. For these reasons, we are continuing to make the adjustment, as describe above, that we made in the preliminary results of this review.

Comment 19: Petitioners argue that Hylsa did not report costs for adding lead to the galvanizing pot and for amortized costs of replacing the pot. Therefore, the petitioners assert that an appropriate adjustment to the reported galvanizing costs in COP and CV is necessary.

DOC Position: We agree with petitioners that respondent did not include these costs. In the preliminary results of this review, we made an adjustment to variable overhead in COP and CV to account for these costs. We have continued to make this adjustment in this final determination.

Comment 20: Petitioners maintain that the Department must adjust the July 1995 costs for capitalized fixed costs for Plant 2. Specifically, petitioners believe that Hylsa did not include any fixed costs for this plant due to it being in a start-up period. Therefore, the Department should substitute fixed costs for a period at the end of the start-up period in accordance with section 773(f)(1)(C)(iii) of the Act. Otherwise, July 1995 costs are understated.

Hylsa responds that it reported the July 1995 costs according to its normal accounting practices and Mexican GAAP. Under the statute, the Department is required to use the costs as recorded in a respondent's normal accounting records. Since Hylsa reported the costs using its normal accounting records, there should be no adjustment. Finally, Hylsa argues that the revision advocated by petitioners would have an ''insignificant'' effect upon the Department's calculation.

However, should the Department decide to apply December 1995 costs to

the July coils, Hylsa believes that the Department should restate the nominal December costs to eliminate the effects of inflation.

DOC Position: We agree with petitioners. It is the Department's practice to calculate costs based on the records of the producer if such records are kept in accordance with the GAAP of the producing country and reasonably reflect the costs associated with the production of the merchandise. In this case, the costs to produce the merchandise for July are not fully reflected in reported costs, since no fixed costs are reported for plant #2 in July. After a further review of verification exhibits, we have found that products were also sourced from plant #2 in other months as well and no fixed costs were reported for those months either. The first month for which fixed costs are reported by Hylsa is in December.

While this practice appears to conform with Mexican GAAP, we determine that it does not reasonably reflect the costs associated with production of the subject merchandise. Since this is the only information we have as to the fixed costs of plant #2, we have used the December unit fixed costs as a surrogate for July and other months for which no fixed costs were reported. Even if the effect of this adjustment is insignificant as respondent argues, we are still making the adjustment to ensure that all costs are reasonably reflected. In agreement with respondent, we have indexed these costs back to each applicable month by the CPI, which is used in other indexing throughout this review. The increase in unit coil costs in each month was then further yielded by the flat products division's exchange loss and G&A and the further loss adjustment made by Hylsa. The total increase in coil costs after other yields was added to the reported cost of manufacturing.

TUNA

Comment 21: As with Hylsa, petitioners argue that the Department should presume reimbursement on the part of TUNA to Acerotex, since the two parties are affiliated and TUNA apparently exercises control over the operations of Acerotex. Additionally, petitioners state that Acerotex has virtually no other function in U.S. sales other than to post the cash deposit for estimated antidumping duties. In return for this function, Acerotex receives a commission that is far less than the amount of cash deposits posted. Because mechanisms for reimbursement exist and the fact that TUNA can exercise control over Acerotex (and thus manipulate prices in such away that the result would be circumvention) petitioners argue that the Department should collapse the two entities into one for the purposes of reimbursement analysis and presume reimbursement. Petitioners cite Color Television Receivers from the Republic of Korea, 61 FR 4408 at 4411 (February 6, 1996) in support of their contention.

TUNA states that the Department did a thorough examination of Acerotex's books and found no evidence of reimbursement or an agreement to reimburse. TUNA further states that presuming reimbursement based on affiliation or what might happen in the future is improper as a matter of law. In addressing Korean TVs, TUNA states that the citation does not support petitioners' position but in fact supports its contention that the Department cannot presume reimbursement.

DOC Position: We agree with respondent. Section 353.26 of the Department's regulations requires the Department to deduct from United States price (now EP or CEP) the amount of any antidumping duty paid, or reimbursed, by the producer or exporter, thereby increasing the amount of the duty ultimately collected. 19 CFR 353.26(a) (1996). The Department has interpreted this regulation as applying regardless of whether the importer is affiliated to the producer or exporter.

As the Department stated in Korean TVs, however, ''[t]his does not imply that foreign exporters automatically will be assumed to have reimbursed related U.S. importers for antidumping duties by virtue of the relationship between them.'' 61 FR at 4411. The regulation requires ''evidence beyond mere allegation that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer, or reimbursed the U.S. importer for its payment of the antidumping duty.'' Federal-Mogul Corp., 918 F. Supp. at 393 (citing *Torrington Co.* v. *United States*, 881 F. Supp. 622, 631 (CIT 1995)).

In the present review, we found no evidence of inappropriate financial intermingling between TUNA and Acerotex. The Department verified that Acerotex is responsible for all cash deposits. Petitioners are correct that Acerotex had established a general ledger provision in its accounting records with respect to antidumping duties. However, we found no evidence that this account was in any way related to reimbursement of these duties.

In Korean TVs, the Department specifically stated that it would not presume reimbursement between affiliated parties absent a clear and irrefutable reimbursement agreement between them. The Department found neither evidence of an agreement between TUNA and Acerotex for reimbursement of antidumping duties, nor the actual reimbursement of these duties between the two affiliated parties. Collapsing the two companies together for the purposes of reimbursement, as petitioners advocate, would be contrary to past practice. While the Department does sometimes ''collapse'' affiliated parties for purposes of the margin calculation, the Department has consistently treated such parties as separate entities when examining the question of reimbursement. Consequently, we are not presuming reimbursement.

Comment 22: Petitioners state that the Department must compare U.S. sales to home market sales made in the same month, due to the effects of high inflation.

TUNA states that, should the Department index for sales that are not within the same month, it should use the index used in indexing costs and also index the VCOM used to calculate the DIFFMER adjustment.

DOC Position: We agree with petitioners, and have adjusted the programming accordingly. *See also* Comment 11. Because we matched each U.S. sale to home market sales in the same month, all VCOM and DIFFMER figures properly reflect costs for that month. Therefore, we are not making any further adjustment.

Comment 23: Petitioners state that the Department should reaffirm its preliminary determination and not grant a level-of-trade adjustment. Petitioners state that the Department was correct in finding that there was not a ''consistent'' price differential between home market sales at different levels of trade. While there may have been differences, they varied greatly from month to month and did not indicate a consistent pattern of price differentials over the entire POR, even adjusting for inflation.

TUNA argues that petitioners are incorrect and that information in its case brief demonstrates that there is in fact a consistent price difference based on different levels of trade.

DOC Position: We agree with petitioners. While we found that two distinct levels of trade exist, our analysis does not show a pattern of consistent price differences between the two levels. In fact, the differences fluctuate greatly from month to month. Therefore, we are not changing our position from the preliminary results of review.

Comment 24: Petitioners argue that the Department's position in the

preliminary determination of excluding home market sales with missing or negative values from consideration was incorrect. Instead, petitioners argue that such sales should be based on facts available. Petitioners believe that the verification of TUNA uncovered numerous small errors and omissions, which in their totality compel the use of facts available.

TUNA responds that the Department's treatment of home market sales with missing or negative values is consistent with past practice and reasonable. Therefore, no changes should be made. TUNA notes that the sales disregarded are those with zero values in the QTYH and GRSUPRH fields, and that the total number of sales under consideration is seven; an extremely small number in comparison to the entire home market data set. Finally, of the seven with missing values, TUNA notes that none of these was used in the calculation of normal value. Therefore, petitioners' statement that it was impossible to state what prejudicial effect these sales would have is incorrect.

DOC Position: We agree with respondent. While the Department did discover small errors and omissions during verification, most of these were corrected easily and do not merit, in our opinion, the use of facts available (except as otherwise noted). Finally, the seven sales in question were not used in the calculation of normal value since they did not match in the month of a U.S. sale and thus have no impact on the margin. Therefore, this issue is moot.

Comment 25: TUNA contends that the Department erred in conducting a sales-below-cost investigation. The basis for this error, according to TUNA, is that petitioners' request was untimely. TUNA takes issue with the Department's August 7, 1996 decision memorandum regarding the initiation of this cost investigation, particularly with the Department's decision that TUNA's initial section A, B and C responses were both untimely and incomplete and therefore the 120-day deadline for filing a below-cost allegation did not apply (19 CFR 353.31(c)(1)). TUNA contends that its responses were timely and complete, and that they were filed prior to the allegation of sales below cost. Finally, TUNA states that petitioners failed to preserve their right to submit a cost allegation by failing to submit an extension request prior to the expiration of the 120-day deadline.

Petitioners claim that the Department properly initiated a sales-below-cost investigation. First, petitioners state that the cost investigation has already proven the validity of the initial allegation. Second, petitioners state that portions of the filing made by TUNA occurred subsequent to the expiration of the 120-day deadline. Using TUNA's logic, petitioners claim, any respondent that delays its filing until after the expiration of the 120-day time limit is immune from a below-cost investigation.

DOC Position: We agree with petitioners that its allegation was not untimely. As stated in our cost initiation memorandum of August 8, ''[w]ith respect to the respondent's claim that petitioners'' allegation was untimely filed, we note that TUNA's questionnaire response was not received until after the 120-day deadline for COP allegations set out by 19 CFR 353.31(c)(ii).'' The Department's established practice in such situations is to use its discretion in determining what constitutes a reasonable time limit for making a sales below cost allegation. *See* Certain Forged Steel Crankshafts From the United Kingdom, 60 FR 52150 at 52153 (Oct. 5, 1995). *See also* Memorandum from Linda Ludwig to Richard Weible, August 8, 1996 at 3). Therefore, the cost investigation was properly initiated.

Comment 26: TUNA asserts that the Department erred in disregarding certain below-cost sales without first determining whether all costs were recovered ''within a reasonable period of time.'' TUNA states that the margin program used by the Department had no test for determining recovery of costs, and that the Department should include program language that will perform the test and account for inflationary effects.

Petitioners state that the Department properly applied the test in the margin calculation program, and has already accounted for the effects of inflation by having monthly historical costs indexed to December, summed, averaged, then indexed back by month.

DOC Position: We disagree with respondent. As we stated in our preliminary results, ''[w]here 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we found that sales of that model were made in 'substantial quantities' within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Act, and were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.''

Section 773(b)(2)(D), cited by TUNA in its case brief, states the following: ''Recovery of costs.—If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.'' This section therefore defines ''reasonable period of time'' as outlined in section 773(b)(1)(B) as being the period of review or investigation.

In a non-inflationary economy, the Department calculates a single weight-average cost of production per product for the entire POR. By inference, any sales which are below the per unit cost of production at the time of sale would remain below the weighted average per unit cost of production for the POR, since the cost of production would not change over the POR. The only time that the cost of production might change within the same POR is in cases where a respondent has provided multiple costs of production per product within a single POR. In such instances, sales below the per unit cost of production for one reported cost period might be above the average per unit costs for the entire POR.

In this case, TUNA did report multiple per unit costs for the same product. Specifically, in accordance with instructions from the Department, TUNA reported monthly per unit costs for each product due to the effects of high inflation. However, as noted by petitioners, the Department did index each of these per unit costs for inflation and then calculated a weight-average, per unit cost for the POR as it would normally do in a non-inflationary review. Therefore, the Department has already compared individual home market sales to a weighted average cost for the entire POR. Thus, as explained above, we have performed a recovery of cost test which takes into account the effects of inflation. For these reasons, no further test is necessary.

Comment 27: Petitioners state that the COP and CV in the final results should be based on facts available, saying that problems found at verification render TUNA's cost and CV data unusable. Petitioners note that TUNA allocated finishing line costs on the basis of weight, since TUNA claimed that finishing takes the same time regardless of the diameter for each pipe, since each has the same length. Petitioners argue that this proposition is wrong. The petitioners assert that while each individual pipe may have the same length, pipe of different diameters have different total lengths per ton and a different number of pieces per ton. Therefore, the petitioners assert that smaller diameter pipe will require more finishing time and expense. Petitioners argue that despite the fact that the

Department found all costs are being absorbed on a macro basis, those costs are being allocated inaccurately in a way that benefits TUNA and prejudices an accurate dumping margin calculation. The petitioners note the same problem exists for threading line expenses. The petitioners argue that TUNA originally claimed that it allocated these costs by time, but now states that such an allocation is not possible because time is not recorded by diameter. Petitioners assert that TUNA could have allocated threading time over the total number of pieces threaded, which would have provided a more accurate allocation than weight. Petitioners further state that varnishing line allocations were also based on weight and suffer the same defect as threading and finishing allocations. The petitioners argue that the amount of time it takes to varnish a particular type of pipe depends on either the number of pieces varnished or the surface area of the pipe, further arguing that an allocation based on number of pieces varnished would be the most accurate.

Petitioners further assert that TUNA rounded zinc consumption, which may have caused an under-or over-allocation of galvanizing costs. In addition, petitioners note that when the Department found that it could not reconcile TUNA's reported packing costs with those in the sales response, TUNA revised the cost exhibit to match the figures in the sales response. The petitioners argue that TUNA incorrectly based its packing labor on historical rather than indexed replacement costs. Also, petitioners argue that TUNA indexed coil prices using the consumer price index rather than the wholesale price index. Petitioners assert that since wholesale prices were growing faster than consumer prices during the period, the use of the consumer price index tends to understate the indexed monthly costs. The petitioners argue that the Department generally prefers the wholesale or producer price indices for costs other than labor costs. The petitioners assert that if the Department does not base the final results on the facts available, it should re-index costs using the wholesale price index.

The petitioners assert that these problems are not insignificant and seriously prejudice the calculation of COP and CV. The petitioners argue that the Department should determine that the necessary information is not on the record and that COP and CV could not be completely verified as a result, and therefore the petitioners further assert that the Department should base its final results on facts available pursuant to sections 776(a) and 782(e) of the Act.

TUNA asserts that, except for a few minor errors, the Department verified the accuracy of the reported information. TUNA states that use of weight-based allocations of fabrication expenses is reasonable and has been used by the Department in the past. TUNA cites Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992), in which, TUNA notes, the Department allocated direct labor and factory overhead costs based on the relative weight of each pipe. TUNA asserts that the Department concluded that allocating fabrication expenses equally over production tonnage was a reasonable allocation base because these costs are primarily a function of tonnage, not steel type or size. TUNA further notes that in its final determination in Pipe from Taiwan, the Department stated that such an allocation did not materially affect the cost calculation because labor and factory overhead represented a small part of the total cost of production. TUNA also cites Welded Stainless Steel Pipe from Malaysia, 59 FR 4023 at 4026–27 (January 28, 1994), in which the Department determined that allocation of processing costs was reasonable. TUNA argues that the Department's conclusion in past proceedings that a weight-based allocation is reasonable applies equally in this review. TUNA notes that the cases cited are also for welded pipe. TUNA also notes that the costs involved represent a small part of both the total processing costs and total cost of production.

Furthermore, TUNA argues that there is no evidence that the use of weight-based allocations is distortive. TUNA further notes that its methodology is used in its normal course of business. TUNA argues that the unsupported theory that allocating fabrication expenses might be distortive does not provide a legitimate basis for rejecting its methodology. TUNA cites *The Timken Company* v. *United States*, 809 F. Supp. 121, 124 (CIT 1992), in which the court rejected petitioner's argument that respondent's allocation methodology should be rejected because petitioner offered no evidence to show that Koyo's information was unreliable, nor had petitioners offered any data more probative than Koyo's. In addition TUNA notes that the fact that there might be other equally valid ways to allocate fabrication expenses does not provide a legitimate basis for rejecting TUNA's verified response. TUNA also asserts that the Court of International Trade has stated that allocation is necessarily an inexact science and is simply a way to estimate costs incurred by the firm to manufacture the product. Such costs vary even among firms in the same industry (*Floral Trade Council* v. *United States*, 822 F. Supp. 766, 722 (CIT 1993)).

Concerning zinc, TUNA maintains that any distortion created by the rounding of its zinc consumption is immaterial. TUNA notes that there is no evidence to conclude that consumption was systematically rounded up or down and that rounding caused any inaccuracy. TUNA argues that even in the worst case scenario the effect on materials costs per metric ton would be negligible.

TUNA argues that petitioners misinterpret the verification of its packing expenses. TUNA asserts that it based its packing costs on historical costs after conferring with the Department. As to the inflation indices, TUNA states that the index used is the same as that used under Mexican GAAP to prepare annual financial statements and the same as it uses in the ordinary course of business. In addition, TUNA asserts that petitioners have no evidence that its index is inaccurate.

DOC Position: We disagree with the petitioners' contention that the methodologies used by TUNA to prepare its COP/CV responses warrant wholesale rejection of those responses and the use of facts available. Section 776(a)(1) of the Act states that if necessary information is not available on the record, the Department ''[s]hall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

We conducted numerous tests, described in our cost verification report, which supported the overall reasonableness of the reported data. Since TUNA's reported costs are in general reliable, we find that the application of total facts available is not warranted. Below, we discuss each of the points raised by petitioners as enumerated above.

Regarding the allocation of finishing line, threading line, and varnishing line costs on the basis of weight, we agree with respondent. In this instance, the costs at issue represent only a small portion of the total production cost of the subject merchandise. Thus, there is no evidence on the record of this review that would suggest that TUNA's normal allocation method would materially distort costs in this review period. Moreover, the Department's December 17, 1996, cost verification report indicates that adequate records of time by diameter were not kept by TUNA for threading and varnishing and, therefore,

it was not possible for the company to allocate costs in the manner suggested by petitioners. Accordingly, we find TUNA's allocation methodology is reasonable in light of the specific circumstances of this case.

With regard to zinc consumption, we agree with respondent. Even if the zinc consumption was overestimated as petitioner contends, the effect on the company's total zinc material costs would be negligible.

With regard to the packing labor being reported on a historical basis, we disagree with petitioners. For purposes of cost, the packing labor is deducted from other costs and reported separately in a packing field. When this deduction is made, the other conversion costs are on a historical basis (reported in the currency value of the month in which they are incurred); therefore, the packing labor must also be on a historical basis for a proper deduction.

Finally, regarding the use of the consumer price index for indexing coil costs, we agree with respondent. We found that TUNA uses the consumer price index in its normal course of business and it is required by Mexican GAAP to prepare constant currency financial statements. As such, the consumer price index has been used throughout the response for materials costs, conversion costs, G&A, and interest. We do not find it unreasonable to use the index accepted by Mexican GAAP to index costs in this case.

Comment 28: Petitioners state that the Department should adjust July 1995 materials cost for a credit that did not relate to raw materials purchases, as it did in the preliminary determination.

DOC Position: We agree with petitioners and have continued to make the adjustment that we made in the preliminary results of this review.

Comment 29: Petitioners note that TUNA amortized major maintenance and shutdown costs over the remainder of the year and that, at verification, TUNA provided a reallocation of those costs to months in which they were incurred. The petitioners urge that the Department use reallocated costs if it relies on TUNA's submitted costs for the final results.

DOC Position: We agree with petitioners. TUNA submitted a revised cost database (containing the reallocated major maintenance and shutdown costs to the months in which they were incurred) after verification and before the preliminary results. We used the reallocated costs in our preliminary results of review and have continued to use them in this final results of review.

Comment 30: Petitioners state that the Department should base G&A on TUNA's G&A, rather than the rate for all group companies. The petitioners note that for the preliminary results, the Department calculated a revised G&A percentage, and petitioners assert the Department should apply this rate in the final results as well.

DOC position: We agree with petitioners and, as in the preliminary results of this review, have continued to use the revised G&A (for TUNA only) percentage.

Comment 31: Petitioners assert that TUNA recorded all foreign exchange rate gains and losses as part of financing costs and was unable to differentiate foreign exchange gains and losses on raw materials purchases from other types of foreign exchange gains and losses. Therefore, petitioners state that all exchange rate gains and losses should be excluded from the calculation of interest expense.

TUNA contends that it properly accounted for exchange rate gains and losses in the interest expense calculation. TUNA points to the cost verification report as affirming that it had excluded gains or losses relating to receivables from the interest expense calculation, citing cost verification Exhibit 37 as illustrating how gains and losses relating to carrying receivables were excluded from the calculation. TUNA notes that it removed from the total net interest expense the gain/loss in monetary position and on foreign exchange related to accounts receivable. TUNA concludes that petitioners have apparently misinterpreted the line item ''exchange (gain) loss customers'' as representing all foreign exchange gains and losses, not just those associated with receivables. TUNA notes that petitioners' argument is therefore based on erroneous analysis and should be disregarded.

DOC Position: We disagree with petitioners that all exchange rate gains and losses should be excluded from the calculation of interest expense.

It is the Department's normal practice to distinguish between exchange gains and losses from sales transactions and exchange gains and losses from purchase transactions. Accordingly the Department does not include exchange gains and losses on accounts receivable. The Department includes, however, foreign exchange gains and losses on financial assets and liabilities in its COP and CV calculation where they are related to the company's production. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. *See, e.g.,* Small Diameter Circular Seamless Carbon and Alloy Standard, Line and Pressure Pipe from Italy, 60 FR 31981 at 31991 (June 19, 1995). Also, it is the Department's normal practice that foreign exchange gains and losses on the purchase of raw materials used in production of subject merchandise relate directly to the acquisition of input materials and should be included in the cost of manufacture. *See, e.g.,* Silicomanganese from Venezuela, 59 FR 55436 (November 7, 1994).

In the present case, TUNA has excluded from reported costs exchange gains/losses related to customers, i.e. those related to accounts receivable or sales transactions. It included exchange gains/losses related to purchase of raw materials as part of interest expense rather than cost of manufacturing, because it does not distinguish between exchange gains and losses on raw materials and exchange gains and losses on other payables in its normal course of business. Since the company did not include exchange gains and losses on accounts receivable / sales in its reported costs and since it cannot distinguish exchange gains and losses related to raw materials from those related to other payables, we have made no adjustment to respondent's interest expense calculation.

Comment 32: Petitioners state that since all of TUNA's costs appear to be presented on a theoretical weight basis, the Department should not make an adjustment to reported costs for differences between actual and theoretical weight. The petitioners note that TUNA could not state definitely whether the reported costs were based on actual or theoretical weights, finally settling on claiming that it had reported costs on an actual weight basis and presented a conversion factor. The petitioners note that TUNA did not document its conclusion with records. The petitioners assert that the record reveals costs were allocated on a theoretical weight basis. The petitioners note that while the unit costs were based on actual costs of acquisition, allocations were based on nominal dimensions of the pipe produced. Therefore, the petitioners assert such allocation is based on theoretical weight.

DOC Position: We agree with petitioners. While unit costs were based on actual costs of acquisition, allocations were often made on nominal dimensions of the pipe produced. Therefore, we have not made any adjustment.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margins exist:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

Producer/manufacturer/exporter	Weighted-average margin
Hylsa	2.99
TUNA	1.77

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of circular welded carbon steel pipe from Mexico 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) The cash deposit rates for the reviewed company will be the rate for that firm as stated above; (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, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under Sec. 353.26 of the Department's regulations 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 Sec. 353.34(d) of the Department's regulations. Timely 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 Sec. 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and Sec. 353.22.

Dated: June 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18114 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon From Chile

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

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick, at (202) 482–0186, or Kris Campbell, at (202) 482–3813; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATION OF INVESTIGATION:

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 refer to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1997.

The Petition

On June 12, 1997, the Department of Commerce (the Department) received a petition filed in proper form by the Coalition for Fair Atlantic Salmon Trade (FAST) and the following individual members of FAST: Atlantic Salmon of Maine; Cooke Aquaculture U.S., Inc.; DE Salmon, Inc.; Global Aqua—USA, LLC; Island Aquaculture Corp.; Maine Coast Nordic, Inc.; ScanAm Fish Farms; and Treats Island Fisheries (collectively referred to hereafter as ''the petitioners''). The petitioners submitted information supplementing the petition on June 23, 1997.

The petitioners allege that imports of fresh Atlantic salmon from Chile are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The Department finds that the petitioners have standing to file the petition because they are interested parties as defined in section 771(9)(C) of the Act, and because they have demonstrated sufficient industry support (*see* discussion below).

Scope of Investigation

The scope of this investigation covers fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species Salmo salar, in the genus Salmo of the family salmoninae. ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope of this petition are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon and Atlantic salmon that has been subjected to further processing, such as frozen, canned, dried, and smoked Atlantic salmon; and (3) Atlantic salmon that has been further processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as statistical reporting numbers 0302.12.0003 and 0304.10.4091 of the Harmonized Tariff Schedule (HTS) of the United States. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

During pre-filing consultations and as a result of our review of the petition, we discussed with the petitioners whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. We noted that the scope in the petition appeared to include both farmed and not farmed Atlantic salmon. The petitioners subsequently notified the Department on June 26, 1997, that Atlantic salmon that is not farmed should be excluded from the scope of the investigation. Accordingly, we have done so.

We are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments before August 4, 1997. This period of scope consultation is intended to provide the Department ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Under section 732(c)(4)(D) of the Act, if the petitioners account for more than 50 percent of the total production of the domestic like product, the Department is not required to poll the industry to determine the extent of industry support.

Based on U.S. salmon production information published by the State of Maine Department of Marine Resources and the Washington Farmed Salmon Commission, the petitioners claimed that they account for over 70 percent of total production of fresh Atlantic salmon in the United States. The petitioners further claimed that, when the U.S. producers related to foreign producers are excluded from the analysis, the petitioners represent approximately 97 percent of domestic production of fresh Atlantic salmon.

On June 27, 1997, the Association of Chilean Salmon and Trout Producers (the Association) contested the petitioners' standing claim. The Association stated that the petitioners' standing calculations focused exclusively on dressed salmon producers while ignoring U.S. fillet producers and claimed that fillet salmon represents a separate domestic like product from dressed salmon under the five-part domestic like product test used by the International Trade Commission (ITC). The Association argued that these facts suggest: (1) The petitioners do not have standing with respect to fillets, and; (2) even if the Department accepts the petitioners' single domestic like product definition, the petitioners have failed to provide adequate industry support data since fillet producers represent a significant portion of the industry producing the domestic like product. This submission included certain letters in opposition to the petition submitted by U.S. fillet processors, some of whom identified themselves as importers of dressed salmon from Chile.

On June 30, 1997, the petitioners submitted a rebuttal, stating that the Association failed to refute the ''total domestic production'' and ''percent of production'' industry support figures contained in the petition and failed to provide any information that would indicate that the petitioners do not have standing even under a two-like-product analysis. The petitioners argued that the facts in this case do not support a finding that fillet salmon is a separate domestic like product because there are no clear dividing lines, in terms of characteristics or uses, between dressed salmon and salmon fillets. Specifically, petitioners contended that, *inter alia,*: (1) Salmon fillets are derived from dressed Atlantic salmon and, in fact, all forms of fresh Atlantic salmon include the salmon meat that is ultimately consumed; (2) respondents focused solely on one cut of fresh Atlantic salmon (fillet) while ignoring other cuts (*e.g.*, steak); (3) the one cutting step that does play a significant role in the physical characteristic of the product (the initial cutting of the fish in order to bleed it) has been performed on both dressed and fillet salmon; [1] and (4) fillet cutting is not a ''value added'' operation, but instead results in a higher-priced end product primarily because much waste has been eliminated. With respect to the last point, the petitioners argued that the price trends of fillets compared with dressed salmon suggest that there is no value added, but in fact negative value added, because the price of Chilean fillets, when adjusted for the cost of processing dressed salmon into fillets, is less than the price of dressed salmon.

On July 1, 1997, the Association submitted further comments in response to the petitioners' arguments.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2] Therefore, we have examined the Association's arguments regarding the definition of the domestic like product in the petition in the context of the statutory provisions governing initiation and the facts of the record.

The Association's contention is based on an examination of like product determinations made in prior ITC cases, and follows an analysis of factors traditionally examined by the ITC. However, as noted above, the Department's analysis of like product is not bound by ITC practice. The Department's analysis begins with section 771(10) of the Act, which defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' After considering the information presented by the petitioner and the Association, we do not find that the petitioner's domestic like product definition is inconsistent with this statutory definition. While both parties have cited to various cases involving agricultural

[1] In this respect, the petitioners distinguish this case from the like product decisions in *Live Swine and Pork from Canada*, Inv. No. 701–TA–22 (Final), USITC pub. 2218 (September 1989).

[2] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 Fed. Reg. 32376, 32380–81 (July 16, 1991).

and other products, in light of the information presented in the petition, we have concluded that there is no basis on which to reject as clearly inaccurate the petitioners' representations that there are no clear dividing lines, in terms of characteristics or uses, between dressed and cut salmon. Therefore, we have adopted the single domestic like product definition set forth in the petition.

Having found that dressed and cut salmon constitute a single like product, we considered the Association's arguments that U.S. production of salmon cuts had not been accounted for in the petition's demonstration of industry support. The calculation of the standing ratio in the petition was based on a comparison of the volume of the petitioners' total 1996 production of dressed salmon to the volume of the industry's total 1996 production of dressed salmon. We have revised the petitioner's industry support calculations to add to the total U.S. domestic industry figure an amount representing the estimated economic value of U.S. fillet processing, in order to be as conservative as possible in our evaluation of industry support.

In order to factor fillet processing into our analysis, we used a value-based analysis. We determined that the calculation of industry support on the basis of weight is inappropriate because the further processing of dressed salmon into cuts involves significant weight yield loss. In this regard, we note that the Statement of Administrative Action (SAA) for the URAA explicitly provides that the Department may determine the existence of industry support based on the value of production. SAA at 862. For a further explanation of our inclusion of salmon processing in the total U.S. domestic industry figure, which served as the denominator in the industry support calculation, see the Initiation Checklist prepared for this case, dated July 1, 1997.

Having accounted for U.S. production of salmon cuts, we find that the production data provided in the petition indicate that the petitioners account for more than 50 percent of the total production of the domestic like product, thus meeting the requirements of section 732(c)(4)(A) of the Act. Since the petitioners exceed the industry support threshold, we have not taken the letters of opposition that were filed with the Association's June 27, 1997, submission into account in our determination of industry support.

Export Price and Normal Value

The petitioners calculated separate export prices for dressed Atlantic salmon (dressed salmon), fillets of Atlantic salmon (fillets), and steaks of Atlantic salmon (steaks).

For dressed salmon and fillets, the petitioners based export price on 1996 CIF price quotes to U.S. customers, as reported by the *Urner Barry* guide, an industry standard for seafood price quotes. The petitioners made deductions for foreign inland freight, international freight, and brokerage fees.

For steaks, the petitioners based export price on 1996 FOB Chilean export values derived from Chilean Customs Service statistics, because the *Urner Barry* guide does not track salmon steak. The petitioners made deductions for foreign inland freight.

With respect to normal value, the petitioners could not find specific data regarding the size of the Chilean domestic market for Atlantic salmon. However, they obtained statements from several sources, including the Chilean Salmon and Trout Producers Association and the U.S. Department of Agriculture, indicating that virtually all production of Chilean Atlantic salmon is exported. Given these statements, and the lack of information about the size of the Chilean domestic market, the petitioners turned to third country exports as the basis for normal value. The petitioners determined that Japan and Brazil are the largest third country markets, based on statistics taken from an export statistics bulletin published by the Chilean Government's Instituto de Fomento Pesquero (IFOP).

The petitioners obtained prices for exports to Japan and Brazil from the IFOP export statistics bulletin, but did not rely upon these prices for a price-to-price comparison of U.S. sales to third country sales. Instead, the petitioners alleged that sales in the third country markets of Japan and Brazil were made at prices below the fully allocated cost of production (COP), and cannot serve as the basis for normal value.

The petitioners calculated COP using data derived primarily from a consultant's report commissioned by the Alaska Department of Commerce and Economic Development, as well as from the financial statements of two Chilean fresh Atlantic salmon producers.

The Statement of Administrative Action (SAA), submitted to Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have ''reasonable grounds to believe or suspect'' that below cost sales have occurred before initiating such an investigation. ''Reasonable grounds'' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.*

Based on a comparison of the Japan and Brazil prices for fresh Atlantic salmon to the COP calculated in the petition, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation. We note, however, that if we determine that the home market (*i.e.*, Chile) is viable, our initiation of a country-wide cost investigation with respect to sales to Japan and Brazil will be rendered moot.

Since, as described above, we have found reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP, for purposes of this initiation we have accepted the use of CV as the basis for normal value.

The petitioners calculated CVs for dressed salmon, fillets, and steaks using the same cost of manufacturing, SG&A, and packing expense figures that were used to compute COP. Consistent with section 773(e)(2), the petitioners included profit in the calculation of CV, based on the financial statements of Chilean producers of fresh Atlantic salmon.

Fair Value Comparison

Based on the data provided by the petitioners, there is reason to believe that imports of fresh Atlantic salmon from Chile are being, or are likely to be, sold at less than fair value. The weighted-average dumping margin based on price-to-CV comparisons is 41.78 percent. If it becomes necessary at a later date to consider the petition as a source of facts available under section 776 of the Act, we may further review the margin calculations in the petition.

Initiation of Antidumping Investigation

We have examined the petition on fresh Atlantic salmon from Chile and have found that it meets the requirements of section 732 of the Act, including the requirement concerning allegation of material injury or threat of material injury to the domestic producers of a domestic like product by reason of subject imports allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of fresh Atlantic salmon from Chile are being, or are likely to be, sold in the United States at less than fair value. Our preliminary determination will be issued by November 19, 1997, unless the deadline for the determination is extended.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Chile. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation of this investigation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by July 28, 1997, whether there is a reasonable indication that imports of fresh Atlantic salmon from Chile are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: July 2, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18112 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: 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: Stainless Steel Bar from India.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or 482–1279, respectively.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to those published in the Code of Federal Regulations, April 1997, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTAL INFORMATION:

Background

On March 7, 1997, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India (61 FR 54774). The review covers one manufacturer/exporter of the subject merchandise for the period August 4, 1994 through January 31, 1996. The manufacturer/exporter is Isibars Limited (''Isibars'' or ''respondent''). The Department gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have found no basis to modify our preliminary results. Therefore, we have adopted the preliminary results of this review as the final results.

On May 1 and May 28, 1997, Isibars submitted untimely arguments and new factual information. We rejected these submissions on May 1, 1997, and June 4, 1997, respectively. On May 20, 1997, and June 9, 1997, respondent filed its objection to the Department's rejection of its submissions.

Scope of the Review

For purposes of this administrative review, the term ''stainless steel bar'' means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this administrative review is currently classifiable under subheadings 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Interested Party Comments

In accordance with 19 CFR 353.38, we gave interested parties an opportunity to comment. We received written comments from petitioners (Al Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp., Electralloy Corp., Republic Engineered Steels, Slater Steels Corp., Talley Metals Technology, Inc. and the United Steelworkers of America (AFL–CIO/CLC)) and the respondent.

Comment 1: Petitioners claim the Department used the wrong date of sale for the reported U.S. sales. They believe the material terms of sale changed significantly enough to warrant using the invoice date, instead of the purchase order date, as the date of sale. Petitioners allege that because the quantity shipped was different than the quantity ordered, the terms of sale changed and thus the invoice date should be viewed as the date of sale. According to petitioners, this change in quantity falls outside the delivery

allowance stipulated in the purchase order.

Isibars disagrees with petitioners' interpretation of the purchase order. Isibars asserts that this sale adhered to the essential terms set by the purchase order. Isibars says that price and quantity were set with the purchase order, the quantity ordered was delivered within the delivery allowance range and the customer paid for the order. Therefore, Isibars argues that the date of sale should be based on the purchase order date.

DOC Position: We agree with respondent. We have no basis for rejecting Isibars' characterization of this transaction, and we are using the purchase order date as the date of sale. The Department instructed Isibars to report date of sale as when the basic terms of sale are set. In this instance, the purchase order fulfills that criterion. We found no evidence in the course of this review suggesting that the essential terms of sale changed between the purchase order date and delivery. While the quantity specified in the purchase order differed from the quantity delivered to the customer, this variance was permitted in the terms of the purchase order. For further discussion of the Department's position, see the Memorandum from Team to Richard Moreland dated June 26, 1997.

Comment 2: Based on their claim that the appropriate date of sale is invoice date, petitioners argue that the Department did not use contemporaneous sales in the home market to calculate normal value. If the Department agrees that the date of sale should be based on the invoice date, the Department must use ''facts available'' for determining the extent of dumping because the invoice date falls outside the period for the information provided by respondent about the comparison market.

DOC Position: As discussed in response to Comment 1, above, we have determined that the purchase order date is the appropriate date of sale. Therefore, there is no need to resort to facts available.

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period August 1, 1994 through January 1, 1996:

Manufacturer/exporter	Margin
Isibars	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturer/exporter subject to this review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, 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 investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established 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 or the original investigation, the cash deposit rate will be the ''all others'' rate of 12.45 percent established in the final determination of sales at less than fair value. (59 FR 66915, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(2)(B) of the Tariff Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h), and this notice is published in accordance with section 777(i)(1) of the Tariff Act.

Dated: July 2, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18113 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970702162–7162–01]

International Buyer Program (Formerly Known as the Foreign Buyer Program); Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and Call for Applications for the FY 1999 International Buyer Program (October 1, 1998, through September 30, 1999).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's International Buyer Program (IBP) to support domestic trade shows: Selection in the International Buyer Program for Fiscal Year (FY) 1999.

The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance to U.S. companies interested in exporting such as export counseling and market analysis. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the Commercial Service of the Commerce Department in 69 countries representing America's major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices.

The Commercial Service expects to select approximately 24 shows for FY 1999 from among applicants to the program. Successful applicants will be required to enter into a Memorandum of

Understanding (MOU) with the Commercial Service that sets forth the specific actions to be performed by the show organizer and the Commercial Service. The MOU constitutes a participation agreement between the Commercial Service and the show organizer specifying which services are to be rendered by the Commercial Service as part of the IBP and, in turn, what responsibilities are agreed to be performed by the show organizer. Anyone wishing to apply will be sent a copy of the MOU along with the application package.

DATES: Applications must be received by August 25, 1997.

ADDRESSES: Export Promotion Services/International Buyer Program, The Commercial Service, International Trade Administration, U.S. Department of Commerce, Room 2116, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–0481 (Facsimile applications will not be accepted.)

FOR FURTHER INFORMATION ON WHEN, WHERE, AND HOW TO APPLY: Contact Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, The Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–0481 or Fax: (202) 482–0115.

SUPPLEMENTARY INFORMATION: The Commercial Service, International Trade Administration (ITA), of the U.S. Department of Commerce is accepting applications for the International Buyer Program (IBP) for events taking place between October 1, 1998, and September 30, 1999. A contribution of $6,000 is required for each show selected by the IBP for inclusion in the FY99 program.

Under the IBP, the Commercial Service seeks to bring international buyers together with U.S. firms by selecting domestic trade shows in industries with high export potential and promoting them in international markets. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12-month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 24 events to support during this 12-month period. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's objectives and selection criteria mentioned below.

Selection indicates that the Commercial Service has found the event to be a leading domestic trade show appropriate for promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of the show's success. Selection is not an endorsement of the show organizer except as to its International Buyer Program activities. Non-selection should not be viewed as an indication that the event will not be successful in the promotion of U.S. exports.

EXCLUSIONS: Trade shows will not be considered that are either first-time or horizontal (non-industry specific) events. Annual trade shows will not be selected for this program more than twice in any three-year period (e.g., shows selected for fiscal years 1997 and 1998 are not eligible for inclusion in this program in fiscal year 1999, but can be considered in subsequent years).

GENERAL SELECTION CRITERIA: Subject to the Departmental budget and resource constraints, those events will be selected that, in the judgment of the Commercial Service, most clearly meet the following criteria:

(a) Export Potential: The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our overseas posts in their Country Commercial Guides.)

(b) International Interest: The trade show meets the needs of a significant number of overseas markets covered by the Commercial Service of the United States of America and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g., best prospects lists).

(c) Scope of the Show: The trade show offers a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of U.S. firms will be given preference.

(d) Stature of the Show: The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or services in that industry.

(e) Exhibitor Interest: There is a demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) Overseas Marketing: There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) Logistics: The trade show site, facilities, transportation services and availability of accommodations conform to the expected norms of an international-class trade show.

(h) Cooperation: The applicant demonstrates a willingness to cooperate with the Commercial Service of the United States of America to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the event timetable, both of which are available from the program office.

Past experience in the IBP will be taken into account in evaluating current applications to the program.

The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625–0151. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625–0151), Washington, DC 20503.

Authority: 15 U.S.C. 4724.

John Klinglehut,

Director, Office of Public/Private Initiatives, The Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 97–18121 Filed 7–9–97; 8:45 am]

BILLING CODE 3310–25–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Meeting to Announce an Opportunity to Collaborate With the National Institute of Standards and Technology (NIST) in a Program to Commercialize NIST's Transition-Edge-Sensor (TES) X-Ray Microcalorimeter Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology invites interested parties to attend a meeting on August 8, 1997 to discuss the commercialization of NIST's transition-edge-sensor (TES) x-ray microcalorimeter technology. This is not a grant program.

The objectives of the meeting are: (1) Brief industry on the current status of NIST's microcalorimeter technology (to include a laboratory tour); (2) Discuss potential commercialization paths for the TES x-ray microcalorimeter technology involving US manufacturers, including: nonexclusive licensing with multiple companies, exclusive licensing with a single company, co-exclusive licensing with a limited number of companies, informal NIST/industry collaboration, cooperative research and development agreements (CRADAs), and industry consortia.

DATES: The meeting will take place on August 8, 1997, beginning at 10:00 a.m., Mountain Time.

ADDRESSES: The meeting will take place at NIST's Boulder, Colorado, facilities: Room 1107, 325 Broadway, Boulder, CO, 80303. Inquiries should be sent to Building 820, Room 213, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ernest R. Graf, Telephone: 301–975–2870; FAX: 301–869–2751; E-mail: egraf@nist.gov.

SUPPLEMENTARY INFORMATION: NIST's mission concerning its microcalorimeter technology is to provide to US manufacturers the methods and basic understanding that they need to provide and prove world leadership in performance, metrology, and quality of their products. The NIST microcalorimeter is in many ways superior to other low-temperature x-ray detectors. The current performance of the NIST microcalorimeter in terms of resolution, count rate, and collection solid angle makes it appropriate to consider commercialization.

There are currently four NIST patents/patent applications that are related to the microcalorimeter. At the August 8, 1997 meeting NIST will also discuss other patented technology necessary for the commercialization of the microcalorimeter. International patent protection is possible on the third and fourth NIST inventions described below.

(1) ''Particle Calorimeter with Normal Metal Base Layer;'' US Patent No. 5,634,718; issued June 3, 1997; NIST Docket No. 94–005; noticed in the **Federal Register** as available for licensing on March 22, 1995. The patent describes the use of a normal metal absorber in a microcalorimeter, which gives significant advantages in increased detector speed and uniformity. Other claims in the patent are use of a normal metal absorber in measuring energy events with particles or photons other than x-rays, and construction using a thermally insulating membrane, normal metal superconductor (NS) contacts for thermal isolation, normal metal insulator superconductor (NIS) tunnel junctions, superconducting quantum interference device (SQUID) readout, ridge structures for fast heat diffusion, multiple temperature sensors for position readout and greater uniformity, and electronic heat pulses for calibration. This patent covers many aspects of our microcalorimeters based on transition edge sensors.

(2) ''Superconducting Transition Edge Sensor;'' filed in August 26, 1996; NIST Docket No. 96–033; noticed in the **Federal Register** is available for licensing on May 8, 1997. The invention describes a reliable and manufacturable method of producing a superconducting film with a transition temperature that is tunable and in the range of interest (from approximately 50 to 300 mK.) The superconducting components to the bilayers are Al and Ti. Al-based bilayers are readily manufacturable, produce reproducible transition temperatures, can be readily incorporated with microfabrication technology, and have great advantages over other superconductors for this application.

(3) ''Microcalorimeter X-ray Detectors with X-ray Lens;'' filed March 5, 1997; NIST Docket No. 96–034; jointly owned with X-ray Optical Systems, Inc. The invention describes the combined use of polycapillary optics with microcalorimeter detectors. The invention enables present-day microcalorimeter spectrometers with areas under 0.1 mm^2 to have collection solid angles that are large enough for many practical applications. Although the construction of larger area detectors without capillary optics may be possible in the future, the use of x-ray optics has fundamental advantages because they enable the use of small detectors, which consequently have faster count rates and higher resolution.

(4) ''Improved Mechanical Support for Two Pill Adiabatic Demagnetization Refrigerators,'' to be filed in July 1997; NIST Docket No. 96–035. The invention mainly describes a practical implementation of dual Kevlar™ string mechanical supports that are needed in a two pill refrigerator. We believe this invention makes the supports easier to manufacture, assemble, and maintain in the field.

NIST anticipates that a challenge to the manufacturers of the above technology will be to understand, design, and manufacture the sub-systems that are necessary to make the system operate; the patents themselves will not provide all the information needed.

Because the manufacturers may not be familiar with the technologies' underlying subsystems, such as the infrared blocking x-ray filters, adiabatic demagnetization refrigerator (ADR) construction, ADR control electronics, SQUID electronics readout, and detector manufacture and mounting, NIST offers the opportunity for a close working relationship to utilize NIST expertise to speed commercialization.

Dated: July 3, 1997.

Elaine Bunten-Mines,

Director, Program Office, The National Institute of Standards and Technology.

[FR Doc. 97–18118 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062797B]

Endangered Species; Permits

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

ACTION: Issuance of modifications 3 and 4 to incidental take permit 844 (P503I).

SUMMARY: Notice is hereby given that NMFS has issued modifications to a permit to the Idaho Department of Fish and Game at Boise, ID (IDFG) that authorizes an incidental take of Endangered Species Act-listed species during sport-fishing activities, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for

review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modifications to a permit were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 27, 1997 (62 FR 14672) that an application had been filed by IDFG for modification 3 to incidental take permit 844 (P503I). Modification 3 to permit 844 was issued to IDFG on May 21, 1997. Permit 844 authorizes IDFG an incidental take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and adult, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the State of Idaho's sport-fishing activities. For modification 3, IDFG is authorized an increase in the incidental take of adult, threatened, unmarked, naturally-produced, Snake River spring/summer chinook salmon associated with the sport fisheries on the Little Salmon River and the Clearwater River in Idaho. The fisheries in these watersheds target adult, non-listed, fin-clipped, hatchery-produced, spring and summer chinook salmon. As stated in its amended Conservation Plan, IDFG will maintain efforts to minimize the impacts to ESA-listed fish, including public information efforts, biological monitoring, and enforcement. Modification 3 is valid in 1997 only.

Notice was published on May 5, 1997 (62 FR 24421) that an application had been filed by IDFG for modification 4 to incidental take permit 844 (P503I). Modification 4 to permit 844 was issued to IDFG on June 17, 1997. For modification 4, IDFG is authorized an incidental take of unmarked residual, ESA-listed, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a kokanee fishery in Redfish Lake in Idaho from the date of issuance until August 7, 1997. The purpose of the fishery is to reduce the kokanee population in Redfish Lake because kokanee are a direct competitor with captive-brood sockeye salmon for habitat and food. IDFG have amended the Conservation Plan for this permit by outlining a monitoring strategy of the potential take of ESA-listed species resulting from the Redfish Lake kokanee fishery. The amended Conservation Plan includes the scheme that anglers will be directed to avoid harvesting fish marked with external hatchery indications. Modification 4 is valid in 1997 only. Permit 844 expires on April 30, 1998.

Issuance of the modifications to a permit, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permit, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: July 2, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–18116 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062597C]

Red Drum Fishery and Reef Fish Resources of the Gulf of Mexico

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Joe Hendrix on behalf of SeaFish Mariculture, L.L.C., San Antonio, Texas (applicant). If granted, the EFP would authorize a feasibility study of net cage culture of finfish associated with offshore oil and gas platforms in the northern Gulf of Mexico.

DATES: Written comments must be received on or before August 11, 1997.

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

The application and related documents are available for review upon written request to the address above.

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

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745, concerning ''Scientific research activity, exempted fishing permits, and exempted educational activity.''

According to the applicant, the purpose of the proposed study is to determine whether it is feasible to grow commercial quantities of native fish species in the offshore environment of the Gulf of Mexico using aquaculture techniques. The applicant proposes to place hatchery-raised juvenile fish in net cages attached to offshore platforms, feed them, allow them to grow for approximately 12 months, harvest them from the cages, land them in Texas, and sell them. No wild-caught fish will be involved in this study.

The proposed study involves activities otherwise prohibited by regulations implementing the Fishery Management Plans for the Red Drum Fishery and the Reef Fish Fishery of the Gulf of Mexico (FMPs). The applicant requires authorization to harvest, possess, and sell red drum (*Sciaenops ocellata*), greater amberjack (*Seriola dumerili*), and red snapper (*Lutjanus campechanus*) taken from Federal waters of the Gulf of Mexico. In addition, authorization is required to possess or sell greater amberjack or red snapper below the minimum size limit, and to harvest or possess red snapper in excess of established trip limits and/or during a closed season.

The applicant also intends to use dolphin (*Coryphaena hippurus*), Florida pompano (*Trachinotus carolinus*), and southern flounder (*Paralichthys lethostigma*) in offshore aquaculture operations. Florida pompano and southern flounder are not subject to Federal fishery management in the Gulf of Mexico. Dolphin are included under a Federal fishery management plan for coastal migratory pelagic resources, but no plan management measures restrict possession, harvest, or sale of dolphin in Federal waters of the Gulf of Mexico.

The applicant is also applying to the Texas Parks and Wildlife Department for authorization to land and sell these species in Texas.

The applicant proposes to place hatchery-raised juvenile fish (fingerlings) in 3 cages attached to oil and gas platforms operated by Shell Offshore Services, Inc., and located approximately 48 nautical miles (nm) south-southwest of Freeport, TX. The cages measure 76–129 feet (23–39 m) in diameter and will contain a maximum fish biomass of 852,000 lb (386,461 kg).

The site is about 40 nm offshore and the depth of the water at the site is 132 ft (40 m).

The fish will be monitored and fed commercially available fish pellets by a crew of technicians living on the platforms. Observations will be made of resident fish and invertebrate populations in the vicinity of the cages to assess the impact of the project. Additionally, the applicant intends to monitor disease occurrences, water and substrate quality, and possible endangered species interactions. Details of the applicant's monitoring plans are available in the application and associated correspondence (See **ADDRESSES**).

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with Texas, Louisiana, Mississippi, Alabama, Florida, the Gulf of Mexico Fishery Management Council (Council), and the U.S. Coast Guard.

Public comments are specifically requested on: The scope of potential environmental impacts of the proposal on cultured species, such as genetic dilution, habitat alteration, or disease introductions; protected species interactions; sediment quality; and water quality, including possible accumulations of chemotherapeutants such as antibiotics. Enforcement of existing prohibitions on taking of red drum, greater amberjack, and red snapper may also be affected by the proposal. The EFP may contain conditions needed to mitigate potential impacts on the cultured species and the habitats of the northern Gulf of Mexico and measures to facilitate enforcement.

The applicant requests a 26-month effective period for the EFP to accommodate two complete growout cycles (i.e., growouts from fingerlings to marketable products). Once preliminary results of the study are available, the applicant intends to ask the Council to amend the FMPs to accommodate longterm or permanent uses of red drum and reef fish in commercial offshore aquaculture operations.

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

Dated: July 2, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18115 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing import limits and Guaranteed Access Levels.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for special shift and swing.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels (GALs) for certain textile products.

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 62 FR 66263, published on December 17, 1996). Also see 61 FR 65375, published on December 12, 1996.

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 7, 1997.

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 6, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 10, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/638	872,300 dozen.
339/639	965,642 dozen.
342/642	491,793 dozen
351/651	1,027,597 dozen.
433	22,898 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Guaranteed Access Levels (GALs) for Categories 342/642, 351/651 and 433 remain unchanged. You are directed to increase the current GALs for the following categories:

Category	Guaranteed Access Level
338/638	3,150,000 dozen.
339/639	3,150,000 dozen.
347/348/647/648	8,550,000 dozen.
444	70,000 numbers.
633	160,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–18208 Filed 7–8–97; 11:27 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

July 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased by five percent additional allowance for 100 percent cotton garments of handloomed fabrics.

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 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

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 3, 1997.

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 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 11, 1997, you are directed to increase 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 level [1]
334/634	136,194 dozen.
335/635	606,337 dozen.
336/636	844,255 dozen.
340/640	1,953,620 dozen.
342/642	1,227,833 dozen.
347/348	586,612 dozen.
351/651	259,540 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

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. 97–18050 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

July 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 336/636/836 is being increased for special shift, reducing the limit for Categories 342/642/842 to account for the increase.

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 61 FR 66263, published on December 17, 1996). Also see 61 FR 68246, published on December 27, 1996.

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 3, 1997.

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 20, 1996, 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 Sri Lanka and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on July 11, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
336/636/836	411,094 dozen.
342/642/842	674,134 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

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.97–18049 Filed 7–9–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: July 21 1997 (800 a.m. to 1600), July 22 1997 (800 a.m. to 1200).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 241–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: June 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17968 Filed 7–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Task Force on Defense Reform

ACTION: Notice.

SUMMARY: Notice is hereby given of a meeting of the Task Force on Defense Reform (the Task Force). Due to a revision in the schedule, the previously announced closed meeting on this date is now open to the public. The purpose of the meeting is to meet with the labor unions representing federal employees in DoD. This notice is less than the customary fifteen days since it is critical that the Task Force meet with union representatives as soon as possible to obtain their views.

The Task Force was recently established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in the Department of Defense, with emphasis on the Office of the Secretary of Defense, the Defense Agencies and the DoD Field Activities, and the military departments.

The closed meeting scheduled for July 31 has been canceled.

DATE: Tuesday, July 15, 1997, at 1:00 p.m.

ADDRESS: Room 3E928, the Pentagon, Washington DC. Seating is limited. Must call Ms. Jeanne Taylor at the number listed in **FOR FURTHER INFORMATION** section below to arrange for access to Pentagon.

FOR FURTHER INFORMATION: Contact Ms. Jeanne Taylor, Task Force on Defense Reform, Room 3C965, Pentagon, Washington, DC 20301, Telephone: (703) 614–7522. Interested parties should call Ms. Taylor before 10:00 a.m., Tuesday, July 15, 1997.

Dated: July 3, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17966 Filed 7–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Innovative Support Structure, Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Innovative Support Structure, Phase II will meet in closed session on July 22, 1997 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will participate in an advisory capacity to the Infrastructure Panel Chairman, Quadrennial Defense Review, and provide appropriate analysis and inputs to the Infrastructure Panel deliberations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)) it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: July 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17969 Filed 7–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine of the Future

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Submarine of the Future will meet in closed session on July 14, 1997 at Electric Boat Shipyard, Groton, Connecticut. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the nation's need for attack submarines in the 21st Century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 31, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17970 Filed 7–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DoD).

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance (SES) Review Board (PRB) for the OIG, DoD, as required by 5 U.S.C. 4314 (c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Deputy Director for Operations, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Management, OIG, DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 604–9716.

Charles W. Beardall—Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, OAIG–P&O
C. Frank Broome—Director, Office of Departmental Inquiries
Donald E. Davis—Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG–P&O
William G. Dupree—Assistant Inspector General for Investigations
Thomas F. Gimble—Director, Readiness and Operational Support, OAIG–Auditing
Paul J. Granetto—Director, Contract Management, OAIG–Auditing
Michael G. Huston—Director, Audit Planning and Technical Support, OAIG–Auditing
John F. Keenan—Deputy Assistant Inspector General for Investigations
Joel L. Leson—Deputy Assistant Inspector General for Administration and Information Management
Robert J. Lieberman—Assistant Inspector General for Auditing
Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management
Donald Mancuso—Deputy Inspector General
Russell A. Rau—Assistant Inspector General for Policy and Oversight
David K. Steensma—Deputy Assistant Inspector General for Auditing
Shelaton R. Young—Director, Logistics Support, OAIG–Auditing
Stephen A. Whitlock—Special Assistant for Ethics and Internal Programs, OAIG–A&IM
Richard B. Calahan—Deputy Inspector General, Department of Treasury
Raymond J. DeCarli—Deputy Inspector General, Department of Transportation
Joyce Fleischman—Deputy Inspector General, Department of Agriculture
Mark Johnson—Deputy Inspector General, Department of State

Dated: July 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–17967 Filed 7–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date: July 17, 1997.
Time: 1:00 p.m. (closed) (et).
Location: National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On July 17, 1997 between the hours of 1:00—2:30 p.m. the Executive Committee of the National Assessment Governing Board will hold a teleconference meeting. The purpose of this meeting is to establish the agenda for the August 1–2, 1997 meeting of the Governing Board. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: July 7, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–18068 Filed 7–9–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(SD)–1 for the transfer of 21,000 kilograms of heavy water from Switzerland to Canada for detritiation and subsequent use by Ontario Hydro.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on July 3, 1997.

Edward T. Fei,

Acting Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–18101 Filed 7–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at jcasselb@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–902, ''Annual Geothermal Heat Pump Manufacturers Survey''.
2. Energy Information Administration; No current OMB number; New collection; Mandatory.
3. EIA–902 is designed to collect information on the emerging domestic geothermal heat pump industry. The economics of geothermal heat pumps have improved in recent years and the pumps are more competitive with conventional heating, cooling, and water heating systems. Data collected will be from U.S. geothermal heat pump manufacturers. The data will be used by DOE , the heat pump industry, and the public. The data will also be published.
4. Business or other for-profit.
5. 160 hours (4 hours x 1 response per year x 40 respondents).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., July 3, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–18102 Filed 7–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3386–000]

Arizona Public Service Company; Notice of Filing

July 3, 1997.

Take notice that on June 3, 1997, Arizona Public Service Company tendered for filing an amendment to the Service agreements for umbrella type Non-Firm Point-to-Point and Short-Term Firm Transmission Service under APS' Open Access Transmission Tariff.

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 385.215). All such motions or protests should be filed on or before July 14, 1997. 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. 97–18038 Filed 7–09–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on July 1, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets listed in Appendix A to the filing and certain pro forma tariff sheets listed in Appendix B to the filing. CNG proposes that the Appendix A tariff sheets become effective August 1, 1997, and that the Appendix B tariff sheets become effective prospectively upon Commission approval.

CNG states that the proposed general rate case changes will increase jurisdictional revenues by approximately $71.1 million based upon a 12-month period ended March 31, 1997, adjusted for changes that are known and measurable and that will become effective during the nine-month test period ending December 31, 1997. CNG states that the principal factors supporting the adjustment in rates are an increase in rate base due to additional plant investment, increases in operation and maintenance expenses, an increase in the return allowance on the company's rate base, an increase in the depreciation rate for the company's computers, and increases in other taxes.

CNG states that its filing is an integrated package of tariff changes, service enhancements, and pricing mechanisms that are designed to better serve CNG's customers in a competitive marketplace.

CNG proposes prospectively to implement market based pricing on its

system for all services under Rate Schedules IT and MCS and under a new rate schedule, Rate Schedule MBA. CNG proposes to provide firm transportation and storage service at market based prices under Rate Schedule MBA, in conjunction with Rate Schedules FT, GSS, GSS–II, and OSS for new contracts under those rate schedules with a primary term of less than five years (i.e., all new contracts for firm services under these rate schedules with a term of less than five years and all extensions or roll-overs of existing contracts with a term of less than five years). Thus, CNG states that it does not propose to implement market based rates for the primary term of existing long-term agreements. CNG does propose to implement market based prices for all short-term services (i.e., short-term firm transportation service, and services under Rate Schedules IT and MCS) immediately upon Commission approval.

CNG states that copies of the filing have been served upon its affected customers and interested State Commissions.

Any person desiring to be heard or to protest this 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 in accordance with Section 154.210 of the Commission's Regulations. Protests will 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. 97–18011 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–167–005]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 30, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following change effective August 1, 1997:

Third Revised Sheet No. 456

Columbia states that this filing is being made to comply with the Letter Order of the Commission dated June 11, 1997, in which the Commission directed Columbia to file a separate tariff sheet at least 30 days prior to August 1, 1997, to incorporate GISB Standard 4.3.6 by reference. Columbia is also correcting a typographical error in the listing of the GISB Standards incorporated by reference in Sheet No. 456 to reflect accurately that GISB Standard 4.3.14, Version 1.0, will be complied with. This standard was incorrectly referred to as ''4.3.4''.

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 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. 97–18020 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–166–006]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 30, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, effective August 1, 1997:

First Revised Sheet No. 286

Columbia Gulf states that this filing is being made to comply with the Letter Order of the Commission dated June 11, 1997, in which the Commission directed Columbia Gulf to file a separate tariff sheet at least 30 days prior to August 1, 1997, to incorporate GISB Standard 4.3.6 by reference.

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 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. 97–18021 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–145–004]

Crossroads Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 25, 1997, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Tariff Sheet No. 76.1. Crossroads asserts that this filing is being made to comply with the letter order of June 18, 1997, which accepted Tariff Sheet No. 76.1 for filing and directed that it be refiled at least 30 days before the August 1, 1997 effective date.

Crossroads states that the purpose of its filing is to reflect changes to its tariff to implement as of August 1, 1997 the Internet Web Standards approved by the Gas Industry Standards Board and incorporated into the Commission's regulations.

Crossroads states further that copies of the filing were served on its current firm and interruptible customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules and Regulations 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 in this proceeding, but will not

serve to make protestants parties to the proceeding. Copies of Crossroads' filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18022 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–29–001]

Distrigas of Massachusetts Corporation; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 30, 1997, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing, in accordance with the letter order issued in this proceeding on June 19, 1997, a compliance sheet to its FERC Gas Tariff, First Revised Volume No. 1.

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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with 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. 97–18036 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3190–000]

Florida Keys Electric Cooperative Association, Inc.; Notice of Filing

July 3, 1997.

Take notice that on June 26, 1997, Florida Keys Electric Cooperative Association, Inc. tendered for filing a letter requesting to withdraw the above-referenced docket.

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 3855.214). All such motions or protests should be filed on or before July 16, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–18044 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–104–004]

Kentucky West Virginia Gas Company L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 30, 1997, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1997:

Second Revised Sheet No. 164
Second Revised Sheet No. 165

Kentucky West states that the purpose of this filing is to comply with the Commission's June 25, 1997 in the captioned docket, and to implement the Internet Web Page standards which were adopted in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should 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. 97–18024 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3053–000]

Keystone Energy Services, Inc.; Notice of Issuance of Order

July 7, 1997.

Keystone Energy Services, Inc. (Keystone) submitted for filing with the Commission a rate schedule under which Keystone will engage in wholesale electric power and energy transactions as a marketer. Keystone also requested waiver of various Commission regulations. In particular, Keystone requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Keystone.

On June 26, 1997, 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 Keystone 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, Keystone is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 Keystone'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 July 28, 1997. 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. 97–18094 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–016]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 30, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of this FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective July 1, 1997:

Eleventh Revised Sheet No. 29

Koch states that the proposed changes to this tariff sheet reflects the removal of three recently expired negotiated rate agreements.

Koch also states that this filing has been served upon all parties on the official service list compiled by the Secretary in 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 Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18028 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2763–000]

Logan Generating Company, L.P.; Notice of Filing

July 3, 1997.

Take notice that on June 18, 1997, Logan Generating Company, L.P. tendered for filing an amendment in the above-referenced docket.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 16, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–18045 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–59–005]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 26, 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 1997:

Sub Original Sheet No. 233
Sub Original Sheet No. 243

Midwestern states that the revised tariff sheets set forth the revisions to Midwestern's pro forma Electronic Data Interchange Trading Partner Agreement as required by the Commission's June 16, 1997 Order on Compliance Filing in the above-referenced dockets (June 16 Order). Midwestern Gas Transmission Company, 79 FERC ¶ 61,350 (1997). In accordance with the June 16 Order, Midwestern requests that these tariff sheets be deemed effective June 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 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 this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18026 Filed 7–9–97; 8:45 am]

BILLING CODE 6716–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–13–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 3, 1997.

Take notice that on June 30, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Fourth Revised Sheet No. 5A, with a proposed effective date of July 1, 1997.

National states that pursuant to Article I, Section 4, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 12.87 cents per dth.

Under Article II, Section 2, of the approved settlement, National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG Rate of 9 cents per dth.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed in accordance with 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18010 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–402–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 30, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective July 30, 1997.

National Fuel states that the purpose of this filing is to submit tariff sheets reflecting National Fuel's replacement of its Electronic Bulletin Board (EBB) with its Internet Web Site (required by Order No. 587–C). The instant filing includes new GT&C Section 9, entitled Web Site, replacing current GT&C Section 9, entitled Electronic Bulletin Board. It is further indicated that the filing replaces references to National Fuel's EBB with references to its Web Site.

National Fuel states that it is serving copies of this filing with its firm customers 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, D.C. 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 in accordance with 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. 97–18015 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3042–000]

Nevada Power Company; Notice of Filing

July 3, 1997.

Take notice that on June 16, 1997, Nevada Power Company (Nevada Power) tendered for filing a proposed revised price sheet to the Purchased Power Agreement Between the Colorado River Commission (CRC) and Nevada Power Company (Exhibit A) having a proposed effective date of June 1, 1997. The signed contract was not included in that filing. The purpose of this filing is to include the signed contract.

Exhibit A provides for an increase in rates to the CRC and an increase in the maximum on-peak firm capacity take for the period June 1, 1997 to May 31, 1998.

Copies of this filing have been served on the CRC and the Nevada Public Service Commission.

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 July 15, 1997. 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. 97–18041 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–609–000]

Northern Natural Gas Company; Notice of Application

July 3, 1997.

Take notice that on June 27, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP No. CP97–609–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by sale to Western Gas Resources, Inc. (WGR), certain compression and treating facilities, with appurtenances, located in Pecos County, Texas (Mitchell facilities), and the services rendered thereby. In addition, Northern requests permission and approval to abandon, by removal, units #5 and #6 at the Mitchell plant yard, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the Mitchell compressor station consists of 6 compressor units totaling 9,512 horsepower. Northern proposes to abandon, by sale to WGR, compressor units #1–4 totaling 5,062 horsepower and treating facilities, with appurtenances. Northern states that such facilities will be conveyed to WGR for $2,928,895. In addition, Northern proposes to abandon, by removal, compressor units #5 and 6 totaling 4,450 horsepower.

Northern states that WGR currently owns gathering facilities connected to the Mitchell facilities. Northern further states that the Mitchell facilities, if owned and operated by WGR, would provide an opportunity for WGR to more efficiently control its gathering operations in the area. In addition, Northern states that WGR intends to file a petition for declaratory order seeking a determination that the subject Mitchell facilities, once conveyed to WGR, are gathering facilities exempt from the Commission's jurisdiction under NGA section 1(b).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR

157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18047 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3346–000]

Pennsylvania Power & Light Company; Notice of Filing

July 3, 1997.

Take notice that on June 2, 1997, Pennsylvania Power & Light Company (PP&L) tendered for filing copies of its fully executed Service Agreement between PP&L and Federal Energy Sales Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 14, 1997. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18039 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3463–000]

PJM Interconnection Association; Notice of Filing

July 3, 1997.

Take notice that on June 27, 1997, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection, L.L.C., tendered for filing tariff sheets to modify certain limited aspects of its currently effective open access transmission tariff in order to eliminate the provisions allowing for the redispatch of generating resources for non-firm transmission service.

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 July 16, 1997. 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 available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18037 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT97–9–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 27, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to be effective August 1, 1997:

Fourth Revised Sheet No. 289

Sabine states that the revised tariff sheet reflects a change in operating personnel shared by Sabine and its affiliated marketing company.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 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. 97–18034 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–138–004]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1997.

Take notice that on June 26, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets set forth on Appendix B to the filing in compliance with the

Commission's Order No. 587–C to become effective August 1 and November 1, 1997.

SGPC states the purpose of the filing is to comply with the letter order issued on June 12, 1997, in Docket No. RP97–138–003, whereby SGPC was directed to file actual tariff sheets at least 30 days prior to the proposed effective dates of August 1 and November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with 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. 97–18023 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–403–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

July 3, 1997.

Take notice that on June 30, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 1997:

Tariff Sheets Applicable to Contesting Parties

Twenty Eighth Revised Sheet No. 14
Forty Ninth Revised Sheet No. 15
Twenty Eighth Revised Sheet No. 16
Forth Ninth Revised Sheet No. 17
Twenty Seventh Revised Sheet No. 18

Tariff Sheets Applicable to Settling Parties

Fifteenth Revised Sheet No. 14a
Twenty First Revised Sheet No. 15a
Fifteenth Revised Sheet No. 16a
Twenty First Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to an increase in FERC interest rate effective July 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

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 Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18014 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–376–001]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

July 3, 1997.

Take notice that on June 30, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet with the proposed effective date of June 1, 1997:

Substitute Thirty Second Revised Sheet No. 29

Southern submits the revised tariff sheet to its FERC Gas Tariff, Seventh Revised Volume No. 1, to correct a typographical error in Thirty Second Revised Sheet No. 29.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

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 of Practice and Procedure. All such protests should be filed in accordance with 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18016 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–54–000]

Southern Natural Gas Company; Notice of Refund Report

July 3, 1997.

Take notice that on June 30, 1997 Southern Natural Gas Company (Southern) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report reflecting its refund of certain amounts to its eligible firm shippers. These amounts represent a follow-through of refunds received from the Gas Research Institute (GRI). The report states that Southern refunded $1,969,721 to its eligible shippers on June 18, 1997, which represents the amount received from GRI as required by the Commission's Order dated February 22, 1995.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1997. 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18035 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–177–004]

Steuben Gas Storage Company; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 30, 1997 Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 154, to be effective August 1, 1997.

Steuben states that the attached tariff sheet is being filed in compliance with the Commission's Order at Docket No. RP97–177–002 issued on June 25, 1997. Steuben states that the filing removes the GISB standards related to the Electronic Delivery Mechanisms and Electronic Data Interchange. Steuben was granted an extension of time to comply with these standards.

Steuben states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring 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 Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with 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. 97–18019 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–404–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 3, 1997.

Take notice that on June 30, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 60. The proposed effective date of such tariff sheet is August 1, 1997.

Transco states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover: (i) The cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms), and (ii) the related cost of transporting such gas.

Transco states that the revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 1997 through July 31, 1998 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 1997.

Transco further states that included in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0010 per dt reflected on the tariff sheet included therein.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 835.214 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. 97–18013 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–6–007]

Trunkline Gas Company; Notice of Compliance Filing

July 3, 1997.

Take notice that on June 26, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1997:

Ninth Revised Sheet No. 157 Original Sheet No. 157A
First Revised Sheet No. 186
Third Revised Sheet No. 198
First Revised Sheet No. 242A

Trunkline asserts that the purpose of this filing is to comply with the Commission's Letter Order dated June 11, 1997 to incorporate into its Tariff Standard 4.3.6 promulgated by the Gas Industry Standards Board and adopted by the Commission in Order No. 587–C in Docket No. RM96–1–004, Standards for Business Practices of Interstate Natural Gas Pipelines.

Trunklin 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, N.E., 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. 97–18027 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3306–000]

UTIL Power Marketing, Inc.; Notice of Filing

July 3,1997.

Take notice that on June 5,1997, UTIL Power Marketing, Inc. (UTIL), tendered for filing an application for authority to charge market-based rates and for certain waivers and blanket approvals.

Any person desiring to be heard or 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 July 14, 1997. 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. 97–18042 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3125–000]

Utilicorp United Inc.; Notice of Filing

July 3, 1997.

Take notice that on June 18, 1997, Utilicorp United Inc. tendered for filing an amendment in the above referenced docket.

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 385.214). All such motions or protests should be filed on or before July 16, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–18040 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3217–000]

UtiliCorp United Inc.; Notice of Filing

July 3, 1997.

Take notice that on June 25, 1997, UtiliCorp United Inc. supplemented its filing in the above-captioned docket.

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 385.214). All such motions or protests should be filed on or before July 16, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–18043 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2275–000]

Virginia Electric and Power Company; Notice of Filing

July 3, 1997.

Take notice that on June 23, 1997, Virginia Electric and Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protect 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 July 14, 1997. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18046 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2592–000]

Watts Works, L.L.C.; Notice of Issuance of Order

July 7, 1997.

Watts Works, L.L.C (Watts Works) submitted for filing with the Commission a rate schedule under which Watt Works will engage in wholesale electric power and energy transactions as marketer. Watt Works also requested waiver of various Commission regulations. In particular, Watt Works requested that the Commission grant blanket approval under 18 CFR Part 34 of all futures issuance of securities and assumptions of liability by Watt Works.

On June 24, 1997, 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 issuance of securities or assumptions of liability by Watt Works 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, Watt Works is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 Watt Works' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is July 24, 1997. 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. 97–18095 Filed 7–9–97; 8:45 am]

BILLING CODE 7617–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–405–000]

Williams Natural Gas Company; Notice of Refund Report

July 3, 1997.

Take notice that on June 30, 1997, Williams Natural Gas Company (WNG) tendered for filing a report of refunds made to customers on June 30, 1997.

WNG states that pursuant to Article 14.1 of its FERC Gas Tariff, Second Revised Volume No. 1, it is refunding to customers the balance in its Account No. 191 as of June 30, 1997. Article 14.1 states that WNG will refund, with interest, any amounts WNG receives which would be credited to WNG's unrecovered purchased gas cost account, applicable to periods prior to the effective date of Article 14.1, but which are recorded after such effective date. The amounts refunded are to be allocated to all customers under rate schedules F, PR(A), PR(B), and P based on each customer's purchases during the twelve-month period ending September 30, 1993. WNG states that it is refunding $85,420.64, which includes interest through June 30, 1997.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 on or before July 11, 1997. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18012 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–62–005]

Wyoming Interstate Company; Notice of Tariff Compliance Filing

July 3, 1997.

Take notice that on June 30, 1997, Wyoming Interstate Company (WIC), tendered for filing to become part of its FERC gas Tariff, Second Revised Volume No. 2 tariff, First Revised Sheet No. 36B, First Revised Sheet No. 36C, Fourth Revised Sheet No. 82, and Original Sheet No. 82A to be effective August 1, 1997.

WIC states the tariff sheets are filed in compliance with Order No. 587–C, and the order issued June 13, 1997 in Docket No. RP97–62–003, as well as Section 154.203 of the Commission's regulations.

Any person desiring to protest this 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 Section 385.211 of the Commission's 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. 97–18025 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3334–000, et al.]

Arizona Public Service Company, et al., Electric Rate and Corporate Regulation Filings

July 2, 1997

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER97–3334–000]

Take notice that on June 16, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS'' Open Access Transmission Tariff with PECO Energy Company—Power Team (PECO).

A copy of this filing has been served on PECO and the Arizona Corporation Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–3335–000]

Take notice that on June 16, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Maine Public Service Company to purchase electric capacity and energy pursuant to the negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Maine Public Service Company.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–3336–000]

Take notice that on June 16, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for EnerZ Corporation to purchase electric capacity and energy pursuant to the negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon EnerZ Corporation.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER97–3337–000]

Take notice that on June 16, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing an umbrella Service Agreement under which Orange and Rockland may make wholesale power sales at market-based rates to USGen Power Services, L.P. pursuant to Orange and Rockland's FERC Electric Tariff, Original Volume No. 4. Orange and Rockland plans to make these sales as part of a marketing initiative with U.S. Generating Company in the Northeast.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER97–3338–000]

Take notice that on June 16, 1997, PECO Energy Company (PECO) filed a Service Agreement dated June 10, 1997 with EnerZ Corporation (ENERZ) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds ENERZ as a customer under the Tariff.

PECO requests an effective date of June 10, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to ENERZ and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–3339–000]

Take notice that on June 16, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with The Detroit Edison Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–3340–000]

Take notice that on June 16, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with NorAm Energy Services, Inc. and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. East Texas Electric Cooperative, Inc.

[Docket No. ER97–3341–000]

Take notice that on June 16, 1997, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing proposed changes in its Rate Schedule ETEC–1. The proposed changes amend Rate Schedule ETEC–1 by (I) revising the Pool Commitment Equalization Adjustment (PCEA) to reflect additional power assigned to ETEC by its members, and (ii) adopting a Demand Charge to replace the existing Customer Charge.

Copies of the filing were served on the public utility's customers, and the Public Utility Commission of Texas.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER97–3342–000]

Take notice that on June 16, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Upper Peninsula Power Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Co.

[Docket No. ER97–3343–000]

Take notice that on June 16, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Sonat Power Marketing L.P. and New York State Electric & Gas Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon the parties, and the Public Utilities Commission of Ohio.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER97–3344–000]

Take notice that on June 17, 1997, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements for service under the terms of PNM's Open Access Transmission Tariff with the following customers: Idaho Power Company, Noram Energy Services, Inc., and Valero Power Services Company. PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–3345–000]

Take notice that on June 17, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Delmarva Power and Light Company (Delmarva).

Cinergy and Delmarva are requesting an effective date of June 16, 1997.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–3347–000]

Take notice that on June 17, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Services, Inc. (Cinergy).

Cinergy and Cinergy are requesting an effective date of June 16, 1997.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–3348–000]

Take notice that on June 17, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement and Amendment with Northern Indiana Public Service Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Co.

[Docket No. ER97–3349–000]

Take notice that on June 17, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated June 11, 1997 with Consumers Power Company dba Consumers Energy Company (Consumers) and The Detroit Edison Company (which with Consumers shall be referred to collectively as The Michigan Companies or Buyer) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds The Michigan Companies as an eligible customer under the Tariff.

PP&L requests an effective date of June 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to The Michigan Companies and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97–3350–000]

Take notice that on June 16, 1997, PECO Energy Company (PECO) filed a Service Agreement dated June 2, 1997 with North American Energy Conservation, Inc. (NAEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NAEC as a customer under the Tariff.

PECO requests an effective date of June 2, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NAEC and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Public Service Company

[Docket No. ER97–3351–000]

Take notice that on June 17, 1997, Southwestern Public Service Company (Southwestern) submitted an executed service agreement under its open access transmission tariff with NPE Energy Inc. The service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Southwestern Public Service Company

[Docket No. ER97–3352–000]

Take notice that on June 17, 1997, Southwestern Public Service Company (Southwestern) submitted an executed service agreement under its open access transmission tariff with CMS Marketing, Services and Trading Company. The service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Houston Lighting & Power Company

[Docket No. ER97–3353–000]

Take notice that on June 17, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with PECO Energy Company—Power Team (PECO) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of June 17, 1997.

Copies of the filing were served on PECO and the Public Utility Commission of Texas.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. MidAmerican Energy Company

[Docket No. ER97–3354–000]

Take notice that on June 17, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated May 1, 1997 with NIPSCO Energy Services, Inc. (NESI) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 19, 1997 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on NESI, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power Company

[Docket No. ER97–3355–000]

Take notice that on June 16, 1997, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Oglethorpe Power Corporation, dated as of May 13, 1997. The parties commenced transactions under the Service Agreement on May 17, 1997. Duke requests that the Agreement be made effective as of May 17, 1997.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER97–3356–000]

Take notice that on June 17, 1997, Commonwealth Edison Company (ComEd) submitted for filing three Service Agreements establishing Vastar Power Marketing, Inc. (Vastar), ConAgra Energy Services, Inc. (ConAgra), and NP Energy Inc. (NP Energy), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 21, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Vastar, ConAgra, NP Energy, and the Illinois Commerce Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER97–3357–000]

Take notice that on June 17, 1997, Commonwealth Edison Company (ComEd) submitted for filing Service Agreements, establishing ConAgra Energy Services, Inc. (ConAgra), Board of Municipal Utilities of Sikeston, Missouri (Sikeston), City Water Light & Power (CWLP), and NP Energy Inc., (NP Energy), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of May 21, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon ConAgra, Sikeston, CWLP, NP Energy, and the Illinois Commerce Commission.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Montaup Electric Company

[Docket No. ER97–3358–000]

Take notice that on June 17, 1997, Montaup Electric Company (Montaup) filed a May 1, 1997, agreement for transmission service among Montaup, Eastern Edison Company (Eastern Edison) and Browning Ferris Gas Services, Inc. (BFGSI). The agreement provides for transmission service to BFGSI over Eastern Edison facilities for generation interconnected to Eastern

Edison's distribution system in East Bridgewater and Halifax, Massachusetts.

Montaup requests that this filing be allowed to become effective on January 21, 1997, when service commenced and that the 60-day notice requirement be waived to permit a retroactive effective date.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power & Light Company

[Docket No. ER97–3359–000]

Take notice that on June 17, 1997, Florida Power & Light Company (FPL), tendered for filing a rate schedule enabling FPL to make wholesale sales of capacity and energy at market-based rates outside of Peninsular Florida. FPL requests an effective date of August 18, 1997.

Comment date: July 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Anoka Electric Cooperative

[Docket No. ES97–37–000]

Take notice that on June 26, 1997, Anoka Electric Cooperative, Inc. (Anoka) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue promissory notes to the National Rural Utilities Cooperative Finance Corporation, in an aggregate principal amount of $21 million and having a maturity date 35 years from the date of issue, and to borrow under a $20 million perpetual line of credit agreement. Anoka also requested an exemption from the Commission's competitive bidding or negotiated placement requirements. Anoka advised the Commission of borrowing that Anoka had undertaken without authorization under Section 204, and requested that the Commission take no action with respect to such borrowing.

Comment date: July 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. TX97–9–000]

On June 27, 1997, Cinergy Services, Inc. (Cinergy), 1000 E. Main Street, Plainfield, IN 46168, filed with the Federal Energy Regulatory Commission an application requesting that the Commission order the Tennessee Valley Authority to provide transmission services pursuant to Section 211 of the Federal Power Act.

Cinergy requested network integration transmission service commencing on January 1, 1998 and continuing until December 31, 2004. Cinergy requested firm transmission service of the same reliability as the transmission service provided to TVA's native load customers.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18009 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6299–009]

Dakota and Goodhue Counties; Notice of Availability of Environmental Assessment

July 3, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an application for amending article 2 of the exemption for the Lake Byllesby Project, Project No. 6299–009. The Lake Byllesby Project is located on the Cannon River, in Dakota County, Minnesota. The application is for incorporating annual winter drawdowns in the operation plan for the project. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First St., N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18029 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2935]

GTXL, Inc.; Notice of Motion To Waive Commission Regulations and Accept Late Filed Notice of Intent To Apply for New License

July 3, 1997.

The notice of intent by GTXL, Inc. (GTXL), the existing licensee for the Enterprise Project No. 2935 was due by September 30, 1996, pursuant to Section 15(b)(1) of the Federal Power Act. None was filed. The original license for Project No. 2935 was issued on October 26, 1981, and expires on September 30, 2001.

The 1,200-kilowatt project is located on the Augusta Canal of the Savannah River in the City of Augusta, Richmond County, Georgia. The principal project works consist of: (1) Intake works, including two diversion gates and trash racks; (2) two penstocks; (3) a powerhouse containing two 600-kilowatt generating units; (4) an underground tailrace; (5) an open tailrace; and (6) appurtenant facilities.

On May 22, 1997, the Commission issued a Notice of Existing Licensee's Failure to File Notice of Intent to File a Subsequent License Application. The notice stated that applications for subsequent license (except from the existing licensee which is prohibited from filing) must be filed with the Commission at least 24 months prior to the expiration of the existing license.

On June 4, 1997, GTXL filed a: (1) Notice of Intent to File for New License; and (2) Motion to Waive Commission Regulations and Accept Late Filed Notice of Intent to Apply for New License.

GTXL requests that the Commission waive its regulations that require a licensee of a minor project to provide five years advance notice of its intention to file a new license application. GTXL also requests that the Commission accept GTXL's late filed Notice of Intent to Apply for New License for the Enterprise Project.

The Commission is seeking comments, protests, or motions to intervene on GTXL's Motion to Waive Commission Regulations and Accept

Late Filed Notice of Intent to Apply for New License. Comments, protests, and motions to intervene must be filed by August 11, 1997. Reply comments are due by August 26, 1997.

This notice also includes the following standard paragraphs: B and C1.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filed and Service of Responsive documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18032 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revised Project Feature

July 3, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Revised Project Feature.

b. Project No.: 5728–016.

c. Date Filed: April 29, 1997.

d. Applicant: Sandy Hollow Power Company.

e. Name of Project: Sandy Hollow Project.

f. Location: On the Indian River in Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Paul C. Preble, Sandy Hollow Power Company, 683 Route 3A, Bow, NH 03304, (603) 224–2010.

i. FERC Contact: Julian Flint, (202) 219–2667.

j. Comment Date: July 28, 1997.

k. Description of Filings: Sandy Hollow Paper Company proposes to change the method of water delivery to its new generating unit. The Commission's August 25, 1995, Order Amending License authorized the licensee to install a new generating unit at the Sandy Hollow Project which would receive flows through a siphon-fed penstock. The licensee proposes to change the siphon penstock to a penstock embedded into the dam, eliminate the siphon notch in the dam, and move the waste notch two feet to the right.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18030 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Modification to Normal Operational Procedures

July 3, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Proposed Modification to Normal Operational Procedures.

b. Project No: 3155–021.

c. Date Filed: October 18, 1996.

d. Applicant: Cox Lake—Carbonton Associates.

e. Name of Project: Carbonton Hydroelectric Project.

f. Location: Deep River, Lee County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Mike Allen, P.O. Box 1401, Burlington, NC 27216–1401, (910) 229–1402.

i. FERC Contact: Robert J. Fletcher, (202) 219–1206.

j. Comment Date: August 7, 1997.

k. Description of Proposed Action: The proposed modification to the normal operational standards is to set one sensor within one-half inch of the crest of the flashboards. Another sensor would be set starting about 4 inches below the upper sensor. Adjusted properly, the project would run automatically within a range between the crest of the flashboards to 4–6 inches below the crest. A safety sensor will be set 3 or 4 inches below the lower of the two operating sensors to prevent excessive drawdown of the reservoir.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18031 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

June 26, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Use project lands to mine sand and other small aggregates from the South River portion of the project.

b. Project Name: Lloyd Shoals Hydroelectric Project.

c. Project No: 2336–033.

d. Date Filed: November 15, 1996.

e. Application: Georgia Power Company.

f. Location: South River on the Ocmulgee River, Eighth District, Newton County, Georgia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–8259(r).

h. Applicant Contact: Mr. J.A. Wilson, Vice-President-Land, Georgia Power Company, Connector Building, 2nd Floor, 333 Piedmont Avenue, NE. BIN 10160, Atlanta, Georgia 30308, (404) 526–2406.

i. FERC Contact: CarLisa M. Linton, (202) 219–2802.

j. Comment Date: August 23, 1997.

Description of Filing: Georgia Power Company (Licensee) requests Commission approval to allow the non-project use of project lands. The proposed dredging operation would entail a total of 32 acres. The proposal involves building a haul road to an identified plant site; construction of 3 sediment ponds; and dredging the South River. The dredged sand would be sent from the dredge to the plant which separates the sand from debris and the water would be transferred to sediment ponds for holding. The sand would be transferred from the plant to a stockpile with rubber tire loader which is then loaded into conventional trucks.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does to file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–18033 Filed 7–9–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400114; FRL–5727–6]

Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Facilities in Certain Industry Sectors; Industry-Specific Guidance; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold public meetings to solicit and discuss comments on industry-specific reporting guidance documents for the newly added industry groups subject to Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and Section 6607 of the Pollution Prevention Act of 1990 (PPA). As described in the final rule issued May 1, 1997, these newly added industry groups include: metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk terminals and plants-wholesale, and solvent recovery services. Certain facilities within these industry groups will begin with activities conducted during the 1998 calendar year with reports submitted by July 1, 1999.

DATES: Persons wishing to participate in the development of these industry-specific guidance documents should

contact the person listed in the FOR FURTHER INFORMATION CONTACT unit on or before July 14, 1997. Comments on the distributed documents must be submitted by August 20, 1997. Scheduled meeting dates and times for distribution of the draft guidance documents are as follows:

1. Coal mining and metal mining: 9 a.m. to 12 p.m., July 28, 1997.
2. Electric utilities: 2 p.m. to 4:30 p.m., July 28, 1997.
3. Commercial hazardous waste treatment and solvent recovery services: 9 a.m. to 12 p.m., July 31, 1997.
4. Chemicals and allied products-wholesale and petroleum bulk terminals and plants-wholesale: 2 p.m. to 4:30 p.m., July 31, 1997.

Scheduled meeting times and dates to discuss comments on the draft guidance documents are as follows:

1. Coal mining and metal mining: 9 a.m. to 1 p.m., August 25, 1997.
2. Electric utilities: 9 a.m. to 12 p.m., August 26, 1997.
3. Chemicals and allied products-wholesale and petroleum bulk terminals and plants-wholesale: 2 p.m. to 4:30 p.m., August 26, 1997.
4. Commercial hazardous waste treatment and solvent recovery services: 9 a.m. to 1 p.m., August 28, 1997.

ADDRESSES: All meetings for distribution and discussion of comments on the draft guidance documents will be held at the Washington Information Center #17 of the Environmental Protection Agency's Waterside Offices, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Hart, 202–260–1576, e-mail: hart.michael@epamail.epa.gov, for specific information regarding this document, or for more information on EPCRA Section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 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:

I. Background

Effective December 31, 1997 (62 FR 23834, May 1, 1997), seven industry groups (as described by their standard industrial classification (SIC) code) will be added to the list of industry groups subject to the reporting requirements set forth in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These added industry groups are metal mining (SIC code 10, except 1011, 1081, and 1094), coal mining (SIC code 12, except 1241), electric utilities (SIC codes 4911, 4931, and 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)), commercial hazardous waste treatment (SIC codes 4953 (limited to facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*)), chemicals and allied products-wholesale (SIC code 5169), petroleum bulk terminals and plants (also known as stations)-wholesale (SIC code 5171), and solvent recovery services (SIC code 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)). Reporting by facilities within these industry groups will begin with the 1998 reporting year. The first reports by these facilities must be submitted by July 1, 1999.

II. Development of Industry Guidance

EPA is preparing guidance documents to familiarize newly added industry groups with the basic EPCRA section 313 reporting requirements and to provide interpretive guidance specific to each newly added industry group. In the Agency's continuing outreach efforts to provide technical and interpretive guidance to the regulated community, draft guidance documents will be distributed for comment and review. Written comments on the guidance documents are due on or before August 20, 1997. EPA will then meet with reviewers that wish to discuss the comments. EPA will then incorporate technical comments, as appropriate. It is anticipated that at least two training workshops in each EPA region will be provided subsequent to the completion of the document review process to further prepare facilities for the submission of their EPCRA section 313 reports.

Persons interested in participating in the review of these guidance documents are invited to contact Michael Hart (202–260–1576 or e-mail: hart.michael@epamail.epa.gov) on or before July 14, 1997.

List of Subjects

Environmental protection, Community right-to-know, Toxic chemicals.

Dated: July 2, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–18087 Filed 7–9–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published documents in the **Federal Register** of June 9, 1997, concerning request for written comments on public information collections being reviewed by the Commission. The document contained an incorrect comment date. The comment period should have been for 60 days instead of 30 days.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Federal Communications Commission on (202) 418–0214.

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of June 9, 1997 in FR Doc. 97–14952, a notice was published which provided an incorrect comment date. This correction changes that date as published on June 9, 1997.

Correction.

On page 31429, in the second column, line 38, the reference to written comments should be corrected to read August 9, 1997 instead of July 9, 1997.

Dated: July 3, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18072 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published documents in the **Federal Register** of May 23, 1997, concerning request for written comments on public information collections being reviewed by the Commission. The document contained an incorrect comment date. The comment period should have been for 60 days instead of 30 days.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Federal Communications Commission on (202) 418–0214.

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of May 23, 1997 in FR Doc. 97–13544, a notice was published which provided an incorrect comment date. This correction changes that date as published on May 23, 1997.

Correction.

On page 28479, in the first column, line 39, the reference to written comments should be corrected to read July 23, 1997 instead of June 23, 1997.

Dated: July 3, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18071 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published documents in the **Federal Register** of June 10, 1997, concerning requests for written comments on public information collections being reviewed by the Commission. The document contained an incorrect comment date. The comment period should have been for 60 days instead of 30 days.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Federal Communications Commission on (202) 418–0214.

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of June 10, 1997 in FR Doc. 97–15082, a notice was published which provided an incorrect comment date. This correction changes that date as published on June 10, 1997.

Correction

On page 31600, in the second column, line 31, the reference to written comments should be corrected to read August 10, 1997 instead of July 10, 1997.

Dated: July 3, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18073 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Commission Meeting To Hear Recommendations of the Network Reliability and Interoperability Council

July 8, 1997.

Representatives of the Commission's Network Reliability and Interoperability Council will present the Council's report and recommendations to the Commission at a meeting which will be held on July 15, 1997 beginning at 9:30 a.m. in the Commission meeting room (856) at 1919 M Street NW in Washington, D.C. The report deals with the implementation of section 256 of the Telecommunications Act of 1996.

Section 256 requires the Commission to establish procedures to oversee coordinated network planning by telecommunications carriers and other providers of telecommunications service and permits the FCC to participate in the development of public network interconnectivity standards by appropriate industry standards-setting bodies. The purposes of section 256 as stated in the statute are (1) to promote non-discriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks and (2) to ensure the ability of users and information providers to ''seamlessly and transparently transmit and receive information between and across telecommunications networks.''

The report will be presented to the Commission by NRIC Chairman Ivan Seidenberg, President and CEO of NYNEX. Other representatives making presentations are Casimir Skrypczak, Group President of Professional Services at Bellcore; John Gunter, Vice President of Network Strategic Planning and Support at BellSouth; William Blatt, Vice President, Major Accounts at NORTEL; and Gerald Peterson, Technical Standards Director at AT&T Labs and Chairman of Standards Committee T1 (sponsored by ATIS).

A list of the organizations which constitute the NRIC is attached.

For further information contact Jim Keegan (202) 418–2323, e-mail: jkeegan@fcc.gov

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A

The Network Reliability and Interoperability Council

Member Organizations (by primary identity)

Interexchange Carriers

AT&T
MCI
Sprint

Local Exchange Carriers

Ameritech
Bell Atlantic
BellSouth
GTE Corporation
NYNEX Corporation
Pacific Telesis
Southwestern Bell
US West, Inc.
Frontier Corp.

Research and Standards Organizations

Bell Communications Research
Alliance for Telecommunications Industry Solutions
Cable Labs
Telecommunications Industry Association

Internet Access Providers

America Online

Trade Associations

Association for Local Telecommunications Services
Competitive Telecommunications Association
Organization for the Protection and Advancement of Small Telephone Companies
United States Telephone Association
National Cable Television Association
Cable Telecommunications Association
Personal Communications Industry Association
Cellular Telecommunications Industry Association

Institutional Consumer Representatives

Tele-Communications Association
International Communications Association
Boeing Company

Residential Consumer Representatives

Alliance for Public Technology
National Association of State Utility Consumer Advocates

Cable Companies

Time Warner Communications

PCS Representatives

NextWave Telecom, Inc.

Manufacturers

Motorola
U.S. Robotics
Lucent Technologies
Nortel

Government Related Organizations

National Association of Regulatory Utility Commissioners
National Communications System

Labor Representative

Communications Workers of America

Satellite Service Providers

Hughes Telecommunications and Space Company—Hughes Electronics Corporation

Computer/IP Industry

Information Technology Industry Council (also representing Information Infrastructure Standards Panel)

Associate Members

National Telecommunications and Information Administration, U.S. Dept. of Commerce

Office of Science and Technology Policy, White House

[FR Doc. 97–18077 Filed 7–9–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' NUMBER: 97–16134.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 26, 1997, 10:00 a.m. Meeting open to the public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Report of the Audit Division on Phil Gramm for President, Inc., Phil Gramm for President Compliance Committee, Inc., Phil Gramm for President Audit Fund.

DATE AND TIME: Tuesday, July 15, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 17, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Report of the Audit Division on Pete Wilson for President Committee

Report of the Audit Division on The Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche Exploratory Committee

Advisory Opinion 1997–8: Grace M. Anderson, Campaign/Finance Director, Texans for Lamar Smith (originally scheduled for the meeting of June 26, 1997)

Advisory Opinion 1997–9: The Chicago Board of Trade by counsel, Jan Witold Baran

Regulations: Who Qualifies as a ''Member'' of a Membership Association: Advance Notice of Proposed Rulemaking (originally scheduled for the meeting of June 26, 1997)

Regulations: Small Business Regulatory Enforcement Fairness Act of 1996; Impact on Commission Procedures and Policies

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer, Telephone (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–18290 Filed 7–8–97; 3:39 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Leake Family Partnership, L.P., Jackson, Mississippi; to retain a total of 32.57 percent of the voting shares of Citizens Capital Corporation, Magee, Mississippi, and thereby indirectly retain Citizens State Bank, Magee, Mississippi.

Board of Governors of the Federal Reserve System, July 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–17964 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 25, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David L. Spehar, Kansas City, Kansas; to acquire voting shares of First Community Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire First Community Bank, Kansas City, Kansas.

Board of Governors of the Federal Reserve System, July 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18100 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will 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. 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 1, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Fairland Banshares, Inc., Fairland, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Fairland Holding Company, Inc., Neosho, Missouri.

Board of Governors of the Federal Reserve System, July 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–17963 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will 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. 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 4, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bank of Elmwood Employee Stock Ownership Plan and Trust, Racine, Wisconsin; to acquire and additional 25.55 percent, for a total of 63 percent of the voting shares of Elmwood Financial Corporation, Racine, Wisconsin, and thereby indirectly acquire Bank of Elmwood, Racine, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of The Bank of the Southwest, N.A., Pagosa Springs, Colorado.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Lexington B & L Financial Corp., Lexington, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Lafayette Bancshares, Inc., Lexington, Missouri, and thereby indirectly acquire Lafayette County Bank of Lexington/Wellington, Lexington, Missouri. Applicant also has applied to B & L Bank, Lexington, Missouri, and thereby continue to engage in operating a savings association, pursuant to § 225.28 (b)(4) of the Board's Regulation Y.

2. RCB Holding Company, Claremore, Oklahoma; to acquire 100 percent of the voting shares of Northeastern Oklahoma Bancshares, Inc., Inola, Oklahoma, and thereby indirectly acquire Bank of Inola, Inola, Oklahoma.

Board of Governors of the Federal Reserve System, July 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18099 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First State Bancshares, Inc., Farmington, Missouri; to retain 5 percent and acquire an additional 4.9 percent of Perry County Financial Corporation, Perryville, Missouri, and thereby indirectly acquire Perry County Savings Bank, FSB, Perryville, Missouri, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–17965 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Caisse Nationale de Credit Agricole, Paris, France; to acquire Credit Agricole Indosuez, Paris, France, and thereby indirectly acquire Indosuez Investment Management Services, Inc., Menlo Park, California, and thereby engage in investment management and advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–18098 Filed 7–9–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 797]

FY 1997; Studies To Evaluate the Epidemiologic and Laboratory Characteristics of Human Immunodeficiency Virus (HIV) Infection Among United States Blood and Plasma Donors

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for cooperative agreements to provide assistance for epidemiologic surveillance studies of human immunodeficiency virus (HIV) in U.S. blood and plasma donors. These studies will be conducted to describe the epidemiology of human immunodeficiency virus (HIV), other retroviruses, and related conditions in persons whose blood tests positive for HIV antibody, HIV antigen, or other related laboratory markers. Additional funds will be available for laboratory studies of the genetic variation of HIV among blood and plasma donors and other selected populations.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of ''Healthy People 2000,'' see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)(2)), as amended. Applicable program regulations are set forth in 42 CFR Part 52, entitled ''Grants for Research Projects.''

Smoke-Free Workplace

CDC strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit blood centers and organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- or women-owned businesses are eligible to apply.

Note: Organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying are not eligible to receive Federal grant/cooperative agreement funds.

Availability of Funds

Approximately $1,200,000 will be available in FY 1997 to fund approximately 5–10 awards. It is expected that the average award will be approximately $200,000, with a range from $20,000 to $800,000. It is expected that approximately 2 new and 6 competing renewal awards will be made and that awards will begin on or about September 30, 1997. Awards will be funded for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of Department of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997

appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of this new law, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Public Law No. 104–208 (September 30, 1996), provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

In the United States, about 8 million people donate approximately 14 million units of whole blood each year; donors also give about 12 million units of plasma for use in making immune globulin, clotting factors, and other products. During the last decade, improved donor screening and education and better laboratory tests for blood-borne viruses have markedly increased the safety of the nation's blood supply.

The Centers for Disease Control and Prevention has monitored data from the routine testing of blood donors since the first HIV antibody screening test was licensed in 1985. Since 1988, CDC has collaborated with the National American Red Cross and other major blood collection agencies to systematically evaluate the characteristics of HIV-infected donors through detailed interviews and follow-up. From 1988 to 1995, the seroprevalence of HIV among blood donors decreased threefold, from approximately 1 in 4,000 to 1 in 12,000 donors. This decrease was due in part to the elimination of seropositive donors from the repeat donor pool. However, HIV seroprevalence among first-time donors has also declined. Because persons with known risks for HIV infection are actively discouraged from donating, information about HIV-infected donors identified during the screening process is valuable for further improving donor deferral procedures and may offer clues to emerging patterns of HIV transmission.

Current estimates of the residual risk of HIV transmission from blood transfusion are based on mathematical models; these models require estimates of the incidence of HIV infection among blood donors and the length of the infectious window period. A recent analysis suggested that there was a risk of 1 case of HIV transmission for every 450,000 to 660,000 donations of screened blood. This estimate is much smaller than earlier estimates, principally because of the improved sensitivity of enzyme immunoassay screening tests for HIV antibody. The ability to monitor the risk of HIV transmission by blood transfusion depends on methods for maintaining surveillance of incident HIV infection among blood donors and characterizing the infectious window period.

Since March 1996, donated blood has also been screened for HIV p24 antigen. On average, p24 antigen tests become positive approximately 6 days before enzyme immunoassays for HIV antibody. Surveillance conducted by CDC, the National American Red Cross, and other blood collection agencies suggest that p24 antigen screening has thus far done little to improve blood safety; however, it has raised issues concerning counseling and exclusion of donors who have false positive test results and donors who may seek testing by a more sensitive test than is routinely offered. In addition, concerns have been raised over the presence of HIV strains poorly detected by commonly used screening assays (e.g., group O). As testing technology continues to evolve, blood donation provides a critical setting for evaluating the performance characteristics of existing and new screening techniques, as well as their potential impact on blood safety.

Although incidence and prevalence of HIV infection are lower among blood donors than among unselected populations, the routine screening of very large numbers of repeat blood donors identifies substantial numbers of persons with recently acquired HIV infection. A newly developed, ''detuned'' enzyme immunoassay can identify HIV infections acquired during a relatively recent interval among first-time, as well as repeat, donors and among other significant populations. Defining the epidemiologic and laboratory characteristics of these recently infected persons is important for understanding the evolution of the HIV epidemic in the U.S. For example, HIV genomes from such persons are needed for larger studies of subtype variation and primary drug resistance.

Purpose

The purpose of these awards is to support research for epidemiologic surveillance studies to gain a greater understanding of the HIV epidemic and the safety of the U.S. blood supply. In particular, studies with flexibility to support surveillance of other transfusion-transmissible agents in addition to HIV will be considered.

I. Surveillance and Interview Studies of Blood and Plasma Donor Populations

A. Monitor the prevalence and incidence of HIV infection in blood and plasma donors at selected centers throughout the U.S. and Puerto Rico.

B. Analyze the demographic, behavioral, and laboratory characteristics of HIV-infected and non-infected donors to strengthen the effectiveness of donor screening and deferral processes.

C. Estimate the risk of HIV transmission from screened blood and plasma.

D. Identify persons and characteristics of persons recently infected with HIV.

II. Laboratory Studies of Blood and Plasma Donors and Other Significant Populations

A. Evaluate the effectiveness of screening blood donations for HIV–1 p24 antigen.

B. Evaluate the performance of proposed or potential HIV screening tests (e.g., amp-RT and viral RNA assays).

C. Describe the evolution of laboratory markers during the interval between acquisition of HIV infection and seroconversion (including the ''window period'').

D. Conduct molecular epidemiologic studies of HIV and related viruses in blood and plasma donors and other populations of epidemiologic significance. These studies could include surveillance for non-B HIV subtypes, primary antiretroviral drug resistance, and segregation of viral strains according to demographic and behavioral risk characteristics.

Applications should indicate whether they are addressing research issues identified under sections I. or II. above, or both. Applications for sections I. and II. will be evaluated separately.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities listed under A. (Recipient Activities), and CDC shall be responsible for conducting activities listed under B. (CDC Activities). The applications should be presented in a manner that

demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Develop research study protocols, consent forms, questionnaires, and data collection methods.
2. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by study protocols and program requirements.
3. Conduct epidemiologic studies at specified sites using approved study protocols established through the recipient's participation with CDC and other collaborating institutions.
4. Perform selected laboratory tests according to established research protocols. Store all HIV seropositive sera and additional specimens (sera or cells) as may be required by the research study designs.
5. Participate in the development and maintenance of data management systems for the study.
6. Share data and specimens with other collaborators when appropriate to answer specific research questions.
7. Analyze study data and present findings in scientific presentations and publications.

B. CDC Activities

1. Provide technical assistance in the design and conduct of the research.
2. Provide technical guidance in the development of study protocols, consent forms and questionnaires, including training and pretesting as necessary.
3. Assist in designing a data management system. As requested, carry out central data management functions.
4. As requested, perform selected laboratory tests.
5. Provide specimens for selected laboratory studies.
6. Facilitate collaboration among the different sites including laboratories and consultants.
7. Collaborate with recipients in the analysis of research information and the presentation of research findings.

Technical Reporting Requirements

1. An original and two copies of annual progress reports are required no later than 90 days after the end of the budget period. The annual reports for current awardees will be submitted with the renewal application.
2. Final financial status and performance report is also required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 5161–1 and the instructions outlined under the following section headings. The application should provide a detailed description of first-year activities and only briefly describe future-year activities. To assist in evaluating the application, please limit the number of pages to 25 plus attachments.

A. Executive Summary

B. Table of Contents

C. Background and Needs

1. Demographic and geographic characteristics of the proposed study population.
2. Reported cases of AIDS and/or HIV infection, patterns of behavioral risk correlated illnesses (e.g., syphilis, hepatitis, etc.) in the study population.
3. Previous efforts to conduct similar studies and uses of the resulting data.

D. Capacity

1. Demonstrated knowledge, ability and resources to conduct epidemiologic or laboratory studies.
2. Ability to enroll and evaluate adequate numbers of eligible study participants or to obtain and examine appropriate numbers and types of laboratory specimens.
3. Position descriptions for all key project personnel. These may be included in the appendix but should be referenced in the text.

E. Goals and Objectives

1. List one or more goals for the project.
2. List specific measurable outcome objectives related to program development and implementation; training and data quality; data analysis and dissemination, including potential plans for linkage with other data systems; and program evaluation.

F. Methods/Activities

1. Describe activities related to each objective.
2. Specify timelines for completing each activity.
3. Designate personnel resources and assignments to specific project activities.

G. Project Evaluation

1. Evaluation plan should contain specific activities to collect data to measure program development and implementation.
2. Describe how information will be obtained, prepared in specific reports, and used to improve the program.

H. Budget

1. Line-item descriptive justification for personnel, travel, supplies and other services should be submitted. Applicant should be precise about the purpose of each budget item as it relates to the project.
2. If applicable, applicants requesting funding for contracts should include the name of the person or firm to receive the contract, the method of selection, the period of performance, and a description of the contracted service requested.
3. Funding levels for years two and through five should be estimated.

I. Supporting Materials

1. Curriculum vitae and job descriptions of critical staff.
2. Letters of endorsement and/or collaboration of participating centers, agencies and/or State or local public health departments.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The applicant demonstrates the knowledge, ability and resources to conduct epidemiologic or laboratory studies of HIV and related viruses in U.S. blood and plasma donors or other populations of epidemiologic significance. (30 points)
2. The applicant demonstrates the ability to enroll and evaluate adequate numbers of eligible study participants (e.g., HIV-seropositive donors) or to obtain and examine appropriate numbers and types of laboratory specimens. (25 points)
3. The applicant presents a sound plan for conducting and evaluating program activities. If tests of clinical significance are performed, the application should include a plan for notifying study subjects. (15 points)
4. The applicant proposes objectives that are measurable, specific, time-phased, and related to required recipient activities and program purpose. (10 points).
5. The applicant demonstrates willingness to cooperate in a study with CDC and other collaborating institutions. (10 points)
6. The size, qualifications, and time allocation of the proposed staff and the availability of facilities are adequate for the study. (10 points)
7. The budget is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized. (Not scored)
8. Procedures are adequate for the protection of human subjects, whether

or not exempt from the Department of Health and Human Services (DHHS) regulations. (Not scored) Recommendations on the adequacy of protections include: (a) Protections appear adequate and there are no comments to make or concerns to raise; (b) protections appear adequate, but there are comments regarding the protocol; (c) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects; or (d) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Funding Priority

Priority will be given to competing continuation applications from satisfactorily performing projects over applications for projects not already receiving support under the program. Projects will be awarded so that the composite of projects reflects the geographic and demographic distribution of the study population.

Executive Order 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.944, Human Immunodeficiency Virus (HIV)/ Acquired Immunodeficiency Virus Syndrome (AIDS) Surveillance.

Other Requirements

1. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

2. Human Subjects

This program involves research on human subjects. Therefore, all applicants must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved with or support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

3. HIV Program Review Panel

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

4. Patient Care

Applicants should provide assurance that all HIV-infected patients enrolled in their studies will be linked to an appropriate local HIV care system that can address their specific needs such as medical care, counseling, social services, and therapy. Details of the HIV care system should be provided, describing how patients will be linked to the system. Funds will not be made available to support the provision of direct care for study participants.

5. Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

6. Confidentiality

Recipients must describe confidentiality and security provisions to protect data collected through HIV/ AIDS surveillance, including copies of local data release policies; employee training in confidentiality provisions; State laws, rules, or regulations pertaining to the protection or release of surveillance information; and physical security of hard copies and electronic files containing confidential surveillance information. Recipients must describe any laws, rules, regulations, or health department policies that require or permit the release of patient identifying information collected under the HIV/ AIDS surveillance system to entities outside of the public health department and measures the health department has taken to ensure that the confidentiality of individuals reported to the surveillance system is protected from further or unlawful disclosure.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, Georgia 30305 on or before August 11, 1997.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the stated deadline date; or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall

not be accepted as proof of timely mailing.)

2. Late Applications

Applications that do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, Georgia 30305, telephone (404) 842–6575, Email address vxm7@cdc.gov. The announcement will be available on one of two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the **Federal Register**) at http://www.access.gpo.gov.

Programmatic technical assistance may be obtained from Dr. Richard Steketee or Dr. Marta Gwinn, Division of HIV/AIDS Prevention, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop E–46, Atlanta, Georgia 30333, telephone (404) 639–2090. Eligible applicants are encouraged to call before developing and submitting their application. Please refer to Announcement Number 797 when requesting information.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report: Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report: Stock No. 017–001–00473–1) referenced in the Introduction from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: July 3, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–18062 Filed 7–9–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for a National Center for the Prevention of Childhood Agricultural Injury, Program Announcement 737: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreement for a National Center for the Prevention of Childhood Agricultural Injury, Program Announcement 737.

Time and Date: 8:30 a.m.-4:30 p.m., August 4, 1997.

Place: Corporate Square Building 11, Conference Room A, Corporate Square Boulevard, Atlanta, Georgia 30326.

Status: Closed.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 737.

The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Ann Cronin, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, M/S D36, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–2277.

Dated: July 03, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–18061 Filed 7–9–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0261]

Frequently Asked Questions About the New FDA Tobacco Regulations: Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration is announcing the availability of a draft guidance entitled ''Frequently Asked Questions About the New FDA Tobacco Regulations.'' The draft guidance is intended to address the questions most frequently asked by retailers, consumers, and others about the age and identification requirements of the final rule restricting the sale of cigarettes and smokeless tobacco to protect children and adolescents.

DATES: Submit written comments on the draft guidance by September 8, 1997.

ADDRESSES: The draft guidance entitled ''Frequently Asked Questions About the New FDA Tobacco Regulations,'' is available on the Internet at http://www.fda.gov/, or a paper copy may be ordered free of charge by calling 1–888–FDA–4KIDS.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, rm. 14–72, Rockville, MD 20857, 301–827–0867.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44396), FDA issued a final rule to restrict the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents (21 CFR part 897). The final rule covers three general classes of nicotine-containing tobacco products: Cigarettes, loose cigarette tobacco, and smokeless tobacco. The final rule applies to manufacturers, distributors, retailers, and importers who make, distribute, sell, and import such products.

Since February 28, 1997, the final rule has prohibited retailers from selling cigarettes, loose cigarette tobacco, or smokeless tobacco to persons under the age of 18, and has required retailers to verify the age of customers under the age of 27 by checking an identification (ID) card which contains the bearer's photograph and birth date.

Before the age and ID requirements took effect, FDA officials held a series of public meetings in 10 metropolitan areas and produced a national videoconference to explain the new requirements and to answer questions from retailers, consumers, public health officials, and others. FDA agreed to make available written answers to the questions most frequently asked at these meetings.

The draft guidance that FDA is making available answers these questions, as well as questions that FDA has received on its toll-free hotline and

over the Internet. Because some of the answers contained in the document represent FDA's current interpretation of new regulatory requirements, the document constitutes guidance. Therefore, FDA is publishing the document in draft and soliciting public comment. FDA will review received comments and, if appropriate, amend the document in response to comments.

Interested parties may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in the heading of this document. The draft guidance and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods that comply with the tobacco regulations are acceptable. If a regulated company or person wishes or chooses to use an approach other than that set forth in this guidance document, FDA will, upon request, discuss with that company or person alternative methods of complying with the regulations.

Dated: June 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–17974 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0263]

Global Pharmaceutical Corp. et al.; Proposal to Withdraw Approval of Four New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on the agency's proposal to withdraw approval of four new drug applications (NDA's). The basis for the proposal is that the sponsors have repeatedly failed to file required annual reports for these applications.

DATES: Written requests for a hearing are due by August 11, 1997; data and information in support of the hearing request are due by September 8, 1997.

ADDRESSES: Requests for a hearing, supporting data, and other comments should be identified with Docket No. 97N–0263 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotic drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). The holders of the NDA's listed in the table below have failed to submit the required annual reports, and have not responded to the agency's request by certified mail for submission of the reports.

Application No.	Drug	Applicant
NDA 9–273	Rauwolfia Serpentina Tablets, 50 milligrams (mg) and 100 mg.	Global Pharmaceutical Corp., Castor and Kensington Aves., Philadelphia, PA 19124–5694.
NDA 11–623	Mucilose Super Powder	European Research Associates, Ltd., Pailinakis Bldg., Elisabeth Ave., P.O. Box N3334, Nassau, N.P., Bahamas.
NDA 12–748	Duotrate (pentaerythritol tetranitrate) Capsules, 45 mg.	Jones Medical Industries, Inc., 1945 Craig Rd., St. Louis, MO 63146.
NDA 16–470	Duotrate (pentaerythritol tetranitrate) Capsules, 30 mg.	Do.

The last two products listed, NDA's 12–748 and 16–470, were named in a notice of opportunity for hearing published in the **Federal Register** of October 14, 1984 (49 FR 40213), under Docket No. 87N–0262, proposing to withdraw the applications, along with other applicants' products, because they lack substantial evidence of effectiveness. In response to that notice, hearings were requested and a hearing was granted (52 FR 32170, August 26, 1987); Jones Medical, the successor in interest to NDA's 12–748 and 16–470, filed a Notice of Participation; on May 10, 1989, the Administrative Law Judge issued his Initial Decision, ordering that NDA's 17–748 and 16–740, and others, be withdrawn; Jones Medical, as well as two other parties, appealed that decision to the Commissioner of Food and Drugs (the Commissioner). If a final order on NDA's 12–748 and 16–470 is issued under the present matter for failing to file required annual reports, the appeal by Jones Medical in Docket No. 87N–0262 will be regarded as withdrawn.

Therefore, notice is given to the holders of the NDA's listed in the table and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the NDA's and all amendments and supplements thereto on the ground that the applicants have failed to submit reports required under § 314.81.

In accordance with section 505 of the act and part 314 (21 CFR part 314), the applicants are hereby provided an opportunity for a hearing to show why the applications listed above should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these applications.

An applicant who decides to seek a hearing shall file: (1) On or before August 11, 1997, a written notice of participation and request for a hearing, and (2) on or before September 8, 1997, the data, information, and analyses

relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, notice of participation, and request for hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications and the drug products may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove the products from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 314.81. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 19, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–17977 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93P–0355]

Gastroenterology-Urology Devices; Denial of Request for Change in Classification of the Ostomy Pouch and Accessories

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; denial of petition.

SUMMARY: The Food and Drug Administration (FDA) is denying the petition submitted by Abraham L. Lastnik (hereinafter referred to as the petitioner) to reclassify the ostomy pouch and accessories from class I into class II. The agency is denying the petition because there is no new information, in the form of valid scientific evidence, that general controls currently used in the production of these devices are not sufficient to assure the safety and effectiveness of the devices. This notice also summarizes the basis for the agency's decision.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–5072.

SUPPLEMENTARY INFORMATION:

I. Classification and Reclassification of Devices Under the Medical Device Amendments of 1976

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), as amended by the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA's classification of a device is determined by the amount of regulation necessary to provide reasonable assurance of the safety and effectiveness of a device. Except as provided in section 520(c) of the act (21 U.S.C. 360j(c)), FDA may not use confidential information concerning a device's safety and effectiveness as a basis for reclassification of the device from class III into class II or class I.

Under the amendments, devices were classified into class I (general controls) if there was information showing that the general controls of the act were sufficient to provide reasonable assurance of safety and effectiveness; into class II (performance standards) if general controls were insufficient to provide reasonable assurance of safety and effectiveness, but there was sufficient information to establish a performance standard that would provide such assurance; and into class III (premarket approval) if there was insufficient information to support placing a device into class I or class II, and the device was a life-sustaining or life-supporting device or was for a use that is of substantial importance in preventing impairment of human health, or if the device presented a potential unreasonable risk of illness or injury.

FDA has classified most generic types of devices that were on the market before the date of the amendments (May 28, 1976) (generally referred to as preamendments devices) under the procedures set forth in section 513(c) and (d) of the act through the issue of classification regulations into one of these three regulatory classes. Under section 513(c) and (d) of the act, FDA secures expert Panel recommendations on initial device classifications for generic types of devices. FDA then considers the Panel's recommendations and, through notice and comment rulemaking, issues classification regulations.

Devices introduced into interstate commerce for the first time after May 28, 1976, are by statute automatically classified into class III under section 513(f) of the act. These devices may be reclassified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Those devices that FDA finds to be substantially equivalent to a class I or II generic type of device are thereby classified in the same class as the predicate device.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. Section 513(e) of the act provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person.

The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when a device was originally classified, as well as information not

presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, *supra*, 422 F.2d at 951.) However, regardless of whether data before the agency are old or new data, the ''new information'' on which any reclassification is based is required to consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available in accordance with section 520(c) of the act. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of premarket approval applications.

II. Reclassification Under the Safe Medical Devices Act of 1990

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) further amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices for which there is insufficient information to show that general controls themselves will provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance, including the issuance of a performance standard or other special controls, such as postmarket surveillance, patient registries, guidelines, and other appropriate actions necessary to provide such assurance of the device. Thus, the definition of a class II device was changed from ''performance standards'' to ''special controls.''

III. Background

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53023), FDA issued a final rule classifying the ostomy pouch and accessories into class I (§ 876.5900 (21 CFR 876.5900)). Section 876.5900 describes the device as follows:

An ostomy pouch and accessories is a device that consists of a bag that is attached to the patient's skin by an adhesive material and that is intended for use as a receptacle for collection of fecal material or urine following an ileostomy, colostomy, or ureterostomy (a surgically created opening of the small intestine, large intestine, or the ureter on the surface of the body). This generic type of device and its accessories includes the ostomy pouch, ostomy adhesive, the disposable colostomy appliance, ostomy collector, colostomy pouch, urinary ileostomy bag, urine collecting ureterostomy bag, ostomy drainage bag with adhesive, stomal bag, ostomy protector, and the ostomy size selector, but excludes ostomy pouches which incorporate arsenic-containing compounds.

In the **Federal Register** of January 23, 1981 (46 FR 7633), the agency had initially proposed that the devices be classified into class II. The proposal stated that the devices were reviewed by the Gastroenterological/Urological Device Classification Panel, the General Hospital and Personal Use Device Classification Panel, and the General and Plastic Surgery Device Classification Panel. Although the latter two Panels recommended classification of the ostomy pouch and accessories into class I, the agency agreed with the Gastroenterological/Urological Device Classification Panel recommendation to classify the devices into class II, and proposed classification accordingly. The Panels' recommendations, among other things, addressed the issues of allergenic materials, inadequate fit allowing liquid feces to contact skin, and malposition or slipping of the appliance with pressure against a protruding stoma. In addition, the Panels determined that the device is not an implant nor is it life sustaining or life supporting.

The agency received one comment on the proposed classification of the ostomy pouch and accessories. The comment effectively refuted the arguments used by the Gastroenterological/Urological Device Classification Panel in recommending the devices be classified into class II, and the comment suggested that the devices be classified into class I, instead. In response to the comment, based upon the best information available at that time, and based upon the original recommendations of the General Hospital and Personal Use Device Classification Panel and the General and Plastic Surgery Device Classification Panel, the agency determined to place ostomy devices into class I.

In the **Federal Register** of June 12, 1989 (54 FR 25042), the agency exempted the ostomy pouch and accessories from the requirements of premarket notification, determining that ''the manufacturer's submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission.'' Though the ostomy pouch and accessories were exempted from premarket notification, they were not exempted from the requirements of the current good manufacturing practice regulations of 21 CFR part 820 or other general adulteration or misbranding petitions.

Subsequently, the agency received a petition dated August 30, 1993, submitted by the petitioner requesting that the ostomy pouches and accessories be reclassified into class II.

IV. Agency Decision

The petition stated that it was inappropriate for the agency to classify the devices into class I based, in part, on a single comment submitted by a manufacturer of ostomy accessories, because the manufacturer did not have sufficient information regarding the magnitude or frequency of device related problems. Furthermore, the petitioner states that, ''because ostomy prostheses are in constant contact with tissues that are normally retained within the body cavity, they would be expected to present the same risks * * * as [device] implants.'' These risks include adverse tissue reaction, problems with inadequate fit or improper size, and the potential for toxic systemic effects. The petitioner also claims that the issuance of voluntary and mandatory standards by certain foreign countries evidences the need for performance standards, and that there is sufficient information available to issue such performance standards. The petition asserts that classification into class II and performance standards would eliminate or reduce risks and shortcomings associated with these devices.

FDA recognizes that section 513(e) of the act provides that for a preamendments device for which reclassification is sought, FDA may secure a recommendation concerning the reclassification from the Panel, which had made a recommendation on the initial classification of the device. FDA did not, however, refer this petition to the Panel because the petitioner did not present new information to warrant reconsideration of these devices by a Panel.

Based on its review of the information contained in the petition, the agency finds that the petition raises the same issues previously evaluated by the device classification Panels and FDA when issuing the 1989 final rule classifying ostomy pouches and accessories into class I. The petitioner

provided no new information that supports his assertion that the risks posed by these devices are of a magnitude or frequency that is different than those considered by FDA in 1989 in classifying these devices into class I. Moreover, the agency searched its Medical Device Reporting (MDR) data bases in order to ascertain the extent of reported problems or adverse incidents associated with these types of devices. The search for reported events during the period from 1985 to 1997 revealed that not only are the rates of reported problems extremely low, but that the problems are the same type previously reported and considered by FDA and the Panels.

Accordingly, FDA believes, on the basis of the same information considered and the same reasons stated in the 1989 classification regulation, as well as the examination of MDR reports for these devices from 1985 to 1997, that the risks to the public health posed by these devices are low and that class I provides a reasonable assurance of the safety and effectiveness of these devices.

Furthermore, FDA does not agree with the petitioner's claim that the issuance of voluntary and mandatory standards by certain foreign countries evidences the need for a designation of class II with performance standards. The existence of performance standards in other countries for a certain device is not the statutory criterion under the act for the issuance of mandatory performance standards, or a designation of class II.

Under section 513(a)(1)(B) of the act, a device is to be classified in class II if it is a device that cannot be classified as a class I device because the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and for which there is sufficient information to establish special controls to provide such assurance. Therefore, the relevant inquiry to determine whether a device should be classified as class II and be subject to performance standards, is not whether there could be performance standards but whether class I controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

On the basis of information described above concerning the risks associated with ostomy pouches and accessories, FDA believes that these devices are appropriately in class I because general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

The petitioner presented insufficient new information, in the form of valid scientific evidence, to determine that special controls described in section 513(a)(1)(B) of the act, in addition to the general controls applicable to all devices, are necessary to provide reasonable assurance of the device's safety and effectiveness for its intended use. FDA, therefore, is denying the petition.

Dated: June 27, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–17972 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0259]

Kensey Nash Corp.; Premarket Approval of the Angio-Seal™ Hemostatic Puncture Closure Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Kensey Nash Corp., Exton, PA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Angio-Seal™ Hemostatic Puncture Closure Device. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 11, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christopher M. Sloan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On October 28, 1993, Kensey Nash Corp., Exton, PA 19341, submitted to CDRH an application for premarket approval of the Angio-Seal™ Hemostatic Puncture Closure Device. The device is a vascular hemostasis device and is indicated for use in closing and in reducing time to hemostasis at the femoral arterial puncture site in patients who have undergone diagnostic angiography or percutaneous transluminal coronary angioplasty (PTCA) procedures using an 8F or smaller procedure sheath.

On May 8, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 10, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–17971 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0253]

Medispec, Ltd.; Premarket Approval of Econolith™ Extracorporeal Shock Wave Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medispec Ltd., Rockville, MD, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Medispec Ltd., Econolith™ Lithotripter. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 7, 1997, of the approval of the application.

DATES: Petitions for administrative review by August 11, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Russell P. Pagano, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On December 26, 1995, Medispec Ltd., Rockville, MD, 20850, submitted to CDRH an application for premarket approval of the Econolith™ Lithotripter. The device is an extracorporeal shockwave lithotripter and is indicated for use in the noninvasive fragmentation of upper urinary tract stones between 5 and 20 millimeters in size.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On April 7, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director, Clinical and Review Policy, the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 10, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–17973 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0166]

Johnson and Johnson Interventional Systems Co.; Premarket Approval of PALMAZ-SCHATZ™ Balloon-Expandable Stent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Johnson and Johnson Interventional Systems Co., Warren, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of PALMAZ-SCHATZ™ Balloon-Expandable Stent. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 2, 1994, of the approval of the application. In addition, the PALMAZ-SCHATZ™ Balloon-Expandable Stent requires tracking under the act as amended by the Safe Medical Devices Act of 1990.

DATES: Petitions for administrative review by August 11, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bram D. Zuckerman, Center for Devices and Radiological Health (HFZ–450),

Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On December 7, 1990, Johnson and Johnson Interventional Systems, Co., Warren, NJ 07059, submitted to CDRH an application for premarket approval of PALMAZ-SCHATZ™ Balloon-Expandable Stent. The PALMAZ-SCHATZ™ Balloon-Expandable Stent is indicated for use in a group of selected patients eligible for balloon angioplasty (see Individualization of Treatment, which is available for examination at the Dockets Management Branch (address above)) with symptomatic ischemic heart disease due to discrete (length less than 15 millimeter (mm)), *de novo* native coronary artery lesions with a reference vessel diameter in the range of 3 to 4 mm. In this patient population, stenting the coronary artery produces a larger luminal diameter, maintains arterial patency, and reduces the incidence of restenosis at 6 months as compared with balloon angioplasty. The stent, however, represents a permanent implant into the coronary artery. One year and longer followup is not well characterized.

On May 3, 1994, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On August 2, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 29, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–17975 Filed 7–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NLM Online Application Packet

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NLM Online Application Packet. *Type of Information Collection Request:* Extension of OMB No. 0925–0223. Expires 08/31/97. *Need and Use of Information Collection:* The NLM uses the information provided by individuals and institutions for MEDLARS online system user code assignments and invoices for system use. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; businesses or other for profit; State or local governments; Federal agencies; Non-profit institutions; Small businesses or organizations. *Type of Respondents:* Organizations, Health Care Providers, Students. The annual reporting burden is as follows: *Estimated Number of Respondents annually:* 1,800. *Estimated Number of Responses per Respondent:* 1: *Average Burden Hours Per Response:* 0.0833 hours; and *Estimated Total Annual Burden Hours Requested:* 149.94. *The annualized cost to respondents is estimated at:* $1,499. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION:

To request additional information on the proposed collection of information or to obtain a copy of the data collection instrument, contact Carolyn Tilley, Head, Medlars Management Section, BSD, LO, NLM, NIH, Building 38A, Room 4N–04, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 402–1076. You may also e-mail your request to: carolyn__tilley@ccmail.nlm.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 1, 1997.

Donald C. Poppke,

Executive Officer, NLM.

[FR Doc. 97–18007 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request; Drug Accountability Record

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Drug Accountability Record (Form NIH 2564) and Transfer Investigation Drug Record (NIH form 2564–1). *Type of Information Collection Request:* Extension, with no Changes OMB No. 0925–0240, Expiration Date 10/31/97. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require investigators to establish a record of the receipt, use and disposition of all investigational agents. The National Cancer Institute, NCI, as a sponsor of investigational drug trials, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for drug accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (NIH 2564) was designed to account for drug inventories and usage by protocols. The Transfer Investigational Drug Form (NIH 2564–1) permits intra-institutional transfer of drugs to other approved investigators for other approved protocols. The data obtained from the drug accountability record will be used to keep track of the dispensing of investigational anticancer agents to patients. It is used by NCI management to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator once every three years. All comparisons are done with the intention of ensuring protocol, patient and drug compliance for patient safety and protections. *Frequency of Response:* Daily. *Affected Public:* state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, and small business or organizations. *Type of Respondents:* Investigators, pharmacist, nurses, pharmacy technicians, data manager. The annual reporting burden is divided into two major areas. These are the audits of Drug Accountability Forms by Government and its contractors and the use of the forms by clinical research sites. The burden is as follows:

Federal Burden: 1700 audits are conducted of clinical research sites, a minimum of three Drug Accountability Forms are reviewed at each audit. Each form requires ½ hour to review.

Number of Respondents: 1700.

Number of responses per Respondent: 3.

Average Burden per Response: 0.5 hours.

Annual Burden Hours: 18,250 hours.

Clinical Trial Site Burden: The annualized respondents' burden for record keeping is estimated to require 3,650 hours for drug accountability and 120 hours for drug transfer. The reporting burden is the average time (4 minutes or 0.1 hours) required to complete the transfer investigation drug form multiplied by the number of forms completed annually. The record keeping burden represents an average time required for multiple entries (4 minutes or 0.1 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers. These estimates are based on the 36,500 items shipped by the PMB and the 1,200 items transfer approvals in calendar year 1996.

Drug Transfer Forms

Number of Respondents: 1200.

Number of response per Respondent: 1.

Average Burden per Response: 0.1.

Annual Burden Hours: 120 hours.

Drug Accountability Forms

Number of Record Keepers: 4560.

Number of responses per Respondent: 8.

Average Burden per Response: 0.1.

Annual Burden Hours: 3650 hours.

Total Annualized Burden for Record Keeping and Reporting: 3,770 Hours.

There are no Capital Costs, Operating Costs, and/or Maintenance Cost to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joseph High, Head, Drug Management and Authorization Section, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division Cancer Therapy, Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 707, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number (301) 496–5725 or E-mail your request, including your address to: *JoeHigh@nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 30, 1997.

Nancie L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–18008 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: July 23, 1997.

Time: 1:00 p.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person: Dr. Katherine Woodbury/ Mr. Phillip Wiethorn, Scientific Review Administrators, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Md 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate an SBIR Phase II Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–17998 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 22, 1997.

Time: 10:30 a.m.

Place: Alexandria Virginia Courtyard Marriott, 2700 Eisenhower Avenue, Alexandria, VA 22314.

Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–17999 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Innovation Grant Program for Approaches in HIV Vaccine Research—Subcommittee on Formulations and New Vectors.

Date: July 15–16, 1997.

Time: 8:30 a.m. to Adjournment.

Place: National Airport Hilton, Ballroom, 2399 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–6800.

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

Name of SEP: Innovation Grant Program for Approaches in HIV Vaccine Research—Subcommittee on Mechanisms of Antigen Processing.

Date: July 17–18, 1997.

Time: 8:30 a.m. to Adjournment.

Place: National Airport Hilton, Ballroom, 2399 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–6800.

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18000 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke *Special Emphasis Panel.*

Date: August 25, 1997.

Time: 8:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Phone: (301) 657–1234.

Contact Person: Dr. Alfred Gordon, Scientific Review Administrator, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences.)

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18001 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).
Date: August 4, 1997.
Time: 10:00 a.m.
Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.
Contact Person: Dr. Katherine Woodbury/ Mr. Philip Wiethorn, Scientific Review Administrators, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate SBIR Phase II Contract Proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applicants and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18002 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Energing Diseases Supplements.
Date: July 30, 1997.
Time: 2:00 p.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 3B05, Rockville, MD 20892, (301) 402–4988.
Contact Person: Dr. Gary S. Modonna, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C21, Bethesda, MD 20892, (301) 496–3528.
Purpose/Agenda: To evaluate grant applications.

Name of SEP: Emerging Diseases Supplements.
Date: July 31, 1997.
Time: 1:00 p.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 1A1, Rockville, MD 20892, (301) 496–0747.
Contact Person: Dr. Gary S. Modonna, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C21, Bethesda, MD 20892, (301) 496–3528.
Purpose/Agenda: To evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18003 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Dates of Meeting: July 8–9, 1997.
Time: July 8, 8:00 a.m. to recess. July 9, 8:00 a.m. to adjournment.
Place of Meeting: Hyatt Regency of Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sean O'Rourke, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Dates of Meeting: August 11–12, 1997.
Time: August 11, 8:30 to recess. August 12, 8:30 to adjournment.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Antonio Noronha, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: July 2, 1997.

La Verne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18004 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting.

Purpose/Agenda: To evaluate and review grant applications.
Name of Committee: NIDA Special Emphasis Panel (AIDS Behavioral/Clinical).
Date: July 16, 1997.
Time: 9 a.m.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National

Institute on Drug Abuse, 5600 Fishers Land, Room 10–42, Rockville, MD 20857, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health.)

Dated: July 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18005 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 9–10, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Biological and Physiological Sciences.

Date: July 16, 1997.

Time: 1:00 p.m.

Place: Georgetown Holiday Inn, Washington, DC.

Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

Name of SEP: Biological and Physiological Sciences.

Date: July 28, 1997.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: July 14, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Clinical Sciences.

Date: July 15, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–18006 Filed 7–9–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Mark Bolton, Hugo, Mn, PRT–830602.

The applicant has requested a permit to import one male and one female captive-hatched peregrine (*Falco peregrinus anatum*) from the Sasktchewan Cooperative Falcon Project, Saskatoon, Saskatchewan, Canada, for the purpose of enhancement of the species through captive propagation and release of offspring.

Applicant: The Cincinnati Zoo and Botanical Garden, Cincinnati, Oh, PRT–831735.

The applicant has requested a permit to import two female captive-born Indochinese tigers (*Panthera tigris corbetti*) from the Singapore Zoological Gardens for the purpose of enhancement of the species through captive propagation.

Applicant: Texas Animal Exports, Coppell, Tx, PRT–821275.

The applicant has requested a permit to export 23 Arabian oryx (*Oryx leucoryx*) to the Al-Ain Zoo and Aquarium, U.A.E., for the purpose of enhancement of the species through captive propagation.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Northwest Territories, Canada for personal use.

Applicant/address	Population	PRT–
Jim Deal, Ramsey, Mn	McClintock Channel	831567
Norman Dunkle, Franklin, Pa	Northern Beaufort	831443
James Y. Jones, Dublin, Ga	Lancaster Sound	831722

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of

Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: July 3, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–17980 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Kern County Waste Facilities Habitat Conservation Plan, Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Kern County Waste Management Department (Department) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–830963. The proposed permit would authorize the incidental take of San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelia silus*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and giant kangaroo rat (*Dipodomys ingens*), federally listed as endangered, and the Desert tortoise (*Gopherus agassizii*) and Hoover's eriastrum (*Eriastrum hooverii*), federally listed as threatened, and/or their habitat during the operation, maintenance, expansion, and/or closure of Kern County municipal solid waste management facilities. The proposed permit also would authorize future incidental take of the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), a currently unlisted species, should it become listed under the Endangered Species Act in the future. The permit would be in effect for 50 years.

The Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application. The application includes the proposed Habitat Conservation Plan (Plan) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). Comments are specifically requested on the appropriateness of the No Surprises assurance contained in this application, specifically outlined in section 7 of the Plan. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before August 11, 1997.

ADDRESSES: Comments regarding the application or adequacy of the environmental assessment and Implementing Agreement should be addressed to the Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–830963 when submitting comments. Individuals wishing copies of the application, Environmental Assessment or Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Tiki Baron or Mr. William Lehman, Sacramento Fish and Wildlife Office, telephone (916) 979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened, respectively. However, the Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The Kern County Waste Management Department seeks coverage for take of listed species incidental to landfill operations at all of the solid waste facilities in Kern County, California, not covered by the Metropolitan Bakersfield Habitat Conservation Plan.

Those facilities include 14 landfills and 2 transfer stations, all of which are existing sites permitted by the California Integrated Waste Management Board for waste management activities. Of the 14 landfills, one has been formally closed, two are inactive and awaiting final closure, and 11 are active. Biological surveys indicated that 6 of the 11 active sites contained listed species and/or their habitats; none of the 3 inactive/closed sites contained listed species or suitable habitat. Based on these results the Department concluded that the operation, maintenance, expansion, and eventual closure of 6 of the landfills may result in incidental take of listed species. San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, San Joaquin antelope squirrel, and Hoover's eriastrum were all found to occur on one or more of the 6 sites. Giant kangaroo rat and desert tortoise were not found on any of the landfill sites, but were each recorded adjacent to a landfill.

On-going operations at 5 of these 6 landfill sites would result in the loss of approximately 251 acres of habitat for the listed species noted above. To compensate for this loss, the Department proposes to fund the permanent protection and management of approximately 755 acres of similar habitat through purchase of credits at the ARCO Coles Levee Ecosystem Preserve or other Service-approved site. The sixth site, the Bakersfield Metropolitan Sanitary Landfill, contains approximately 900 acres of habitat for listed species. This site would be developed in phases of approximately 100 acres, each of which would be restored to habitat for listed species upon closure. To minimize impacts at the Bakersfield Metropolitan Landfill, the Department proposes to have only two phases (one closing while another opens) active at any time. In addition, the Department will enhance and maintain a 963-acre buffer around the landfill as open grazing land, managed to provide habitat for listed species, in perpetuity. The Plan also specifies comprehensive measures designed to minimize impacts to listed species on all of the landfill sites.

The Environmental Assessment considers the environmental consequences of three alternatives.

Alternative 1, the proposed action, consists of the issuance of an incidental take permit to the County of Kern, and implementation of the Plan and its Implementing Agreement. This alternative is preferred because: (1) It satisfies the purpose and needs of the Fish and Wildlife Service and the Kern County Waste Management Department; (2) measures have been incorporated to avoid and minimize incidental take to the greatest extent practicable; and (3) unavoidable impacts are mitigated by the permanent protection of approximately 755 acres of habitat at an approved preserve and the enhancement of approximately 963 acres surrounding the Bakersfield Metropolitan Landfill. Under Alternative 2, the no action alternative, the Service would not issue an incidental take permit. The Department would likely proceed with the continued operation, maintenance, and closure of those eight landfill sites which do not provide habitat for listed species. However, this alternative would not allow the Department to continue operations that would result in take of listed species at the six landfill sites where listed species or their habitats occur. Under this alternative, the Department also would not enhance the value of the Bakersfield Metropolitan Landfill and its buffer as habitat for the San Joaquin kit fox, nor would it contribute to the permanent protection of listed species habitat through purchase of credits at an approved preserve. Alternative 3 entails closure of one or more of the existing landfill sites and development of new waste facilities on alternate sites. Development of alternate sites, however, would likely result in equal or greater impacts to listed species because most suitable alternate sites also provide habitat for listed species.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: June 27, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–18063 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On May 8, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 89, Page 25201, that an application had been filed with the Fish and Wildlife Service by the following individual for a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use.

Applicant/address	Population	PRT–
Jeffrey Sorg, Kalispell, MT	Southern Beaufort	827890

Notice is hereby given that on June 25, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permits subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 3, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–17981 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1990–01]

New Mexico: Public Notice of Legal Financial Guarantees Acceptable to the Bureau of Land Management That Are Allowable Under New Mexico State Law

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of mining claims under the general mining laws; Surface management: Forms of legal financial guarantees allowable under New Mexico State law.

SUMMARY: The Bureau of Land Management (BLM) amended the surface management regulations at 43 CFR 3809 on February 28, 1997 (62 FR 9093). The amendment requires each BLM State Director to consult with the appropriate State authorities to determine which financial instruments listed in 43 CFR 3809.1–9(k) are allowable under State law.

EFFECTIVE DATE: March 31, 1997.

ALLOWABLE FINANCIAL INSTRUMENTS: The BLM has consulted with the Director, Mining and Minerals Division of the Energy, Minerals, and Natural Resources Department to determine which of the financial instruments listed in 43 CFR 3809.1–9(k) are allowable under New Mexico State Mining Act rules to satisfy the financial assurance requirements related to mining reclamation. All listed financial instruments are allowable under State Mining Act rules. Specifically, surety bonds, cash, irrevocable letters of credit, certificates of deposit or savings accounts, negotiable U.S., state, and municipal securities or bonds; and investment-grade rated securities having a Standard and Poor's rating of AAA or AA or equivalent rating.

ADDRESS: Inquiries should be sent to the Bureau of Land Management, New Mexico State Office, Land and Minerals Support Team, P.O. Box 27115, Santa Fe, NM 87502–0115. For further information contact: Bill Dalness, (505) 439–7405.

Dated: June 30, 1997.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 97–18088 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW134897]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 27, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134897 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134897 effective February 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–18053 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW134898]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 27, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134898 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134898 effective February 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–18054 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW134899]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 27, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134899 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134899 effective February 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–18055 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 915 5700 00]

Change of Public Room Hours

AGENGY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In order to meet our customers' needs, the Nevada State Office Public Room hours will be extended. The new hours will be 8:00 a.m. to 4:00 p.m.

EFFECTIVE DATE: August 1, 1997.

ADDRESS: 850 Harvard Way, Reno, NV 89502; P.O. Box 12000, Reno, NV 89520.

FOR FURTHER INFORMATION CONTACT: Natalie Okimura, Josephine Leone, or Betty Green at 702–785–6500.

Dated: June 18, 1997.

Theodore J. Angle,

Chief, Office of Administration and Records Management.

[FR Doc. 97–18059 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1430–01; AA–8964, AA–11330]

Public Land Order No. 7263; Transfer of Administrative Jurisdiction of Public Lands; Alaska; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description in Public Land Order No. 7263, 62 FR 31450–31451, published June 9, 1997, FR Doc. 97–14927.

EFFECTIVE DATE: July 10, 1997.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–3266.

On page 31451, first column, 15th line, which reads ''21, T. 55 S., R. 71 E., is more'' is hereby corrected to read ''21, T. 55 S., R. 77 E., is more''.

Dated: June 27, 1997.

Donald W. Baggs,

Lands and Minerals Group Supervisor, Division of Lands, Minerals, and Resources.

[FR Doc. 97–18057 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–01; COC–28583; COC–28645]

Public Land Order No. 7273; Partial Revocation of Secretarial Orders Dated July 2, 1910, Which Established Powersite Reserve No. 147, and August 10, 1944, Which Established Powersite Classification No. 359; Opening of Land Under Section 24 of the Federal Power Act in Powersite Classification No. 359; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

EFFECTIVE DATE: July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

SUMMARY: This order partially revokes two Secretarial orders insofar as they affect 122.29 acres of National Forest System lands withdrawn for Water Power Purposes. This order also opens 52.95 acres of National Forest System land in Powersite Classification No. 359, subject to the provisions of Section 24 of the Federal Power Act, to permit consummation of a pending Forest Service land exchange. All of the lands have been and will remain open to mining and to mineral leasing.

1. By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

Secretarial Orders dated July 2, 1910, which established Powersite Reserve No. 147, and August 10, 1944, which established Powersite Classification No. 359, are hereby revoked insofar as they affect the following described National Forest System lands:

Roosevelt National Forest

Sixth Principal Meridian

T. 8 N., R. 71 W.,
Sec. 5, lot 3;
Sec. 6, SE¼NW¼.
T. 8 N., R. 73 W.,
Sec. 5, lots 5 and 6;
Sec. 6, lots 8 and 9.

The areas described aggregate 122.29 acres of National Forest System lands in Larimer County.

At 9:00 a.m. on July 25, 1997, the lands described above, are relieved of the segregative effects of Powersite Reserve No. 147 and Powersite Classification No. 359.

2. The lands described in paragraph 1 have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to lands withdrawal for power purposes, the provisions of the act are no longer applicable. The lands have been and will remain open to mineral leasing.

3. By virtue of the authority vested in the Secretary of the Interior by Section 24 of the Act of June 10, 1920, as amended 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–547, it is ordered as follows:

At 9:00 a.m. on July 25, 1997, the following described National Forest System land withdrawn by Secretarial Order dated August 10, 1944, which established Powersite Classification No. 359, will be opened to such forms of disposition as may by law be made of National Forest System land, subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCO–547, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Roosevelt National Forest

Sixth Principal Meridian

T. 9 N., R. 74 W.,
Sec. 30, lots 8 and 9.

The area described contains 52.95 acres of National Forest System land in Larimer County.

4. The land described in paragraph 3 has been and will remain open to location and entry under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). The land has been and will remain open to mineral leasing.

Dated: June 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–18056 Filed 7–9–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Application for Federal Law Enforcement Dependents Assistance.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by July 14, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–75871, Department of Justice Desk Officer, Washington, DC.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until September 8, 1997. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address on or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

(2) Evaluate the accuracy of the agencies 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 response.

Overview of this information collection:

(1) Type of Information Collection: Initial collection of information.

(2) Title of the Form/Collection: Application for Federal Law Enforcement Dependents Assistance.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, 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: Children and spouses of Federal civilian law enforcement officers who were killed or permanently and totally disabled in the line of duty and are seeking financial assistance for the purpose of higher education. Other: None. This program is administered under the authority of 42 U.S.C. 3796 *et*

seq. to provide financial assistance in the form of awards to the children and spouses of Federal civilian law enforcement officers whose deaths or permanent and total disabilities in the line of duty resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program. The Application Form will be completed by each eligible applicant and will provide information regarding educational experience, educational goals, and estimated cost of educational plan for verification and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses annually at 2 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: (100) annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 3, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–17962 Filed 7–9–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 29, 1997, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N, N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3, 4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3, 4-methylenedioxy- amphetamine (7402).	I
3, 4-Methylenedioxy-N-ethyl- amphetamine (7404).	I
3, 4-Methylenedioxymeth- amphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
1-[1- (2-Thienyl) cyclohexyl]- piperidine (7470).	I
Dihydromorphine (9145)	I
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane- carbonitrile (PCC) (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 8, 1997.

Dated: June 23, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–18104 Filed 7–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33 of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 5, 1997, U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamongo, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the listed controlled substances to make drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 8, 1997.

Dated: June 23, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–18105 Filed 7–9–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time:

July 28, 1997; 6:00 p.m.–10:00 p.m.
July 29, 1997; 8:00 a.m.–6:00 p.m.
July 30, 1997; 8:00 a.m.–6:30 p.m.

Place: University of Utah, Alumni House, Central Campus Drive, Salt Lake City, UT 84112.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning support for the Science and Technology Center, University of Utah.

Agenda: To review and evaluate a proposal and provide advice and recommendations as part of the review process for a proposal submitted to the National Science Foundation.

Reason for Closing: The activities being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–18084 Filed 7–9–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* DOE/NRC Form 742, ''Material Balance Report;'' NUREG/BR–0007, ''Instructions for Completing Material Balance Report and Physical Inventory Listing;'' and DOE/NRC Form 742C, ''Physical Inventory Listing.''

3. *The form number if applicable:* DOE/NRC Form 742 and DOE/NRC Form 742C.

4. *How often the collection is required:* DOE/NRC Forms 742 and 742C are submitted semiannually following a physical inventory of nuclear materials.

5. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear or source material.

6. *An estimate of the number of responses:*

DOE/NRC Form 742: 600 responses

DOE/NRC Form 742C: 240 responses

7. *The estimated number of annual respondents:*

DOE/NRC Form 742: 300 licensees

DOE/NRC Form 742C: 120 licensees

8. *An estimate of the total number of hours needed annually to complete the requirement or request:*

DOE/NRC Form 742: 450 hours

DOE/NRC Form 742C: 1,440 hours

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Each licensee authorized to possess special nuclear material totalling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by August 11, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0004 and –0058), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 1st day of July 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–17994 Filed 7–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* 10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

5. *Who will be required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. *An estimate of the number of responses:* 63 responses.

7. *The estimated number of annual respondents:* 63 Agreement State licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 150 hours

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by August 11, 1997. Edward Michlovich, Office of Information and Regulatory Affairs (3150–0032), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 1st day of July 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–17995 Filed 7–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Byron Nuclear Power Station, Units 1 and 2, located in Ogle County, Illinois, and Braidwood Nuclear Power Station, Units 1 and 2, located in Will County, Illinois, respectively.

The proposed amendments would authorize a revision to the realistic dose values for the process gas system rupture in Section 15.0 of the Byron/Braidwood (B/B) Updated Final Safety Analysis Report (UFSAR). During preparation of a UFSAR change package, ComEd discovered that the Final Safety Analysis Report (FSAR) had not been updated to correct an error from the previous revision of the dose calculation. Since the correct dose value is greater than that previously reported, the consequences of the accident had increased, and an unreviewed safety question resulted.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve a slight increase to the consequences of the waste gas decay tank rupture event as shown in UFSAR Tables 15.0–11 and 15.0–12. However, the values continue to be less than a small fraction of the 10 CFR 100 limits, i.e., 10 percent or 2.5 rem for whole-body dose. Standard Review Plan 11.3, Branch Technical Position (BTP) ETSB 11–5, ''Postulated Radioactive Releases Due to a Waste Gas System Leak or Failure,'' in NUREG–0800, July 1981 imposes lower dose limits than 10 CFR 100 because the probability of an accidental release from the waste gas system is relatively high. The BTP establishes a limit of 0.5 rem to an individual at the nearest exclusion area boundary. The recalculated doses also meet this criterion.

All other aspects of the original accident event and analysis, as presented in UFSAR Subsection 15.7.1, are unchanged. The proposed changes do not impact any accident initiators or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. There is no change to the types of effluents released offsite. The source terms in UFSAR Table 15.7–2 are unaffected. The change affects only the post-accident dose; there is no impact on individual or cumulative occupational radiation exposure. Therefore, this request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident or malfunction mechanism. The proposed change affects only a calculation to determine dose following an event that has been previously analyzed. It has no impact on any event in the accident sequence, and no new failures are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not result in any reduction in the margin of safety

because they have no impact on safety analysis assumptions. Technical Specification 3.11.2.6 restricts the quantity of radioactivity contained in each gas storage tank to provide assurance that, in the event of an uncontrolled release of the tank's contents, the resulting whole body exposure will not exceed 0.5 rem, as established in BTP ETSB 11–5. The gas decay tank activity is limited to 50,000 curies of noble gas as Xe-133 equivalent. Since this activity limit is not affected and the calculated dose is less than 0.5 rem, the margin of safety remains the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 7, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated June 9, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 27th day of June 1997.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–17992 Filed 7–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–0017]

Notice of Environmental Assessment, Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of environmental assessment, finding of no significant impact, and opportunity for hearing related to amendment of materials license no. STB–527 for the Dow Chemical Company, Midland, Michigan.

The U.S. Nuclear Regulatory Commission is considering a license amendment request submitted by the Dow Chemical Company (Dow). The proposed action is the approval of Dow's unrestricted release criteria for the thorium-contaminated slag storage piles at Dow's Midland and Bay City, Michigan, plant sites.

Summary of the Environmental Assessment

Dow submitted its proposed release criteria by letter dated March 11, 1996. The proposed action is the approval of the release criteria so that Dow can complete remediation of the storage areas, release them for unrestricted use, and terminate the license. The proposed action is necessary so that Dow can release the current storage areas for unrestricted use and terminate Dow's license.

Dow is currently decommissioning the Midland and Bay City, Michigan, sites, by excavating and transporting the contaminated material, by truck, from the Midland, to the Bay City, facility. The thorium-contaminated material from both facilities is then transported by rail for burial at the Envirocare low-level radioactive waste facility in Clive, Utah. NRC issued the license amendment authorizing the current decommissioning activities on July 19, 1996.

Based on staff's evaluation of Dow's unrestricted release criteria, it was determined that the proposed criteria complies with NRC's guidance on criteria for release for unrestricted use, and that authorizing the license amendment would not be a major Federal action significantly affecting the quality of the human environment. The staff concludes that a finding of no significant impact is justified and appropriate and that an environmental impact statement is not required.

The staff-identified alternatives for approving Dow's proposed release criteria are: (1) No action; or (2) adherence to the remediation criteria in the ''Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites'' (SDMP Action Plan) (57 FR 13389, April 16, 1992). NRC's soil remediation criteria for thorium and uranium wastes, referenced in the SDMP Action Plan, are from the Branch Technical Position (BTP) entitled ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations'' (46 FR 52601, October 23, 1981).

The no-action alternative runs counter to the goals of 10 CFR part 40 and protecting public health safety and environment. The dose modeling results for Dow's proposed remediation criteria gave a maximum dose at or below the dose modeling results for the BTP Option 1 thorium remediation criteria (maximum modeled dose of 0.03 mSv (30 mrem)/year predominantly from the direct radiation and inhalation pathways). Based on these results, Dow's proposed isotope specific concentration limits for soil comply with NRC's guidance for unrestricted release and are acceptable for unrestricted release.

Finding of No Significant Impact:

Based on the findings in the environmental assessment, the staff has determined that, under the National Environmental Policy Act of 1969, as amended, and NRC's regulations in 10 CFR part 51, authorizing this license amendment would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The staff concludes that a finding of no significant impact is justified and appropriate.

The staff believes that approval of Dow's release criteria will not cause any significant impacts on the human environment and is acceptable. Dow's preferred alternative provides the most complete and optimum level of protection of human health and safety and the environment among the various alternatives for release of this site.

Further Information

For additional information regarding the proposed action, see the licensee's proposed release criteria submitted by letter dated March 11, 1996, and supplementary information, the safety evaluation report, and the environmental assessment, which are available for inspection at NRC's Public Document Room, 2120 L Street NW, Washington, DC.

For further information contact Jack D. Parrott, Division of Waste Management, USNRC, Mailstop T–8F37, Washington, DC 20555–0001, Telephone: (301) 415–6700.

Opportunity for a Hearing

NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings,'' of NRC's rules of practice, for domestic licensing proceedings, in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for a hearing must be filed within thirty (30) days of the

date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By hand delivery to: Docketing and Service Branch, Office of the Secretary, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail or telegram to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, The Dow Chemical Company, Attention: Mr. Larry Giebelhaus, Project Manager, 1261 Building, Midland, MI 48667; and

2. NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 1st day of July, 1997.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards..

[FR Doc. 97–17991 Filed 7–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation; Three Mile Island Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix R to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR part 50, Appendix R to the extent that it requires the installation of automatic fire suppression systems in certain fire areas. The licensee is seeking an exemption from Appendix R, Section III.2.G.c, which requires the installation of automatic fire suppression systems in fire areas where redundant circuits required for safe shutdown are separated by fire barriers having a 1-hour rating and have fire detectors installed. The licensee requested exemptions for the following fire areas/zones: CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, CB–FA–3b, and FH–FZ–5.

The proposed action is in accordance with the licensee's application for exemption dated August 16, 1996, as supplemented by letters dated August 28, 1996, and January 3, 1997.

The Need for the Proposed Action

Installation of automatic fire suppression systems in the affected fire areas is not a viable alternative. The affected fire areas contain high voltage plant electrical equipment where automatic water suppression systems are not desirable. Halon gas suppression systems are no longer a viable option due to the environmental concerns. The affected fire areas and adjoining spaces are frequently occupied by plant personnel, therefore carbon dioxide suppression systems are not desirable due to the personnel hazard. Modification of the fire barrier envelopes within the affected fire areas to achieve a 3-hour rating, and therefore eliminating the need for fire suppression systems, would represent a substantial cost hardship.

Environmental Impacts of the Proposed Action

In lieu of an automatic sprinkler system, the licensee will install an area-wide automatic detection system in the affected fire areas and will establish that all the fire barrier envelopes within the affected fire areas have a minimum 1-hour fire endurance rating. Manual firefighting equipment is available either inside, or in close proximity to, all of the affected fire areas. Fire brigade response to these fire areas is expected to be rapid. Also, administrative controls limit the amount of combustibles in the affected fire areas.

The Commission has completed its evaluation of the proposed action and has concluded that the degree of fire protection afforded by the area-wide detectors, the minimum 1-hour rated fire barriers, the close proximity and rapid response of firefighting equipment, and certain administrative controls provide reasonable assurance that the ability to perform safe shutdown functions in the event of a fire will be maintained. This evaluation is applicable to the following fire areas identified in the licensee's submittal: CB–FA–2b, CB–FA–2c, CB–FA–2d, CB–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–3b.

Granting an exemption from the regulation for these fire areas will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the exemption, the Commission considered denial of the proposed action, thus requiring the licensee to upgrade the existing fire barrier envelopes to a 3-hour rating, or install automatic fire suppression systems. For fire areas CB–FA–2b, CB–FA–2c, CB–FA–2d, CG–FA–2e, CB–FA–2f, CB–FA–2g, CB–FA–3a, and CB–FA–

3b, the Commission concluded denial would result in no change in current environmental impacts.

For fire zone FH–FZ–5, the Commission concluded that, due to the high combustible loading associated with this fire zone, upgrading to a 3-hour fire barrier would have a measurable benefit. Denial of the proposed action with respect to fire zone FH–FZ–5 would result in no change to current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for TMI–1.

Agencies and Persons Consulted

In accordance with its stated policy, on June 6, 1997, the staff consulted with the Pennsylvania State official, Mr. S. Maingi of the Department of Environmental Protection, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 16, 1996, as supplemented by letters dated August 28, 1996, and January 3, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenues, Harrisburg, PA.

Dated at Rockville, Maryland, this 3rd day of July 1997.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18075 Filed 7–9–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Vocational Report.
(2) *Form(s) submitted:* G–251.
(3) *OMB Number:* 3220–0141.
(4) *Expiration date of current OMB clearance:* 08/31/1997.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 6,000.
(8) *Total annual responses:* 6,000.
(9) *Total annual reporting hours:* 3,045.
(10) *Collection description:* Section 2 of the Railroad Retirement Act provides for the payment of disability annuities to qualified employees and widow(ers). The collections obtains the information needed to determine their ability to work.

Additional Information or Comments

Copies of the forms and supporting documents can be obtained form Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–18089 Filed 7–9–97; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 16, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building. 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Field Office Closure—Washington, DC Office
(2) Phase 2 Restructuring Plan for Office of Programs' Operations
(3) Harvard Medical School Study of Diseases in Certain Railroad Occupations
(4) Draft Response to April 23, 1997, Letter From Congress, Bob Wise on Behalf of Ronda Fortner re Early Retirement/Buyout Offer
(5) Request to Post Chief Information Officer Position
(6) Bureau of Information Services Reorganization—Phase 2
(7) Fiscal Year 1997 Third Quarter Review
(8) Performance Awards for Fiscal Year 1996
(9) Senior Executive Recertification Process
(10) Disability Workloads
(11) *Regulations:*
A. Part 220 (Subpart C, Occupational Disability)
B. Part 230 (Reduction and Non-Payment of Annuities by Reason of Work)
C. Part 255 (Recovery of Overpayments—Final Rule)
D. Part 261 (Final Rule—Administrative Finality)
E. Part 295 (Payments Pursuant to Court Decree or Court-Approved Property Settlement)
(12) Year 2000 Issues
(13) Labor Member Truth-in-Budgeting Status Report

Portion Closed to the Public

(A) Request for Waiver of Excess Annual Leave Credits (Charles A. Flanagan, Jr.)
(B) Request for Waiver of Debt Arising From Annual Leave Deficit (William H. Tebbe)
(C) Reorganization—Administration Group
(D) *Pending Board Appeals:*
1. Maurice McAfee
2. John Machado. Jr.
3. Michael A. Roberts
4. Jerry D. Ruckel
5. Ruth S. Schlegel
6. Charlotte R. Shaw

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: July 7, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–18201 Filed 7–8–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22734 ; 812–10666]

The Cascades Trust, et al.; Notice of Application

July 2, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Cascades Trust on behalf of its series, the Tax-Free Trust of Oregon (''Fund''), Qualivest Capital Management, Inc. (''Adviser''), and First Bank National Association (''New Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from section 15(a).

SUMMARY OF APPLICATION: Adviser's parent, U.S. Bancorp, will merge with and into New Adviser's parent, First Bank System, Inc. (''FBS''), which will result in the assignment, and thus the termination, of the Fund's existing advisory agreement with Adviser. Applicants request an order to permit the implementation, without shareholder approval, of an interim advisory agreement between the Fund and New Adviser (''Interim Advisory Agreement'') for a period commencing on the date the merger is consummated (but in no event later than September 30, 1997) and continuing for a period of up to the earlier of 120 days or the date the Interim Advisory Agreement is approved or disapproved by shareholders of the Fund (''Interim Period''). The order also would permit New Adviser to receive, following shareholder approval of the Interim Advisory Agreement, all fees earned during the Interim Period.

FILING DATES: The application was filed on May 14, 1997 and amended on June 16, 1997. Applicants have agreed to file an 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 July 28, 1997 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: The Cascades Trust, 380 Madison Avenue, Suite 2300, New York, NY 10017; Adviser, 111 S.W. Fifth Avenue, Suite T–15, Portland, OR 97204; New Adviser, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641, or Mercer E. Bullard, 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 Cascades Trust is a Massachusetts business trust registered as an open-end management investment company under the Act. Adviser, a registered investment adviser under the Investment Advisers Act of 1940, currently serves as investment adviser to the Fund. Adviser is a wholly-owned subsidiary of United States National Bank of Oregon, which is a wholly-owned subsidiary of U.S. Bancorp. New Adviser serves as the investment adviser and manager of the First American Family of Funds through its First Asset Management Group. New Adviser is a direct, wholly-owned subsidiary of FBS.

2. On March 20, 1997, FBS and U.S. Bancorp jointly announced the signing of a definitive merger agreement for FBS to acquire U.S. Bancorp (the ''Merger''). Under the merger agreement U.S. Bancorp shareholders will receive 0.755 shares of FBS common stock for each share of U.S. Bancorp common stock. FBS will be the surviving corporation and will use the name U.S. Bancorp. Applicants expect the Merger to be consummated sometime before September 30, 1997, subject to the satisfaction of certain conditions, including receipt or certain regulatory approvals.

3. At a meeting on June 6, 1997, the board of trustees of the Fund (''Board''), including a majority of its trustees that are not ''interested persons'' under section 2(a)(19) of the Act (''Independent Trustees''), after full evaluation and with the advice and assistance of counsel, voted in the manner prescribed by section 15(c) of the Act to approve the Interim Advisory Agreement and to recommended that shareholders on the Fund approve the Agreement during the 120-day period commencing on the earlier of the consummation of the Merger (''Effective Date'') or September 30, 1997. The Board was advised that, in order to ensure the continued provision of high quality investment advisory services to the Fund, on the Effective Date the New Adviser will employ several portfolio managers now employed by the Adviser, including the manager of the Fund. These portfolio managers, together with the investment professionals already employed by New Adviser, then would assume management of the Fund on the Effective Date pursuant to the New Advisory Agreement between New Adviser and the Fund. Applicants state that these arrangements take into account the fact that several other portfolio managers, including the Fund's backup portfolio manager, have departed or will depart from Adviser by or shortly after the Effective Date.

4. All investment advisory fees paid by the Fund to New Adviser during the Interim Period will be paid to an escrow agent (which will be an unaffiliated third party institution), and none of such fees held in escrow will be paid to New Adviser until the related shareholder approval has been obtained. If Fund shareholders fail to approve the Interim Advisory Agreement, the escrow agent will pay to the Fund the applicable escrow amounts (including interest earned). The escrow agent will release the escrow funds only upon receipt of a certificate from the officers of The Cascades Trust stating, if the escrow funds are to be delivered to New Adviser, that the Interim Advisory Agreement has received the requisite shareholder vote, or, if the escrow funds are to be delivered to the Fund, that the Interim Period has ended and the Interim Advisory Agreement has not received the requisite shareholder vote. Before any such certificate is sent, the Independent Trustees of the Cascades Trust will be notified.

5. Applicants request relief from section 15(a) to permit the Fund to implement the Interim Advisory Agreement during the Interim Period. In the event the Effective Date is later than September 30 1997, the Interim Period will commence on September 30, 1997. The Interim Advisory Agreement will contain the same terms and conditions as the existing advisory agreement between the Fund and Adviser (''Existing Advisory Agreement''), except for the effective and termination dates, escrow provisions, and the

substitution of New Adviser in place of Adviser. Applicants also request an exemption to permit New Adviser to receive from the Fund, subject to shareholder approval of the Interim Advisory Agreement and to the escrow arrangement described in the application, any and all fees earned during the Interim Period under such Interim Advisory Agreement. The fees to be paid during the Interim Period will be unchanged from the fees to be paid under the Existing Advisory Agreement.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor. Applicants state that, on the Effective Date, the Adviser will become a wholly-owned subsidiary of the surviving corporation. Applicants therefore believe that the Merger will result in the ''assignment'' of the Existing Advisory Agreement.

2. Rule 15a–4 under the Act provides that, if an investment advisory contract with an investment company is terminated by assignment, an investment adviser may act as such for the company during the 120 day period following such termination pursuant to a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by the company's board of directors, including a majority of the non-interested directors, (b) the compensation to be paid under the new contract money does not exceed the compensation that would have been paid under the contract most recently approved by company's shareholders, and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receive(s) money or other benefit'' in connection with the assignment. Applicants state that they may not be permitted to rely on rule 15a–4 because of the benefits U.S. Bancorp's shareholders will receive from the Merger.

3. Applicants contend that, because the Fund did not have sufficient advance notice of the Merger, it will not be possible to obtain shareholder approval of the Interim Advisory Agreement in accordance with section 15(a) prior to the closing of the Merger. Applicants state that the terms and timing of the Merger were determined by FBS and U.S. Bancorp in response to a number of factors relating principally to their commercial banking and other similar business concerns.

4. Applicants state that the Board determined that retention of New Adviser to provide advisory services to the Fund during the Interim Period was in the best interests of Fund shareholders because it would (a) provide that the Fund will continue to be managed by one of the same individuals who now manage it; (b) ensure that, regardless of any further personnel changes which may take place at Adviser during the Interim Period, the Funds would be managed during such period by a group of investment professionals which the Board has determined can provide the appropriate scope and quality of advisory services; and (c) avoid the need for the Board to consider on an *ad hoc* basis whether and how to proceed under rule 15a–4 if further personnel changes were to take place at Adviser during the Interim Period.

5. The Board noted that, at the Effective Date, the business operations of Adviser will be greatly reduced or eliminated altogether. Applicants state that, of approximately $9.7 billion of assets under management by Adviser (excluding assets of the Fund), New Adviser will assume management of approximately $9.45 billion on the Effective Date. The Board also noted that the remaining portfolio managers of Adviser who advise other mutual funds are expected to become employees of New Adviser. Thus, applicants state that most or all of the current operations of Adviser, apart from those relating to the Fund, will be effectively transferred to New Adviser on the Effective Date. Under these circumstances, the Board believed that New Adviser's investment management staff and support personnel and systems would be much better equipped to provide ongoing services to the Fund than whatever staff, support personnel and systems, if any, may remain in place at Adviser following the Effective Date.

6. Applicants submit that the Fund will receive during the Interim Period substantially comparable investment advisory services, provided in substantially the same manner, as it received prior to the Effective Date. Applicants anticipate that New Adviser will employ one of the co-managers who managed the Fund prior to the announcement of the Merger. In the event there is any material change in personnel providing advisory services under the Interim Advisory Agreement during the Interim Period, applicants state that New Adviser will apprise and consult the Board to ensure that such Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope and quality.

7. Applicants submit that to deprive New Adviser of its customary fees during the Interim Period for no reason, other than the fact that the Merger may be deemed to result in an assignment of the Existing Advisory Agreement, would be unduly harsh and unreasonable penalty to impose upon an investment adviser. New Adviser submits that, in good faith and consistent with the Act and the spirit of rule 15a–4, it seeks to promote the interests of the Fund and its shareholders by undertaking the fee and other arrangements described in the application. Applicants state that the fees payable to New Adviser under the Interim Advisory Agreement have been approved by the Board, including a majority of the Independent Trustees, in accordance with their fiduciary and other obligations under the Act, and that such fees will not be released by the escrow agent without the approval of the Fund's shareholders.

8. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfied this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The Interim Advisory Agreement will have the same terms and conditions as the Existing Advisory Agreement, except for the effective and termination dates, escrow provisions, and the substitution of New Adviser in place of Adviser.

2. Fees earned by New Adviser and paid by the Fund during the Interim Period in accordance with the Interim Advisory Agreement will be maintained with an unaffiliated financial institution in an interest-bearing escrow account, and amounts in such account (including interest earned on such amounts) will be paid to New Adviser only upon approval of the shareholders of the Fund or, in the absence of approvals by such shareholders, to the Fund.

3. The Fund will hold a meeting of shareholders to vote on approval of the Interim Advisory Agreement for the Fund on or before the 120th day following the earlier of the termination of the Existing Advisory Agreement on the Effective Date or September 30, 1997.

4. New Adviser will pay the costs of preparing and filing this application. New Adviser will pay the costs relating to the solicitation of approval of the Interim Advisory Agreement necessitated by the Merger.

5. New Adviser will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund under the Interim Advisory Agreement will be at least equivalent, in the judgment of the Board including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Advisory Agreement. In the event of any material change in personnel providing services pursuant to the Interim Advisory Agreement, New Adviser will apprise and consult the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17983 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22733; 812–10654]

Qualivest Funds, et al.; Notice of Application

July 2, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Qualivest Funds on behalf of each of its investment portfolios (each portfolio, a ''Fund''), Qualivest Capital Management, Inc. (''Adviser''), and First Bank National Association (''New Adviser'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting an exemption from section 15(a).

SUMMARY OF APPLICATION: Adviser's parent, U.S. Bancorp, will merge with and into New Adviser's parent, First Bank System, Inc. (''FBS''), which will result in the assignment, and thus the termination, of the Funds' existing advisory agreements with Adviser. Applicants request an order to permit the implementation, without shareholder approval, of interim advisory agreements between the Funds and New Adviser (''Interim Advisory Agreements'') for a period commencing on the date the merger is consummated (but in no event later than September 30, 1997) and continuing for a period of up to the earlier of 120 days or the date the Interim Advisory Agreements are approved or disapproved by shareholders of the Funds (''Interim Period''). The order also would permit New Adviser to receive, following shareholder approval of the related Interim Advisory Agreement, all fees earned during the Interim Period.

FILING DATES: The application was filed on May 12, 1997 and amended on June 12, 1997.

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 July 28, 1997 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: Qualivest Funds, 3425 Stelzer Road, Columbus, OH 43219–3035; Adviser, 111 S.W. Fifth Avenue, Suite T–15, Portland, OR 97204; New Adviser, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641 or Mercer E. Bullard, 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.

Applicant's Representations

1. Qualivest Funds, a business trust organized under the laws of the Commonwealth of Massachusetts, is registered as an open-end management investment company under the Act. It is organized as a series investment company and currently offers 15 separate Funds, of which 13 are currently offered for sale to the public. Adviser, a registered investment adviser under the Investment Advisers Act of 1940, currently serves as investment adviser to the Funds. Adviser is a wholly-owned subsidiary of United States National Bank of Oregon, which is a wholly-owned subsidiary of U.S. Bancorp. New Adviser serves as the investment adviser and manager of the First American Family of Funds through its First Asset Management Group. New Adviser is a direct, wholly-owned subsidiary of FBS.

2. On March 20, 1997, FBS and U.S. Bancorp jointly announced the signing of a definitive agreement for FBS to acquire U.S. Bancorp (the ''Merger''). Under the merger agreement, U.S. Bancorp shareholders will receive 0.755 shares of FBS common stock for each share of U.S. Bancorp common stock. FBS will be the surviving corporation and will use the name U.S. Bancorp. Applicants expect the Merger to be consummated sometime before September 30, 1997, subject to the satisfaction of certain conditions, including receipt of certain regulatory approvals.

3. At a meeting on May 8, 1997, the board of trustees of Qualivest Funds (''Board'') voted in the manner prescribed by section 15(c) of the Act to approve Interim Advisory Agreements and to recommend that shareholders of each Fund approve the related Interim Advisory Agreement during the 120-day period commencing on the earlier of the consummation of the Merger (''Effective Date'') or September 30, 1997. The Board determined to retain New Adviser rather than the current Adviser after considering the capabilities of New Adviser and determining that it was indeed well-qualified to manage each of the Funds, and the exigent circumstances with which the Board was faced. Applicants expect that at least six of the eleven Fund portfolio managers now employed by Adviser will leave the employ of the Adviser by or shortly after the Effective Date. As a result of these departures, at least four Funds will lose both their portfolio co-managers; at least another three Funds will lose one of their two portfolio co-managers; and the committee which manages another four Funds will lose more than half its members. In light of these facts, the Board determined that doubt exists whether the remaining personnel of Adviser, acting alone,

would be able to provide an appropriate scope and quality of advisory services to the Funds during the Interim Period.

4. In order to provide continuity of Fund management and to avoid harm to the Funds, applicants propose that the remaining Fund portfolio managers now employed by the Adviser become employees of the New Adviser on the Effective Date of the parent company Merger. These individuals, together with the investment professionals already employed by the New Adviser, then would assume management of the Funds on the Effective Date pursuant to a new advisory agreement between the New Adviser and the Funds.

5. All investment advisory fees paid by the Funds to New Adviser during the Interim Period will be paid to an escrow agent (which will be an unaffiliated third party institution), and, with respect to each Fund, none of such fees held in escrow will be paid to New Adviser until the related shareholder approval has been obtained. If shareholders of any Fund fail to approve the Interim Advisory Agreement, the escrow agent will pay to the Fund the applicable escrow amounts (including interest earned). The escrow agent will release the escrow funds only upon receipt of a certificate from the officers of Qualivest Funds stating, if the escrow funds are to be delivered to New Adviser, that the Interim Advisory Agreement has received the requisite shareholder vote, or, if the escrow funds are to be delivered to any Fund, that the Interim Period has ended and the Interim Advisory Agreement has not received the requisite shareholder vote. Before any such certificate is sent, the members of the Board that are not interested persons as defined in section 2(a)(19) of the Act (''Independent Trustees'') of Qualivest Funds will be notified.

6. Applicants request relief from section 15(a) to permit the Funds to implement Interim Advisory Agreements during the Interim Period. In the event the Effective Date is later than September 30, 1997, the Interim Period will commence on September 30, 1997. Each Interim Advisory Agreement will contain the same terms and conditions as the existing advisory agreement between the related Fund and Adviser (each, an ''Existing Advisory Agreement''), except for the effective and termination dates, escrow provisions, and the substitution of New Adviser in place of Adviser. Applicants also request an exemption to permit New Adviser to receive from each Fund, subject to shareholder approval of the related Interim Advisory Agreement and to the escrow arrangement described in the application, any and all fees earned during the Interim Period under such Interim Advisory Agreement. The fees to be paid during the Interim Period will be unchanged from the fees to be paid under the respective Existing Advisory Agreements.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides that it shall be unlawful for any person to serve as an investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor. Applicants state that, on the Effective Date, Adviser will become a wholly-owned subsidiary of the surviving corporation. Applicants therefore believe that the Merger will result in the ''assignment'' of the Existing Advisory Agreements.

2. Rule 15a–4 under the Act provides that, if an investment advisory contract with an investment company is terminated by assignment, an investment adviser may act as such for the company during the 120 day period following such termination pursuant to a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by the company's board of directors, including a majority of the non-interested directors, (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by company's shareholders, and (c) neither the adviser nor any controlling person of the adviser directly or indirectly receives money or other benefit in connection with the assignment. Applicants state that they may not be able to rely on rule 15a–4 because of the benefits U.S. Bancorp's shareholders will receive from the Merger.

3. Applicants contend that, because the Funds did not have sufficient advance notice of the Merger, it will not be possible for them to obtain shareholder approval of the Interim Advisory Agreements in accordance with section 15(a) prior to the closing of the Merger. Applicants state that the terms and timing of the Merger were determined by FBS and U.S. Bancorp in response to a number of factors relating principally to their commercial banking and other similar business concerns.

4. Applicants state that the Board determined that retention of New Adviser to provide advisory services to the Funds during the Interim Period and employment of the remaining Fund portfolio managers of Adviser by New Adviser would serve Fund shareholders better than any alternative, in that it would (a) provide that the Funds will, to the extent possible under the circumstances, continue to be managed by the same individuals; (b) ensure that, to the extent current Fund portfolio managers depart Adviser, the affected Funds will be managed during the Interim Period by a group of investment professionals which the Board has determined can provide the appropriate scope and quality of advisory services; and (c) avoid the need for the Board to consider on an emergency, *ad hoc* basis how to proceed if and to the extent additional current Fund portfolio managers decide to leave Adviser. With respect to the third point, the Board noted that if additional portfolio managers were to leave Adviser, the affected Funds could be left essentially unmanaged until the Board could be convened to terminate the Existing Advisory Agreements and select and retain a new investment adviser. The Board also noted that, following the Effective Date, both Adviser and New Adviser will be subsidiaries of the same corporate parent. Thus, applicants note, ultimate control over the entity which advised the Funds during the Interim Period will rest in the same place regardless of whether that entity is the current Adviser or New Adviser.

5. Applicants anticipate that all but three of the Funds will be merged into corresponding funds of the First American Family of funds during or by the close of the Interim Period. Applicants maintain that the 120 day period will give the Funds sufficient time to allow a single proxy solicitation to be conducted for shareholder consideration of an overall, comprehensive plan for reorganizing the Funds, as well as for shareholder consideration of the Interim Advisory Agreements. Applicants contend that proceeding in this manner will allow shareholder approval to be obtained in a cost effective manner and will minimize any shareholder confusion that might arise in the circumstances.

6. Applicants submit that each Fund will receive during the Interim Period substantially comparable investment advisory services, provided in substantially the same manner, as it received prior to the Effective Date. Applicants anticipate that New Adviser will employ certain of Adviser's key portfolio managers and advisory

personnel that managed the Funds prior to the announcement of the Merger. In the event there is any material change in personnel providing advisory services under the Interim Advisory Agreements during the Interim Period, applicants state that New Adviser will apprise and consult the Board to ensure that such Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope and quality. Applicants state that the Board's approval of the Interim Advisory Agreements signifies its independent determination that implementing the Agreements prior to shareholder approval was necessary to protect the Funds and their shareholders.

7. Applicants submit that to deprive New Adviser of its customary fees during the Interim Period for no reason, other than the fact that the Merger may be deemed to result in an assignment of the Existing Advisory Agreements, would be unduly harsh and unreasonable penalty to impose upon an investment adviser. New Adviser submits that, in good faith and consistent with the Act and the spirit of rule 15a–4, it seeks to promote the interests of the Funds and their shareholders by undertaking the fee and other arrangements described in the application. Applicants state that the fees payable to New Adviser under the Interim Advisory Agreements have been approved by the Board, including a majority of the Independent Trustees, in accordance with their fiduciary and other obligations under the Act, and that such fees will not be released by the escrow agent without the approval of the respective Fund's shareholders.

8. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfies this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each Interim Advisory Agreement will have the same terms and conditions as the respective Existing Advisory Agreement, except for the effective and termination dates, escrow provisions, and the substitution of New Adviser in place of Adviser.

2. Fees earned by New Adviser and paid by a Fund during the Interim Period in accordance with the Interim Advisory Agreement will be maintained with as unaffiliated financial institution in an interest-bearing escrow account, and amounts in the such account (including interest earned on such amounts) will be paid to New Adviser only upon approval of the shareholders of the related Fund or, in the absence of approval by such shareholders, to the Fund.

3. The Qualivest Funds will hold meetings of shareholders to vote on approval of the Interim Advisory Agreements for the Funds on or before the 120th day following the earlier of the termination of the Existing Advisory Agreements on the Effective Date or September 30, 1997.

4. New Adviser will pay the costs of preparing and filing the application. New Adviser will pay the costs relating to the solicitation of approval of Fund shareholders, to the extent such costs relate to shareholder approval of the Interim Advisory Agreements necessitated by the Merger.

5. New Adviser will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Advisory Agreements will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Advisory Agreements. In the event of any material change in personnel providing services pursuant to the Interim Advisory Agreements, New Adviser will apprise and consult the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17988 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22732; 812–10580]

Reserve Investment Funds, Inc., et al., Notice of Application

July 2, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Reserve Investment Funds, Inc., T. Rowe Price Balanced Fund, Inc., T. Rowe Price Blue Chip Growth Fund, Inc., T. Rowe Price Capital Appreciation Fund, T. Rowe Price Capital Opportunity Fund, Inc., T. Rowe Price Dividend Growth Fund, Inc., T. Rowe Price Equity Income Fund, T. Rowe Price Equity Series, Inc., T. Rowe Price Equity Income Portfolio, T. Rowe Price Mid-Cap Growth Portfolio, T. Rowe Price New America Growth Portfolio, T. Rowe Price Personal Strategy Balanced Portfolio, T. Rowe Price Financial Services Fund, Inc., T. Rowe Price Growth & Income Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price Health Sciences Fund, Inc., T. Rowe Price Index Trust, Inc., T. Rowe Price Equity Index Fund, Institutional Equity Fund, Inc., Mid-Cap Equity Growth Fund, Institutional International Funds, Inc., Foreign Equity Fund, T. Rowe Price International Fund, Inc., T. Rowe Price International Discovery Fund, T. Rowe Price International Stock Fund, T. Rowe Price European Stock Fund, T. Rowe Price New Asia Fund, T. Rowe Price Japan Fund, T. Rowe Price Latin America Fund, T. Rowe Price Emerging Markets Stock Fund, T. Rowe Price Global Stock Fund, T. Rowe Price International Bond Fund, T. Rowe Price Global Government Bond Fund, T. Rowe Price Emerging Markets Bond Fund, T. Rowe Price International Series, Inc., T. Rowe Price International Stock Portfolio, T. Rowe Price Mid-Cap Growth Fund, Inc., T. Rowe Price Mid-Cap Value Fund, Inc., T. Rowe Price New America Growth Fund, T. Rowe Price New Era Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price OTC Fund, Inc., T. Rowe Price OTC Fund, T. Rowe Price Science & Technology Fund, Inc., T. Rowe Price Small-Cap Value Fund, Inc., T. Rowe Price Spectrum Fund, Inc., Spectrum Growth Fund, Spectrum Income Fund, Spectrum International Fund, T. Rowe Price Value Fund, Inc., New Age Media Fund, Inc., T. Rowe Price California Tax-Free Income Trust, California Tax-Free Bond Fund, California Tax-Free Money Fund, T. Rowe Price Corporate Income Fund, Inc., T. Rowe Price Fixed Income Series, Inc., T. Rowe Price Limited-Term Bond Portfolio, T. Rowe Price Prime Reserve Portfolio, T. Rowe Price GNMA Fund, T. Rowe Price High Yield Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Personal Strategy Fund, Inc., T. Rowe Price Personal Strategy Balanced Fund, T. Rowe Price Personal Strategy Growth

Fund, T. Rowe Price Personal Strategy Income Fund, T. Rowe Price Prime Reserve Fund, Inc., T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price Short-Term U.S. Government Fund, Inc., (formerly known as T. Rowe Price Adjustable Rate U.S. Government Fund, Inc.), T. Rowe Price State Tax-Free Income Trust, Maryland Tax-Free BondFund, Maryland Short-Term Tax-Free Bond Fund, New York Tax-Free Bond Fund, New York Tax-Free Money Fund, Virginia Tax-Free Bond Fund, Virginia Short-Term Tax-Free Bond Fund, New Jersey Tax-Free Bond Fund, Georgia Tax-Free Bond Fund, Florida Insured Intermediate Tax-Free Fund, T. Rowe Price Summit Funds, Inc., T. Rowe Price Summit Cash Reserves Fund, T. Rowe Price Summit Limited-Term Bond Fund, T. Rowe Price Summit GNMA Fund, T. Rowe Price Summit Municipal Funds, Inc., T. Rowe Price Summit Municipal Money Market Fund, T. Rowe Price Summit Municipal Intermediate Fund, T. Rowe Price Summit Municipal Income Fund, T. Rowe Price Tax-Exempt Money Fund, Inc., T. Rowe Price Tax-Free High Yield Fund Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price U.S. Treasury Funds, Inc., U.S. Treasury Intermediate Fund, U.S. Treasury Long-Term Fund, U.S. Treasury Money Fund, T. Rowe Price Associates, Inc. (''T. Rowe Price''), Rowe Price-Fleming International, Inc. (''Price-Fleming''), each fund and all other registered investment companies and series thereof that are advised by T. Rowe Price or Price-Fleming or a person controlling, controlled by, or under common control with T. Rowe Price or Price-Fleming (collectively, the ''Adviser''), and all other registered investment companies and series thereof for which the Adviser in the future acts as investment adviser (collectively, the ''Price Funds''); T. Rowe Price Trust Company (''Trust Company''); collective trust funds, the trustee for which, or in the future the trustee for which, is Trust Company or the Adviser that are excepted from the definition of investment company by section 3(c)(11) of the Act (the ''3(c)(11) Entities''); institutional and individual managed accounts advised by the Adviser (''Institutional Accounts'') [1] (collectively, the Price Funds, the 3(c)(11) Entities, and the Institutional Accounts, the ''Funds''),[2] T. Rowe Price Services, Inc. (''Services''), T. Rowe Price (Canada), Inc. (''Price Canada''), and T. Rowe Price Stable Asset Management, Inc. (''Price SAM'').

RELEVANT ACT SECTIONS: Order of requested under section 12(d)(1)(J) of the Act exempting applicant from sections 12(d)(1) (A) and (B) of the Act, under section 6(c) of the Act exempting applicants from rule 2a–7(c)(4) (i) and (ii) under the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under rule 17d–1 under the Act to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit certain Funds, including money market funds (the ''Participating Funds''), to purchase shares of one or more non-publicly traded T. Rowe Price money market funds and/or short-term bond funds (the ''Central Funds'') for cash management purposes, and permit the Participating Funds and the Central Funds to engage in certain transactions with each other. The requested order also would amend a condition of a prior order.[3]

FILING DATES: The application was filed on March 14, 1997 and amended on June 9, 1997 and June 19, 1997. Applicants have agreed to file an 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 July 28, 1997 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, NW., Washington, DC 20549. Applicants, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Price Fund is or will be registered under the Act, and the shares of each series in a Price Fund are or will be registered under the Securities Act of 1933 (the ''1933 Act''). Most of the Price Funds are series companies and may issue one or more series and/or one or more classes of shares. The 3(c)(11) Entities are common trust funds established by Trust Company under Maryland law and exempt from registration under the Act in reliance on section 3(c)(11) thereunder. Trust Company, which is a wholly-owned subsidiary of T. Rowe Price, acts as trustee for each common trust.[4]

2. T. Rowe Price and Price-Fleming are each registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). T. Rowe Price acts as the investment manager for all domestic Funds and Price-Fleming acts as the investment manager for all international and global Funds. T. Rowe Price provides all Funds with certain administrative services and Price-Fleming provides the international and global Funds with certain administrative services. Services, a wholly-owned subsidiary of T. Rowe Price, is a registered transfer agent and acts as the shareholder servicing, transfer, and dividend paying agent for each of the Price Funds. Price Canada, a wholly-owned subsidiary of T. Rowe Price, is an investment adviser organized in Maryland and registered under the Advisers Act and with the Ontario Securities Commission to provide advisory services to individual and institutional clients residing in Canada. Price SAM is a wholly-owned subsidiary of T. Rowe Price and is registered under the Advisers Act. Price SAM provides investment management

[1] An Institutional Account is defined as any separately managed account (as distinct from a Price Fund or collective trust fund).

[2] Each Fund that currently intends to rely on the requested relief has been named as an applicant. Any other existing Fund that may rely on the order in the future and any future Fund that relies on the order will do so only in accordance with the terms and conditions of the application.

[3] T. Rowe Price Spectrum Fund, Inc., Investment Company Act Release Nos. 21371 (Sept. 22, 1995) (notice) and 21425 (Oct. 18, 1995) (order) (''Spectrum Fund Order'').

[4] Trust Company, in its capacity as trustee, is the legal owner of the assets of the 3(c)(11) Entities, although the assets within each such entity are beneficially owned by the participating employee benefit plans therein. Accordingly, applicants submit that Trust Company can appropriately join as an applicant on behalf of the 3(c)(11) Entities without each entity individually also joining as an applicant.

services for portfolios investing in guaranteed investment contracts, bank investment contracts, and structured investment contracts issued by banks and insurance companies, as well as short-term fixed income securities.

3. Each Participating Fund has, or may be expected to have, uninvested cash held by its custodian bank. Such cash may result from a variety of sources, including dividends or interest received from portfolio securities, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors.

4. The Central Funds will be open-end management investment companies registered under the Act, but will not register their shares for sale under 1933 Act. The Central Funds will be taxable or tax-exempt money market funds or short-term bond funds with a portfolio maturity of three years or less.[5] The Central Funds are anticipated to be used as an additional cash management device for temporary investment by the Participating Funds. Shares of the Central Funds will be sold only to the Participating Funds.

5. No front-end sales charge, contingent deferred sales charge, rule 12b–1 fee, or other underwriting and distribution fee will be charged in connection with the purchase and sale of shares of the Central Funds. The Adviser currently intends not to collect any advisory fee from a Central Fund for serving as its investment adviser.

6. Applicants believe that it will be in the best interests of the Participating Funds and their shareholders to provide the widest possible range of investments for available cash. By adding shares of the Central Funds as another investment option, applicants believe that the Participating Funds may reduce their aggregate exposure to counterparty risk in repurchase agreements and diversify the risk associated with direct purchases of short-term obligations while providing high current rates of return, ready liquidity, and increased diversity of holdings indirectly through investment in the Central Funds. Reducing the amount of uninvested cash held at custodian banks also would reduce the Participating Funds' credit exposure to such banks. These benefits would be particularly pronounced for any tax-exempt Participating Funds, which have fewer cash management options than taxable funds.

7. Applicants intend that Participating Funds and the Central Funds engage in certain interfund purchase and sale transactions in securities. From time to time, certain of the Participating Funds engage in interfund purchase and sale transactions involving short-term money market instruments. Typically, these transactions would be between one entity that has a need to raise cash and another that has cash to invest on a short-term basis or between a fund seeking to implement a portfolio strategy and another fund seeking to raise or invest cash. These transactions provide the Participating Funds with an additional source of liquidity and an additional source of securities for investment.

8. Applicants seek an order to permit (i) the Participating Funds to purchase shares of the Central Funds; (ii) the Central Funds to sell such shares to the Participating Funds; (iii) the Central Funds to purchase (redeem) such shares from the Participating Funds; (iv) the Adviser to effect such purchases and sales (collectively, the ''Proposed Transactions''); (v) the Participating Funds and the Central Funds to engage in interfund purchase and sale transactions in securities (including daily and weekly variable rate demand notes that trade at par plus accrued interest, if any (''VRDNs'')) that otherwise would be effected in reliance on rule 17a–7 [6] (the ''Interfund Transactions''); and (vi) the Participating Funds that are money market funds (the ''Money Funds'') to invest more than five percent of their assets (but no more than 25% of their total net assets) in the Central Funds that are money market funds.

9. Applicants state that T. Rowe Price Spectrum Fund, Inc. (''Spectrum Fund'') is a party to the application. Spectrum is a fund of funds registered under the Act and the 1933 Act that operates under the Spectrum Fund Order. Applicants state that one of the conditions of the Spectrum Fund Order is that the underlying funds in which Spectrum Fund can invest cannot themselves acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants request that if the requested relief is granted, the Price Funds, which include the underlying funds in which Spectrum Fund can invest, will be permitted to purchase shares in excess of the limits contained in section 12(d)(1)(A) of the Act.

Applicants' Legal Analysis

A. Section 12(d)(1)

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 outstanding voting stock of the acquired company's 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. Applicants state that because the Participating Funds will be the only shareholders of the Central Funds, it is unavoidable that more than 3% of the shares of each Central Fund may be owned from time to time by one or more of the Participating Funds that are Price Funds and that more than 10% of each Central Fund's shares may be held by one or more Price Funds. In addition, applicants state that each of the Price Funds will invest in, and hold shares of, the Central Funds to the extent that a Price Fund's aggregate investment in the Central Funds at the time the investment is made does not exceed 25% of the Price Fund's total net assets. For these reasons, applicants seek an exemption from the provisions of section 12(d)(1) to the extent necessary to implement the Proposed Transactions.

3. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

4. Applicants state that while any equity fund might from time to time have a larger than 10% portion of assets temporarily in cash, and while new funds during their start-up phase may even have larger cash positions, applicants believe that a maximum of 25% of a Participating Fund's assets

[5] An investment in a Central Fund that is a short-term bond fund would be available only to those Participating Funds for which direct investment in short-term bonds would be consistent with their investment objectives, policies, and restrictions. Participating Funds that are money market funds would not be eligible to invest in a Central Fund that is a short-term bond fund, but would be eligible to invest in a Central Fund meeting the requirements of rule 2a–7

[6] Rule 17a–7 generally permits purchase or sale transactions between registered investment companies and certain affiliated persons provided that certain conditions are met.

will cover normal investment patterns and permit the majority of equity fund cash to be invested in a Central Fund (assuming that a fund's fundamental investment policies permit such investment). In addition, applicants assert that a 25% limit would be consistent with the requirements and experience of the tax-exempt bond Funds. Furthermore, applicants submit that while the 25% limit might not accommodate the needs of the tax-exempt Money Funds during all periods, it would still allow such Funds an important alternative means of investing for liquidity purposes. Finally, applicants state that they have reviewed the operations of taxable funds with respect to their historic short-term liquid investment requirements and believe that limiting a Participating Fund's investment in the Central Funds to 25% of its total net assets would adequately accommodate cash investment requirements.

5. Applicants state that section 12(d)(1) is intended to protect an investment company's shareholders against (i) undue influence over portfolio management through the threat of large-scale redemptions, the threat of loss of advisory fees to the adviser, and the disruption of orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions, (ii) the acquisition of voting control of the company, and (iii) the layering of sales charges, advisory fees, and administrative costs. Applicants state that each of the Central Funds will be managed specifically to maintain a highly liquid portfolio and that access to the Central Fund will enhance each Participating Fund's ability to manage and invest cash. In addition, applicants state that because the Adviser will serve as investment adviser to both the Participating Funds and the Central Funds, it is not susceptible to undue influence regarding its management of the Central Funds due to threatened redemptions or loss of fees. Further, applicants assert that because no Central Fund will be publicly offered, only the Participating Funds will exercise voting control over the Central Funds and each Participating Fund will hold a *pro rata* share of a Central Fund's outstanding voting securities based on the amount of its investment. Additionally, applicants state that because the Participating Funds will not incur many of the expenses associated with direct investment, these expense savings should significantly offset the effect of the remaining expenses incurred by the Central Funds. Therefore, applicants believe none of the perceived abuses meant to be addressed by section 12(d)(1) is created by the Proposed Transactions.

B. Rule 2a–7

1. Rule 2a–7(c)(4) (i) and (ii) require money market funds to limit their investment in the securities of any one issuer (other than certain specified securities) to 5% of fund assets with respect to either 100% or 75% of the fund's total assets. The SEC has interpreted rule 2a–7(c)(4) (i) and (ii) as applying to a money market fund's investment in another money market fund.[7] Accordingly, applicants seek relief from rule 2a–7(c)(4) (i) and (ii) to the extent necessary to permit the Money Funds to invest in a Central Fund that is a money market fund, to the same extent, and on the same basis, as Participating Funds that are not money market funds.

2. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if 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 Act.

3. Applicants state that rule 2a–7 is designed to minimize the risk that a money market fund will not be able to maintain a stable net asset value. Applicants note that a Central Fund that is a money market fund will seek to maintain a constant net asset value and will be as liquid as a publicly offered money market fund. Applicants state that the net asset value per share of a money market Participating Fund would be made no more volatile as a result of investing a portion of its assets in another money market fund. In addition, applicants note that investment in a Central Fund would be as liquid as other investment alternatives. Accordingly, applicants believe that the investment by a money market Participating Fund in a Central Fund that is a money market fund would be consistent with the risk-limiting objectives of rule 2a–7.

C. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. Applicants request an exemption from the provisions of section 17(a) to permit (i) the sale of shares of the Central Funds to the Participating Funds that are registered investment companies and the redemption of such shares to the Central Funds, and (ii) the Participating Funds, and the Central Fund to engage in certain Interfund Transactions involving the purchase and sale of securities (including VRDNs) that otherwise would be effected in reliance on rule 17a–7.

2. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person that owns more than 5% of the outstanding voting securities of that company, any investment adviser of the investment company, and any person directly or indirectly controlling, controlled by, or under common control with, such investment company. Applicants state that the Adviser is an affiliated person of each Fund under section 2(a)(3). Applicants state that because the Funds either share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and certain Price Funds also share a common board of directors/trustees, some or all of the Funds may be deemed to be under common control with some or all the other Funds, and, therefore, affiliated persons of those Funds. In addition, applicants state that it is likely that a Participating Fund would own more than 5% of the outstanding voting securities of the Central Fund. Thus, each Participating Fund and the Central Fund may be affiliated persons (or affiliates of affiliates) of each other Fund.

3. Applicants state that the Participating Funds currently rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies which are affiliated persons, or affiliated persons of affiliated persons, or each other or between a registered investment company and a person which is an affiliated person of such company (or an affiliated person of such person) solely by reason of having a comment investment adviser, common officers, and/or common directors, Applicants believe that Participating Funds could be affiliated persons of each other, and of the Central Funds, by virtue of a Participating Fund owning 5% or more of the outstanding voting securities of a Central Fund. Thus, applicants believe they would not be able to reply on rule 17a–7 to effect Interfund Transactions.

4. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if

[7] *See* Investment Company Act Release No. 21837 (Mar. 21, 1996) (release adopting amendments to rule 2a–7).

it finds that the terms of the proposed transaction 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 registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants state that section 17(b) applies only to individual proposed transactions. However, applicants note that the SEC has frequently used its authority under section 6(c) of the Act to exempt a series of future affiliated transactions that otherwise met the standards of section 17(b). Applicants submit that their request for relief is consistent with these standards.

5. Applicants assert that the terms of the Proposed Transactions will be fair and reasonable, and do not involve overreaching. Applicants state that the consideration paid and received for the sale and redemption of shares of the Central Funds will be based on the net asset value per share of the Central Funds. In addition, applicants submit that the Proposed Transactions will be consistent with the policies of each Fund involved. Applicants state that the investment of assets of the Participating Funds in shares of the Central Funds, and the issuance of shares of the Central Funds, will be effected in accordance with each Participating Fund's investment guidelines, if any, and will be consistent with each Participating Price Fund's policies as set forth in its registration statement.

6. With respect to the relief requested from section 17(a) for the Interfund Transactions, applicants state that the Funds will comply with rule 17a–7 under the Act in all respects, other than the requirement that the registered investment company and the affiliated person thereof (or the affiliated person of such person) be affiliated persons of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors. Applicants state that the additional affiliation created by the Proposed Transactions does not affect the other protections provided by rule 17a–7, including the integrity of the pricing mechanism employed and oversight by the board of directors/trustees of each Price Fund.

7. Applicants believe that Interfund Transactions do not raise the types of concerns that section 17 was designed to address. Applicants state that all Interfund Transactions will be effected at the independent current market value of the security. Applicants contend that effecting Interfund Transactions at the current market value assures that there is an independent basis for determining that value of the securities. Applicants note that no brokerage commission, fee, or other remuneration will be paid in connection with the transactions. Applicants also note that the Adviser will not be a party to the transactions. Applicants therefore believe that Interfund Transactions will be reasonable and fair, will not involve overreaching, and will be consistent with the purposes of the Act and the policy of each registered investment company concerned.

D. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 thereunder generally prohibit an affiliated person of a registered 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. Applicants contend that because they are acting together to create the Central Funds as a private facility for their cash management needs, the Central Funds may be deemed a joint enterprise for the purposes of section 17(d) and rule 17d–1. Applicants also believe that the Funds and Services, by participating in the Proposed Transactions, and the Adviser, by managing the Proposed Transactions, could be deemed to be joint participants in a joint transaction.

2. In order to grant an exemption from the provisions of section 17(d), rule 17d–1 requires that the SEC consider whether an investment company's participation in a joint enterprise or joint arrangement 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.

3. Applicants state that, for the reasons explained above, the Proposed Transactions are consistent with the provisions, policies, and purposes of the Act. Applicants also assert that the Participating Funds that are Price Funds and the Central Funds will not participate in this arrangement on a basis that is different from or less advantageous than the participants that are not investment companies. Rather, applicants state that the Proposed Transactions are intended to provide substantial benefits to all Participating Funds and that the Central Funds will benefit from having as large an asset base as possible. Moreover, applicants state that the arrangement is not intended to increase the fees for the Adviser or any other non-investment company participant. Finally, applicants note that each Participating Fund may purchase and redeem shares of each Central Fund, and would receive dividends and bear expenses on the same basis as each other Participating Fund that also invests in such Central Fund.

E. Spectrum Fund

1. Applicants also request relief under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1) (A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to the extent necessary to amend the Spectrum Fund Order. Applicants submit that the Spectrum Fund Order should be modified solely to the extent necessary to permit the underlying funds in which Spectrum Fund can invest to purchase shares of the Central Funds in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants believe that the proposed relief satisfies the standards of sections 12(d)(1)(J), 6(c), and 17(b). Applicants state that the underlying funds in which Spectrum Fund invests will be investing in the Central Funds solely for cash management purposes, and such investment will not create any of the abuses to which section 12(d)(1)(A) is addressed for the reasons discussed above.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Conduct Rules).[8]

2. If the Adviser to a Central Fund collects a fee from the Central Fund for acting as its investment adviser, before the next meeting of the board of directors/trustees of a Price Fund that invests in the Central Fund is held for the purpose of voting on an advisory contract under section 15, the Adviser to the Price Fund will provide the board of directors/trustees with specific information regarding the approximate cost to the Adviser for managing the assets for the Price Fund that can be expected to be invested in such Central Funds. Before approving any advisory contract under section 15, the board of

[8] The staff notes that until recently rule 2830 of the NASD's Conduct Rules was section 26 of Article III of the NASD Rules of Fair Practice.

directors/trustees of such Price Fund, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19), shall consider to what extent, if any, the advisory fees charged to the Price Fund by the Adviser should be reduced to account for the fee indirectly paid by the Price Fund because of the advisory fee paid by the Central Fund. The minute books of the Price Fund will record fully the directors/trustees' consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Participating Fund, each Central Fund, and any future fund that may rely on the order shall be advised by or, in the case of a 3(c)(11) Entity, shall have as its trustee, T. Rowe Price or Price-Fleming or a person controlling, controlled by, or under common control with T. Rowe Price or Price-Fleming.

4. Investment in shares of the Central Funds will be in accordance with each Price Fund's respective investment restrictions, if any, and will be consistent with each Price Fund's policies as set forth in its prospectuses and statements of additional information.

5. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1) (A) of the Act.

6. A majority of the directors/trustees of each Price Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

7. Each of the Price Funds will invest uninvested cash in, and hold shares of, the Central Funds only to the extent that the Price Fund's aggregate investment in the Central Funds at the time the investment is made does not exceed 25% of the Price Fund's total net assets. For purposes of this limitation, each Price Fund or series thereof will be treated as a separate investment company.

8. To engage in Interfund Transactions, the Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely be reason of having a common investment adviser or investment advisers which are affiliated person of each other, common officers, and/or common directors.

Applicants also agree that condition number 2 to the Spectrum Fund Order would be modified as follows:

No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent such Underlying Fund acquires securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Fund to acquire securities of one or more affiliated investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17989 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38810; International Series Release No. 1090; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Application for Registration as a Clearing Agency

July 1, 1997.

I. Introduction

On May 30, 1997, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') an application on Form CA–1 for registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 17Ab2–1 thereunder[2] in order to perform the functions of a clearing agency with respect to transactions in U.S. dollar-denominated Brady bonds.[3] The Commission is publishing this notice to solicit comments from interested persons.[4] Comments are solicited on all aspects of the EMCC application, and in particular the matters discussed in Section IV of this notice.

II. Structure of the EMCC System

EMCC is a corporation organized under the laws of the State of New York. EMCC was formed by the Emerging Markets Traders Association (''EMTA'') and the International Securities Clearing Corporation (''ISCC'') in response to an industry initiative to reduce risk in the clearance and settlement of emerging markets debt instruments.

Initially, EMCC will be owned by EMTA, the National Securities Clearing Corporation (''NSCC''), and the International Securities Markets Association (''ISMA''). EMTA will be issued 300 shares (37.5% of the outstanding shares), NSCC will be issued 300 shares (37.5% of the outstanding shares), and ISMA will be issued 200 shares (25% of the outstanding shares).[5]

EMTA is a trade association organized as a New York not-for-profit corporation in 1990 by financial institutions to promote the orderly development of trading markets in emerging market instruments. As of the end of 1996, EMTA had 154 members, which were mainly broker-dealers and banks. EMTA had 154 members, which were mainly broker-dealers and bankers. EMTA owns 100% of the outstanding voting securities of EMTA Black, Inc. EMTA Black, Inc. in turn owns 100% of the outstanding voting securities of each of Clear-EM, Inc., Match-EM, Inc., and Net-Em, Inc. Match-EM, Inc. is the owner of Match-EM, which is an electronic post-trade confirmation and matching system for Brady bonds and sovereign loans operated by GE Information Services, Inc. (''GE''). Match-EM also enables EMTA to disseminate daily market volume and price data. Match-EM began services in May 1995.

ISMA is an industry association composed of member broker-dealer firms. ISMA has approximately 820 members in 48 countries. ISMA is organized under the laws of Switzerland and is registered in the United Kingdom (''U.K.'') as a designated investment exchange. ISMA owns TRAX, a trade matching and reporting system started in 1989. U.K. broker-dealers can use TRAX to fulfill their U.K. reporting requirements. ISMA's wholly-owned subsidiary, International Securities Market Association Limited (''ISMA Ltd.''), operates TRAX.

NSCC is a clearing agency registered under Section 17A of the Exchange Act.[6] NSCC is owned by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National

---

[1] 15 U.S.C. 78q-1.

[2] 17 CFR 240.17Ab2–1.

[3] On June 2, 1997, and June 17, 1997, EMCC filed amendments to its application. Copies of the application are available for inspection and copying at the Commisison's Public Reference Room

[4] The description set forth in this notice regarding the structure and operations of EMCC have been largely derived from information contained in EMCC's Form CA–1 application and publicly available sources.

[5] After the initial issuance of shares to EMTA, NSCC, and ISMA, EMCC intends to issue shares to persons that have contributed to the EMCC development fund and to finance EMCC's initial operations in such amounts and at such time as determined by EMCC. EMCC intends to issue shares no later than June 30, 1998. EMCC will file a proposed rule change prior to any such issuances.

[6] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of NSCC as a clearing agency.

Association of Securities Dealers, Inc. NSCC is the parent corporation of ISCC, which is also registered as a clearing agency under the Exchange Act.[7]

III. Description of EMCC Operations

EMCC is being established as a clearing agency initially to facilitates the clearance and settlement of transactions in U.S. dollar-denominated Brady bonds.[8] Currently, Brady bonds are settled through the facilities of Cedel Bank, Société anonyme (''Cedel'') and the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York (''Euroclear'').[9] As more fully described below, EMCC will facilities the settlement of Brady bonds at Cedel and Euroclear (''depositories'').

A. Clearance Services

Brady bonds are traded in an over-the-counter market composed of dealers and interdealer brokers where trading is either directly between dealers or between dealers through interdealer brokers. Generally, Brady bonds that have warrants associated with them are traded to include the warrants. In order to participate in EMCC, dealers and interdealer brokers will need to submit transaction data to a locked-in trade source which will match such data using its own criteria. Initially, the locked-in trade sources designated by EMCC will be Match-EM and TRAX.

Upon completion of the matching process, each locked-in trade source will submit all of its transaction data to EMCC regardless of whether the counterparties are EMCC members. EMCC will then segregate all data on trades between two EMCC members to input into EMCC system. As a result, all EMCC members that decide to use Match-EM or TRAX as a part of their normal trading process will be locked into settlement at EMCC and will be unable to select an alternative settlement process. While EMCC members will be able to delete their trades from EMCC's clearance system by submitting cancellation instructions through the locked-in trade source, such action may result in the trade legally being considered cancelled (*i.e.*, the members would be required to reconfirm such trades outside of TRAX or Match-EM and therefore would not receive the benefit of using TRAX's or Match-EM's automated confirmation system).

EMCC will receive data from the locked-in trade sources three times each business day: (1) At approximately 8:30 a.m. eastern time (''ET'') (''early morning transmission''), (2) at approximately 11:30 a.m. ET (''early midmorning transmission''), and (3) at approximately 9:30 p.m. ET (''evening transmission''). EMCC will review such data to determine whether it meets EMCC's and the depositories' operational parameters and will reject trades that do not meet such parameters.[10] At approximately 10:30 a.m. ET and 11:30 p.m. ET, EMCC will send out to its members and to the locked-in trade sources a report of data that was rejected because it did not meet the operational parameters. Any correction or cancellation of data must be done through the locked-in trade sources.[11]

EMCC will report to each member on its ''accepted trade report'' data on all trades: (a) that are eligible for processing by EMCC (*i.e.*, U.S. dollar denominated Brady bonds), (b) that are matched by the locked-in trade sources, (c) that are received by EMCC on trade date (''T''), on T+1, and in the early morning transmission on T+2, and (d) that are not rejected by EMCC based on the operational parameters. Matched trades that are eligible for processing and that are received on T+2 in the midmorning transmission will be listed on a ''settlement instructions only report.''[12] Transaction data received by EMCC in the evening transmission on T+2 and thereafter will not be accepted by EMCC because it will be unable to submit timely settlement instructions to the depository.

EMCC may also received uncompared transaction data from the locked-in trade sources. If EMCC does not receive by the early morning transmission on T+2 updated data from a locked-in trade source indicating that an uncompared trade has been cancelled or compared, EMCC will include data on the uncompared trade on the settlement instructions only report if the submitting member has requested EMCC to do so pursuant to the member's standing instructions.

Accepted trade reports will be made available to members at approximately 10:30 a.m. ET and 11:30 p.m. ET. The morning report will contain data on matched trades received in the early morning transmission. The evening report will contain data on matched trades received in the midmorning and evening transmission. The settlement instructions only report will contain data on matched trades received in the midmorning transmission on T+2 and data on unmatched trades received by the midmorning transmission on T+2. At approximately 12:30 p.m. on T+2, EMCC will send settlement instructions to the depositories based on trade data contained in the accepted trade reports and in the settlement instructions only report.

B. Risk Management Services

EMCC will interpose itself as the counterparty and guarantor on a trade-for-trade basis with respect to the trades it reports on its accepted trade report (''novation'') unless EMCC notifies or has made information available to its members that trades listed on the accepted trade report are not assumed and guaranteed because EMCC has ceased to act for the original

---

[7] *See* Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (order approving temporary registration of ISCC as a clearing agency). ISCC continues to operate under its temporary registration. Securities Exchange Act Release No. 38703 (May 30, 1997), 62 FR 31183.

[8] Brady bonds were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the collateral would be U.S. Treasury securities. The first Brady bonds were issued in 1990 for Mexico. Later securities that did not strictly adhere to the terms of the plan (*e.g.*, such securities may not have been collateralized) were also referred to as Brady bonds.

The definition of Brady bonds used to denote securities that will be eligible for processing by EMCC will be somewhat broader than the traditional usage of the term. As defined in EMCC's rules, Brady bonds are: (i) any bond or note issued in connection with the restructuring of indebtedness by a sovereign or an agency or entity thereof under the auspices of the Brady plan or under any similar restructuring or financing plan whether or not collateralized and including bonds or notes issued in exchange thereof or (ii) any warrant or similar right originally issued attached to a Brady bond. The term does not include securities offered by a sovereign debtor to investors through normal underwriting syndication channels.

EMCC intends to offer clearance and settlement services for other emerging markets debt instruments in the future. EMCC will file proposed rule changes with the Commission prior to expanding the categories of securities eligible for processing at EMCC.

[9] For a description of Cedel, *see* Securities Exchange Act Release No. 38328 (February 24, 1997), 62 FR 9225 (order approving application for limited exemption from registration as a clearing agency). For a description of Euroclear, *see* Securities Exchange Act Release No. 38589 (May 9, 1997), 62 FR 26833 (notice of application for limited exemption from registration as a clearing agency).

[10] Such parameters include complete information and valid characters. In addition, EMCC has established a maximum delivery size of $20 million.

[11] Any cancellation or correction must be received by EMCC no later than the early morning transmission two business days after trade date (''T+2'').

[12] EMCC provides settlement instructions on behalf of its members with respect to trades listed on the settlement instructions only report to the depositories for settlement directly between the members.

counterparty.[13] EMCC's guarantee will be effective with respect to: (a) trades reported on the evening accepted trade report at the later of (i) midnight ET or (ii) one half hour after the issuance of the preliminary margin report[14] and (b) trades reported on the morning accepted trade report at the later of (i) 1:00 p.m. ET or (ii) two and one half hours after issuance of the final margin report.[15] The result is a novation of the original contract between the c′ounterparties, creating an obligation on the part of the seller to deliver the securities to EMCC and on the part of the purchaser to receive and pay for the securities delivered by EMCC.

C. Settlement Services

EMCC will be a member of both Euroclear and Cedel. EMCC will transmit settlement instructions to the appropriate depository on behalf of members with EMCC as the counterparty to each side of the trade. With respect to each transaction reported on an accepted trade report which has not been deleted, EMCC will send receive and deliver instructions to the depository at 12:30 p.m. on T+2. If the accepted trade report indicates that a member has a securities receive obligation, EMCC will notify the depository to deliver the bonds from EMCC's account into the member's account against payment on the next day (''T+3''). If the member had a securities deliver obligation reflected on the accepted trade report, EMCC will instruct the depository to deliver the specified quantity of bonds from the member's account into EMCC's account against the receipt of the corresponding payment price on T+3.[16]

Settlement will occur in accordance with the rules of Euroclear or Cedel. Essentially, the receiver must have sufficient cash or line of credit to pay for the delivery, and the deliverer must have sufficient securities to make full delivery.[17] The depositories will notify EMCC and its members each day at midnight ET of the status of trades indicating which have settled and which are still pending. EMCC will not provide settling trade reports or fail reports to its members.

If a member cannot accept delivery of securities because of insufficient funds, EMCC will generate a fail compensation instruction and will transmit it to the appropriate depository. Pursuant to that instruction, the depository will debit the account of the member that had insufficient funds and credit its counterparty's account an amount of money based on the depository's overnight borrowing interest rate multiplied by the amount of funds which were not paid.

With respect to matched transactions reflected on the settlement instructions only report, EMCC will send instructions on the afternoon of T+2 to the depository on behalf of the members listed as counterparties. The depository will be advised to deliver on T+3 bonds from the account of the member with the deliver obligation to the account of the member with the receive obligation against payment. EMCC will not monitor the settlement of these transactions.

With respect to uncompared transactions reflected on the settlement instructions only report, EMCC will send instructions on the afternoon of T+2 to the depository on behalf of the member submitting the data naming the other member as the counterparty to the instruction. EMCC will not monitor the settlement of these transactions.

D. Buy-ins/Sell-Outs

EMCC's rules will permit a buy-in or a sell-out in the event that a transaction has not been completed by five days after settlement date (''SD+5'') as described below. A buy-in or sell-out may be initiated by the member with the receive or deliver obligation, respectively, by submitting a pre-advice notice to EMCC. Upon receipt of the pre-advice notice, EMCC will transmit the pre-advice notice to the corresponding member with the fail obligation. If the instruments or money covered by the pre-advice notice are not received within two business days after the date of the pre-advice notice, then the member that requested the buy-in or sell-out will need to deliver to EMCC a buy-in or sell-out notice between two to five business days after issuance of the pre-advice notice in order to proceed with the buy-in or sell-out. Upon receipt of the buy-in or sell-out notice, EMCC will transmit a buy-in or sell-out notice to the member with the fail obligation. Execution of the buy-in or sell-out will take place through an agent selected by EMCC on the fifth business day following the issuance of the buy-in or sell-out notice. EMCC also may initiate a buy-in or sell-out if it determines that such action is necessary to protect EMCC, its members, its creditors, or its investors; to safeguard securities or funds in EMCC's custody or control; or to promote the prompt and accurate clearance and settlement of securities transactions.

EMCC will also use the buy-in or sell-out procedures for deliver and receive obligations for warrants. However, if EMCC has ceased to act for a member with fail obligation prior to the execution of the buy-in or sell-out, EMCC will undertake the buy-in or sell-out only at the expense of the member that submitted the pre-advice notice. If EMCC ceases to act for the defaulting member after the pre-advice notice has been submitted but before the execution of the buy-in or sell-out, EMCC will first confirm with the requesting firm that it wants to proceed with the buy-in at the requesting firm's expense.

E. Release of Clearing Data

Pursuant to EMCC's rules, EMCC may release transaction data of its members to EMTA in accordance with a written agreement between EMCC and EMTA. Such data may be used only for the purpose of promoting market transparency on a noncommercial basis. On June 9, 1997, EMCC and EMTA entered into a letter agreement that provides for the release of information relating to the aggregate and per trade

[13] EMCC does not interpose itself as the counterparty and guarantor for transactions reported on the settlement instructions only report.

[14] *See infra* Section IV.C.1.a for a description of the preliminary margin report.

[15] *See infra* Section IV.C.1.a for a description of the final margin report.

[16] Consistent with industry conventions, EMCC assumes that the bonds will be delivered with attached warrants unless otherwise specified.

[17] Both Cedel and Euroclear employ mechanisms that can look beyond the initial counterparties' obligations. Cedel has a ''chaining'' program which scans open transactions until all cash and securities resulting from same day settlements are reemployed to settle further transactions for same day value. Therefore, for back-to-back transfers for equivalent funds, customers may not need to pay because proceeds from sales are used to settle purchases. However, Cedel's chaining program is limited when transactions are sent through its bridge connection with Euroclear. EMCC has informed the Commission that its members currently do not intend to use Cedel as a depository. If this changes, EMCC intends to maintain a line of credit at Cedel of approximately $40 million to allow the receipt and delivery of securities across the bridge.

Euroclear's chaining program operates somewhat differently. In scanning open transactions, the Euroclear program will only look to the next settlement. For example, if a member does not have sufficient funds to receive securities, Euroclear will review to see if that member has a corresponding securities deliver obligation to another member. In such case, Euroclear will complete both transactions if the counterparty to the deliver obligation has sufficient funds to pay for the securities. But if the counterparty to the securities deliver obligation did not have sufficient funds to settle the transaction, Euroclear, unlike Cedel, would not look to subsequent settlements for funds and securities. Accordingly, if EMCC inserts itself as a common counterparty without sufficient funds to accept deliveries, Euroclear's system will only look to EMCC's member to determine if sufficient funds exist. Therefore, EMCC will maintain a line of credit between $60 and $100 million at Euroclear to reduce settlement inefficiencies. EMCC's line of credit will permit Euroclear to review not only the available funds of EMCC's member but also such member's subsequent counterparty, if any.

transaction volumes and prices of trades processed by EMCC.

IV. EMCC's Request for Registration

A. Introduction

Brady bonds are the most actively traded emerging market debt instrument. In the first quarter of 1997, Brady bonds represented $671 billion of the $1.6 trillion traded in emerging markets instruments. Brady bonds constitute approximately 12% of the total $1.2 trillion issued of emerging market instruments.[18]

While Brady bonds currently are cleared and settled either through Euroclear or Cedel, neither guarantees settlement of these transactions. Furthermore, dealers have exposure to brokers until the assumption of risk by clearing firms on the afternoon of T+1. As a result, parties to a transaction retain a high degree of settlement risk. EMCC was developed in response to an industry initiative to reduce risk in the clearance and settlement of emerging market debt instruments. Therefore, in order to provide the benefits of guaranteed settlement to the Brady bond market, EMCC seeks registration as a clearing agency pursuant to Section 17A of the Exchange Act and Rule 17Ab2–1.

B. Goals of Clearing Agency Registration

Section 17A of the Exchange Act directs the Commission to promote Congressional objectives to facilitate the development of a national clearance and settlement system for securities transactions.[19] Registration and regulation of clearing agencies is a key element in promoting these statutory objectives. Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules.[20] The Commission has published standards developed by its Division of Market Regulation which are used in evaluating applications for clearing agency registration.[21]

C. Safety and Soundness Protections

Sections 17A(b)(3) (A) and (F) of the Exchange Act require that a clearing agency be organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.[22] In the Standards Release, the Division enumerated certain requirements that should be met to comply with this standard.

1. Clearing Fund

The Standards Release stated that a clearing agency should have a clearing fund which is based on a formula applicable to all users and is comprised of cash or highly liquid securities. The rules of a clearing agency should limit the investments that can be made with the cash portion of its clearing fund to government securities or other safe and liquid investments. The clearing fund should only be used to protect participants and the clearing agency (a) from defaults of participants and (b) from clearing agency losses not resulting from day to day expenses and not covered by insurance or other resources of the clearing agency. While the Standards Release stated that a clearing agency could use temporary applications of the clearing fund in limited amounts to meet unexpected and unusual requirements for funds, the regular or substantial use of a clearing fund for operational purposes would be inappropriate.[23] The clearing agency should provide for the maximum assessment to which any participant is subject. Comment is requested on whether EMCC meets these standards as described below.

a. Clearing Fund Formula. EMCC will maintain and will manage a clearing fund for the purpose of limiting or eliminating EMCC's exposure to loss in the event a member would fail to perform its obligations to EMCC. Each member will be obligated to make deposits to EMCC's clearing fund. The initial required clearing fund deposit for each member will be set by EMCC based on the expected nature and level of the member's activity. The minimum required clearing fund deposit for each member will be US $1,000,000.

Every day, EMCC will calculate margin in the morning and in the evening but will only collect margin based on the morning calculation. EMCC will generally calculate the margin amount as follows: (mark to market amount + volatility amount) × event risk factor.[24] The mark to market

---

[18] Broward Daily Business Review, May 20, 1997, at A3.

[19] 15 U.S.C. 78q-1. Section 17A(a)(1) provides:

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

For legislative history concerning Section 17A, *see, e.g.,* Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

[20] 15 U.S.C. 78q–1(b)(3). *See also* Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b–4, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[21] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (''Standards Release''). *See also,* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

[22] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[23] The Standards Release also stated that there may be legitimate purposes for which a clearing fund may be used for a longer period of time so long as (a) the funds are properly protected, (b) the funds are used to facilitate the process of clearance and settlement, and (c) the participants and the Commission approve such use during the registration proceedings.

[24] EMCC has represented that it performed a stress test in which the proposed formula was applied using three months of data on EMCC eligible transactions obtained from Match-EM. The test assumed for each member that the market in which such member had its highest concentration of positions experienced an abnormal negative market move (*i.e.,* the ''stressed market''). All securities positions for that member in other countries were run under the baseline assumptions (*i.e.,* no unusual market movements). The tests assumed first a 10 strandard deviation market drop in the stressed market and second a 4 standard deviation market gain in the stressed market. The test assumed that bonds on the opposite sides of the stressed market had correlations of 80% while bonds on the same side of the stressed market had 100% correlation.

However, the test did not attempt to take into account any spillover effect (*i.e.,* where the sudden drop of prices in a country's bond market resulted in a similar drop in the bond markets of other countries with similar risk profiles). EMCC states that it is difficult to quantify any spillover effects. EMCC believes that spillover effects are addressed because the test assumes that for each firm the stressed event occurred in the country in which the firm was most concentrated and therefore would most adversely effect the value of the firm's position and also assumes a degree of deviation from the mean that was substantially higher than was the case in the Mexican debt crisis.

Under this test, EMCC had no exposure 73.64% of the time. EMCC had exposure between $1 and $1 million 9.18% of the time. EMCC had exposure of greater than $10 million 1.7% of the time. The highest exposures were four occurrences of an exposure of approximately $15 million and one exposure of approximately $50 million.

amount will be based on all trades due to settle on or after that day and all fails unless EMCC has received notice from the depository that such trade or fail has settled.[25] The mark to market amount will be based on the difference between the market price and the contract value of the trade. If the net mark-to-market is a credit, the firm will have a zero mark-to-market.

The volatility amount for the evening calculation will be based on all trades due to settle on or after that day and all fails unless EMCC has received notice from the depository that such trade or fail has settled. The volatility amount for the morning calculation will be based on all trades due to settle on or after the current day and all fails calculated as of the prior day whether or not EMCC has received notice of the settlement of such trades or fails. Thus, the morning volatility amount will includes trades that have already settled that day, while the evening volatility amount will only include trades that have not settled.[26] In order to calculate the volatility amount, each security will be placed into one of four liquidity categories based on the average bid/offer spread, which will determine which volatility formula will be applied to that security.[27] The sum of the volatility amounts for each security will be the clearing member's volatility amount.[28]

The event risk factor, which is designed to give EMCC an additional cushion against events in countries not covered by two standard deviations, will initially be set at 1.25. EMCC may adjust the event risk factor for a member or for all members without prior notice to the member(s). EMCC also will increase margin requirements by multiplying a global holiday risk factor to the formula to take into account days on which U.S. banks are closed but securities markets are open.

The preliminary margin amount will be calculated each evening and will be reported to members at approximately 11:30 p.m. on a preliminary margin report. The report will show the member's current deposit, preliminary margin amount, and preliminary amount due, if any. However, members will not be required to make any payment to EMCC based on the preliminary margin report.

The final margin amount will be calculated each morning and will be reported to members at approximately 10:30 a.m. on a final margin report. A member's required margin deposit will be equal to the largest single final daily margin amount computed for that member for the month during which such margin calculation is being performed and for the previous calendar month. The final margin report will indicate each member's current deposit, final margin amount, and final amount due, if any. A member will be required to pay any obligation with respect to its margin obligation reflected on the final margin report no later than the later of 11:30 a.m. ET or one hour after the final margin report is made available. Margin deficits of less than $100,000 will not be considered to be a margin deficit. Payment must be made through the U.S. Fedwire system.

EMCC also will have the authority to collect additional amounts over and above the daily margin requirement in order to obtain adequate assurances of the financial responsibility or operational capability of a member. EMCC has created a policy statement on procedures to follow in determining whether additional clearing fund deposits are needed.[29] EMCC also may collect additional margin if a member has been placed on surveillance status.[30]

b. Margin Composition and Investment. Members will be required to pay margin in cash, U.S. Treasury

[25] EMCC will receive notice at midnight ET (or 6:00 a.m. in Brussels and Luxembourg) from Euroclear and Cedel of all trades that have settled. At that time, Euroclear and Cedel have already completed most of the settlements of that day (*i.e.*, the notice issued at midnight ET on Friday morning will indicate trades that will settle Friday at the depository). Some trades will settle Friday at the depository). Some trades will settle later, but EMCC will receive notice of them before it begins its processing day. Thus, when EMCC calculates the margin in the morning and the evening, it will have received notice of which trades have settled or failed for the day.

[26] The reason for including transactions in the morning volatility calculation whether or not they have settled is to insure that data on three days of pending trades is included. EMCC believes that because it is guaranteeing three days of trades, it is appropriate that data on three days of trading activity is included in the volatility calculation. At the time of the morning volatility calculation, the trades entered into three days before will have settled, but EMCC will not have received data for the trades entered into on the current day. Thus, by including data for trades settling that day, EMCC will be using three days of data. EMCC will calculate fails as of the prior day because fails calculated as of the current day would include trades due to settle that day (*i.e.*, these trades would be doubled counted as trades due to settle that day and fail trades). With respect to the evening volatility calculation, EMCC will have received data on trades entered into on that day. Thus, it is no longer necessary to include trades that have settled that day.

[27] The four classes and spreads are as follows: L1—⅜ or less; L2—¾ or less; L3—2 or less; L4—greater than 2 or no trading activity for a certain period of days.

[28] For each L4 security, the volatility amount is the value of the position × 30%. For L1, L2, and L3 securities of each issuer, EMCC will take the larger of the following formula with: (a) the member's long positions in lines 1 and 2 and short positions in lines 3 and 4 and (b) the member's short positions in lines 1 and 2 and long positions in lines 3 and 4.

1. (value of long or short L1+L2) × 2 Std, PLUS
2. (value of long or short L3) × 4 Std, PLUS
3. (value of short or long L1+L2) × 2 Std × CC, PLUS
4. (value of short or long L3) × 1 Std × CC

Std. is equal to a one standard deviation move over a five day holding period based on the higher of a calculation using price data for one year and three months. CC is the smallest correlation coefficient between any security of that issuer in which the member has a short position and any security of that issuer in which the member has a long position. The correlation coefficient will be based on one year's pricing data and will be updated daily.

EMCC may adjust the fixed percentage applied to L4 securities or the number of standard deviations applied to L1, L2, and L3 securities without prior notice in order to increase the volatility calculations when warranted by circumstances. These adjustments may be made on a country by country basis or a bond by bond basis either for all members or for members unduly concentrated.

[29] Each day, EMCC will calculate a net country position and a net geographical position for each member. The net country position will be the sum of the settlement values of the member's position in L1, L2, and L3 securities plus the sum of the absolute settlement values of the member's position in L4 securities of each country. The net geographical position will be the sum of the net country positions in Latin America, Eastern Europe, Asia, and Africa. An undue concentration will be deemed to exist for a bank when the net country position exceeds 20% of net worth or the net geographical position exceeds 30% of net worth. An undue concentration will be deemed to exist for a broker-dealer when the net country position exceeds 50% of excess regulatory capital or the net geographical position exceeds 80% of excess regulatory capital. Under such circumstances, EMCC will contact the member to request information on the nature and magnitude of non-Brady bond exposure and on any hedging positions. If EMCC is not satisfied with the answers to these questions, EMCC may request additional clearing fund deposits.

[30] EMCC will put a member on surveillance status if any of the following factors are present: (a) The member fails to meet any financial standard for admission or continuance as a member, (b) the member's capital position falls below the standards for admission, (c) the member experiences an inability to meet its money or securities settlement obligations to EMCC, (d) EMCC's board determines that a significant reorganization, change in control, or management of the member is likely to impair the member's ability to meet its money or securities settlement obligations to EMCC, or (e) the member has been placed on surveillance status by another self-regulatory organization or comparable regulatory organization. EMCC also will have the discretion to put a member on surveillance status if any of the following factors are present: (a) it experiences a significant operational problem, (b) the member's positions are significantly disproportionate to its usual activity in light of current industry conditions, (c) EMCC receives notification from the member's designated examining authority or appropriate regulatory agency or comparable regulatory organization of a pending investigation or administrative action that could call into question the member's ability to meet its obligations to EMCC, or (d) the member experiences any condition that could materially affect its financial or operational capability so as to potentially increase EMCC's exposure to loss or liability.

securities, or letters of credit from banks that have been approved by EMCC. If letters of credit are used as margin, no more than 70% of a member's requirement may be satisfied with letters of credit and, as a minimum, the greater of $100,000 or 10% of the member's margin requirement (up to a maximum of $1,000,000) must be in cash. Furthermore, no more than 20% of EMCC's total clearing fund may be letters of credit from any one issuer. If letters of credit are not used, the greater of $100,000 or 5% of the member's margin requirement (up to a maximum of $1,000,000) must be in cash. A haircut of 5% will be applied to letters of credit and treasury securities.

EMCC may invest any cash deposited as margin in securities issued or guaranteed as to principal or interest by the U.S. or agencies or instrumentalities of the U.S., repurchase agreements related to EMCC, or otherwise pursuant to the investment policy adopted by EMCC. If not invested, cash funds will be deposited by EMCC in its name in a depository institution selected by EMCC. EMCC will retain all investment income from cash deposits. Comment is requested as to whether such investments are consistent with the standard that investments should be limited to safe and liquid investments such as government securities.

c. Loss Allocation. EMCC will establish an overnight exposure cap for each member. This cap will be set at the lesser of (a) 5% of excess net capital for U.S. broker-dealers, 5% of excess financial resources for U.K. broker-dealers, and 1% of shareholders' equity for banks or (b) $20 million. If a member's preliminary margin calculation is in excess of its overnight exposure cap, the member will be subject to fines. The loss allocation method applied to trades of an insolvent member will be dependent upon whether the insolvent member has exceeded its overnight exposure cap.

When the failed member is not an interdealer broker, EMCC will classify trades as brokered or direct.[31] If there was an overnight exposure cap violation, EMCC will further classify such trades as trades received by EMCC before the violation (''old trades'') or trades received by EMCC after the violation (''new trades''). Any collateral of the defaulting member will be divided between direct trades and brokered trades in proportion to the amount of losses attributable to old trades in each category. If there is insufficient collateral to cover all of the losses attributable to old trades: (a) Losses attributable to brokered transactions that are old trades will be allocated pro rata among all members based upon each member's average final daily margin amount for the prior 30 calendar days[32] and (b) losses attributable to direct transactions that are old trades will be allocated among all the original counterparties in proportion to the amount of losses created by each member's transactions.

After the losses from old trades have been satisfied, EMCC will determine if any clearing fund collateral of the defaulting member remains. EMCC will net new trades to obtain a net loss per issue of securities. Any remaining clearing fund of the defaulting member will be applied to the smallest loss, then the next remaining smallest loss until there is no remaining clearing fund of the defaulting member.[33] EMCC then will segregate the smallest remaining losses up to an amount that equals the amount of the defaulting member's overnight exposure cap (''under the cap losses'').[34] The under the cap losses will be allocated as follows: (a) losses attributable to direct transactions will be allocated back to the original counterparties in an amount equal to the losses attributable to the member's trades and (b) losses attributable to brokered transactions will be allocated pro rata among all EMCC members based upon each member's final daily margin amount calculated with respect to the prior thirty calendar days. Any remaining losses attributable to new trades will be allocated as follows: (a) Losses attributable to direct transactions will be allocated back to the original counterparties in an amount equal to the losses attributable to the member's trades and (b) losses attributable to brokered transactions will be allocated first to the interdealer broker member that was a contraparty to such trade to the extent of the loss attributable to such trade up to a maximum allocation of $3 million per interdealer broker and then pro rata among members that were contraparties to interdealer brokers that reach their maximum allocation and that were on the opposite side of the market in the same issue of securities creating a loss with the same settlement date and at approximately the same price.

Different loss allocation rules will apply when the defaulting member is a broker. In such cases, any collateral of the defaulting member will be applied first to losses resulting from old trades. If there are remaining losses from old trades, such losses will be allocated among all the original contraparties in proportion to the amount of loss created by each member's transactions. EMCC then will net new trades to obtain a net loss per issue of securities. Any remaining clearing fund of the defaulting member will be applied to the smallest loss, then the next remaining smallest loss until there is no remaining clearing fund. Any remaining loss after application of clearing fund will be allocated back to the contraparties to the transactions giving rise to such loss to the extent of the loss attributable to such transactions.

d. Use of Clearing Fund. EMCC's rules will provide that the use of clearing fund deposits is limited to satisfaction of losses or liabilities of EMCC arising from the failure of a member to satisfy an obligation to EMCC or as an incident to the clearance and settlement by EMCC and to provide EMCC with a source of collateral to meet its temporary financing needs. If EMCC pledges any part of the clearing fund deposits for more than 60 days as a source of temporary financing, EMCC will by the 74th day consider such amount to be a loss and will allocate such loss in accordance with the loss allocation rules. Comment is requested whether EMCC's proposed uses of its clearing fund are consistent with the requirement that temporary applications of the clearing fund should be used only in limited amounts to meet unexpected and unusual requirements for funds and that the regular or substantial use of a clearing fund for operational purposes would be inappropriate.

2. Standard of Care

The Division stated in the Standards Release that the rules of a clearing agency should provide that it is liable to a participant for failure to deliver the participant's securities resulting from (i) the negligence or misconduct of the clearing agency, the clearing agency's

[31] If the failed member's counterparty was an interdealer broker, but the interdealer broker's counterparty on the other side was not an EMCC member, EMCC will consider the trade to be a direct trade between the insolvent and the interdealer broker. In other words, ''brokered trades'' are trades where the interdealer broker is an EMCC member and EMCC members are on both sides.

[32] A member that is assessed pursuant to this provision may limit its assessment to its current margin requirement if it chooses to terminate its membership.

[33] For example, after netting new trades in each issue of securities, EMCC may determine that there are losses of $2 million, $4 million, $3 million, and $10 million in four issues and EMCC has collateral of the defaulting member of $8 million. EMCC will satisfy the $2 million loss first, then the $3 million loss, then a portion of the $4 million loss.

[34] For example, if after netting there are losses of $5 million, $7 million, and $3 million in four issues and the defaulting member had an overnight exposure cap of $10 million, EMCC will segregate out the $3 million loss, the $5 million loss, and $2 million of the $7 million loss.

subcustodian or agent, or any of their respective employees, (ii) the placement of fully-paid participant securities of a lien or charge of any kind in favor of the clearing agency, the clearing agency's subcustodian or agent, or any person claiming through any one or more of them, (iii) larceny, (iv) mysterious disappearance, or (v) any other cause for which the clearing agency has assumed responsibility. Since the date of the Standards Release, the Commission has further clarified its position on clearing agency liability, stating that clearing agencies should perform their functions under a high standard of care and at a minimum custody services should be performed under an ordinary negligence standard.[35] The Commission also has stated that custody functions include all functions related to transaction processing and the safekeeping of customer funds and securities.[36]

As proposed, EMCC's member's agreement, executed between EMCC and each member, will provide that EMCC is not subject to any liability under the agreement, including any liability with respect to EMCC's failure to provide any services under the agreement or EMCC's rules, except for losses resulting from EMCC's gross negligence, criminal act, or willful misconduct in connection with its duties. The agreement further will provide that EMCC will not be liable for any consequential or special damages which may result from EMCC's failure to perform its obligations under the agreement.

EMCC's rules will provide that EMCC will have no responsibility for errors which may occur in any transmission of data to EMCC except in the case of EMCC's gross negligence. EMCC's rules also will provide that EMCC will have no liability for errors made by it in the conversion of data from a yield basis to a price basis or vice versa or from the comparison of such converted data if EMCC has acted in good faith and takes prompt action to correct any error.

The Commission preliminarily believes that EMCC's proposed standard of care is inconsistent with the Exchange Act and prior Commission positions. Because EMCC's actions bear directly upon the safeguarding of securities and funds, the Commission believes that EMCC's activities constitute custodial functions for which a negligence standard is appropriate. Furthermore, the Commission has never approved a gross negligence standard as a blanket standard of liability for a fully functioning clearing agency.[37] The Commission invites comment upon the appropriateness of EMCC's proposed standard of liability.

3. Processsing Capacity

ISCC has agreed pursuant to a service agreement to perform services for EMCC with respect to EMCC's clearing agency activities. ISCC will furnish the services necessary to conduct EMCC's operations for a fee designed to cover ISCC's costs. ISCC will provide EMCC with technical services in the following areas: data processing, operations, planning and development, communications, and research and development. Currently, ISCC has seven employees. Such employees' duties are generally limited to operational functions. ISCC currently provides limited clearing agency services. Many of ISCC's functions are performed by NSCC or by the International Depository & Clearing, L.L.C. (''IDC''). IDC is a company equally owned by NSCC and The Depository Trust Company, both registered clearing agencies. However, IDC is not regulated in any manner. The Commission invites comments as to whether ISCC has sufficient capacity to act as the facilities manager and operate another clearing agency.

ISCC may use outside parties to fulfill its commitments to EMCC. Specifically, NSCC through ISCC will provide EMCC with management and administrative services in the following areas: financial, personnel, corporate communications, marketing, regulatory or compliance, and legal. The Securities Industry Automation Corporation (''SIAC''), through ISCC and NSCC, also will provide EMCC with managerial, clerical, and data processing services. In addition, ISCC will rely on employees of IDC for product development, marketing and sales, planning, participant services, and executive (*i.e.*, decison making) functions. The Commission asks for comment as to whether these service arrangements are appropriate, and particularly whether it is appropriate that an unregulated entity such as IDC perform the above functions for a clearing agency.

In addition, as discussed above, EMCC has no independent capacity to match trades. Instead, it relies on Match-EM and TRAX for such services, neither of which is regulated in the U.S. EMCC has represented that it has no contractual agreement with either GE (the operator of Match-EM) or ISMA Ltd. (the operator of TRAX) that would permit it to review their operational capabilities. Because the failure of Match-EM or TRAX could result in EMCC being unable to fulfill its clearance and settlement functions with respect to those trades which either Match-EM or TRAX should have matched and reported to EMCC, the Commission requests comment on whether the current arrangement is consistent with EMCC's obligations to ensure that it has sufficient operational capability. Specifically, the Commission believes that at a minimum, EMCC should obtain sufficient information to be able to make a determination that Match-EM and TRAX are operating in a manner that ensures that they will be able to accurately match and to report trades on a timely basis to EMCC. Furthermore, the Commission believes that it should have access to the materials that EMCC has relied on to make this determination. Comment is requested as to whether other conditions should be applied.

4. Audit Committee and Internal Audit Department

The Standards Release stated that clearing agencies should have an audit committee composed of nonmanagement directors. A nonmanagement director is a director who is not associated with the clearing agency other than in a user capacity or with any entity which furnishes securities processing services to the clearing agency. The audit committee should have responsibility for reviewing the work performed by the clearing agency's independent public accountant.

EMCC's bylaws will provide that the board of directors may appoint an audit committee consisting of three or more directors other than officers of EMCC. The audit committee will have responsibility for reviewing with the independent certified public accountants the scope of their auditing procedures and the financial statements of EMCC to be certified by the accountants. The Commission notes that EMCC's bylaws do not prohibit the directors that are representatives of

[35] Securities Exchange Act Release Nos. 26154 (October 3, 1988), 53 FR 39556 (registration order of the Intermarket Clearing Corporation [''ICC'']); 26450 (January 12, 1989), 54 FR 2010 (registration order of the Delta Government Options Corp. [''DGOC'']); 26812 (May 12, 1989), 54 FR 21691 (registration order of ISCC); and 27611 (January 12, 1990), 55 FR 1890 (second registration order of DGOC).

[36] *See, e.g.*, ICC registration order, *supra* note 35.

[37] While the Commission approved the temporary registration of the Government Securities Clearing Corporation (''GSCC'') under a gross negligence standard, such clearing agency's functions at the time were limited to comparison of data. In addition, the Commission urged GSCC to adopt a negligence standard for all functions affecting member settlements, including comparison of data. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839. GSCC continues to operate under its temporary registration. Securities Exchange Act Release No. 38698 (May 30, 1997), 62 FR 30911.

NSCC, ISMA, and EMTA from serving on the audit committee. Comment is requested as to whether the relationship and the services provided by NSCC, ISMA, and EMTA are such that the individuals representing these entities on EMCC's board should not serve on the audit committee.

The Standards Release stated that a clearing agency should have an internal audit department which is adequately staffed with qualified personnel. NSCC's internal audit department will perform EMCC's internal auditing functions.

5. Securities, Funds, and Data Controls

The Standards Release provides that a clearing agency should have off-site storage of up-to-date files, written procedures detailing steps involved in handling funds and securities, and emergency mechanisms for establishing and maintaining communications with participants and other entities. In addition, clearing agencies should have adequate insurance.

EMCC has represented that through its facilities manager, SIAC, it has access to two computer sites in different locations, both of which are capable of being operated independently and are capable of handling total participant activity. Data received will be automatically written to both sites. EMCC has provided a detailed written statement of security measures that will be used to prevent unauthorized access to EMCC's processing facilities. EMCC maintains blanket bond insurance and all risk insurance.

D. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

1. Governance Procedures

EMCC's board will have a total of 21 directors, divided into four classes. The first three classes will consist of five directors each (''participant directors''). The fourth class will have six directors, consisting of one director selected by EMTA, one director selected by ISMA, two directors selected by NSCC, and two directors selected by the EMCC board. The term of office of the participant directors will be three years, with the term of one class of directors expiring each year.[38] Participant directors may not serve for more than six consecutive years. The term of the fourth class will be one year.

Members may nominate individuals to serve as participant directors by filing with EMCC's Secretary at least thirty days prior to the date of the annual meeting a petition signed by the lesser of five percent of the participants or ten participants.[39] A nominating committee selected by the board will also select individuals to serve as participant directors. If any member files a petition for participant director, EMCC's Secretary will mail ballots to all members. Members will then be provided the opportunity to vote for participant directors.[40]

2. Provision of Information to Participants

The Standards Release stated that participants should have sufficient information concerning a clearing agency's affairs to participate meaningfully in its administration. Clearing agencies should furnish participants with audited annual financial statements, an annual report on internal accounting control prepared by an independent public accountant, and notices of any proposed rule changes.

The Standards Release stated that the annual financial statements should be provided within 60 days following the close of the clearing agency's fiscal year prepared in accordance with generally accepted accounting principles. EMCC's rules will provide that EMCC will undertake to provide to all members audited financial statements and a report prepared by independent public accountants within 60 days following the close of its fiscal year. EMCC also will undertake to provide unaudited financial statements to its members within 30 days following the close of each of EMCC's fiscal quarters.

The Standards Release stated that the report on internal accounting control should be based on a study and an evaluation which was made for the purpose of reporting on the clearing agency's overall system of internal accounting control. The report should disclose any material weaknesses discovered and any corrective action taken or proposed to be taken. The report should be furnished to all participants promptly after it becomes available and no later than 60 days after the period covered by the report. EMCC indicated in its Form CA–1 that it intends to prepare an annual internal accounting control report. However, EMCC does not provide that such report will be given to its participants.

As discussed in the Standards Release, the notice of proposed rule changes should be provided to participants prior to or as soon as possible after filing with the Commission and should provide a description of the rule change, its purpose, and its effect. EMCC's rules will provide that it will immediately notify all members and registered clearing agencies of all proposals it has made to change, revise, add, or repeal any rule, including a brief description of the proposal, its purpose, and its effect.

E. Participant Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[41] In addition, a clearing agency may accept specific categories of persons other than those enumerated, but a clearing agency should be cognizant of the impact that participation may have on the safety of the clearing agency and should provide safeguards to protect against that risk. Section 17A(b)(4)(B) of the Exchange Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participants or any category of participants enumerated in Section 17A(b)(3)(B), but that these criteria may not be used to unfairly discriminate among participants. In addition, the Exchange Act recognizes that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience, and competence.

1. Members

EMCC will provide services to those organizations, entities, or persons that

[38] The term of the initial directors in class one will expire in 1998, the term of the initial directors in class two will expire in 1999, and the term of the initial directors in class three will expire in 2000.

[39] Only one director may be selected which is an officer of any single participant or its affiliate.

[40] Members will have three votes for each $1.00 of average clearing fund deposits during the twelve month period ending on the last day of the second month prior to the date of determination and two votes for each $1.00 of the average monthly fee payable or paid by the member to EMCC during the same twelve month period.

[41] The classes are registered brokers or dealers, registered clearing agencies, registered investment companies, banks, and insurance companies.

qualify as members under EMCC's rules, that apply to EMCC to act for them, whose applications are approved by EMCC, and that have contributed to EMCC's clearing fund. A partnership, corporation, limited liability company, or other organization, entity, or individual will be qualified to become a member of EMCC if it satisfies at least one of the following qualifications: (a) it is a broker or dealer registered under the Exchange Act; (b) it is a broker or dealer registered or regulated under the laws of the jurisdiction other than the U.S. in which it is organized or established; (c) it is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities in the U.S. having supervision and examined by the banking regulator in the jurisdiction other than the U.S. in which it is organized or established; or (e) if it does not qualify under (a) through (d) but is the successor or assigns of any member and has demonstrated to the board of directors that its business and capabilities are such that it could use EMCC's services without undue risk, then such successor or assigns may become a member for the limited purpose of winding up its business with EMCC in an orderly manner. Initially, only broker-dealers that are organized under the laws of the U.K. will be eligible for admission under (b) above. Comment is requested as to the advisability of admission of non-U.S. participants and whether the proposed admission standards provide sufficient protection to EMCC and the national clearance and settlement system.

After the issuance of shares to persons which have contributed to the development fund for the organization and initial operation of EMCC,[42] all applicants that EMCC accepts for membership will be required to be either a shareholder of EMCC or an affiliate or subsidiary of a shareholder of EMCC. EMCC may deny an application to become a member or to use one or more services of EMCC upon a determination by EMCC that EMCC does not have adequate personnel, space, data processing capacity, or other operational capability at such time to perform its services for the applicant or member without impairing the ability of EMCC to provide services for its existing members, to assure the prompt, accurate, and orderly processing and settlement of securities transactions, or to otherwise carry out its functions. However any such applications which are denied will be approved as promptly as the capabilities of EMCC permit.

2. Financial Reports

All applicants for admission to EMCC will need to provide a copy of the applicant's financial statements for the two fiscal years ending immediately preceding the year in which application is made, certified without qualification by the applicant's independent certified public accountants. To the extent that such audited financial statements are not prepared in accordance with U.S. generally accepted accounting principles (''GAAP''), the applicant will be required to provide EMCC with a discussion of the material variations of such accounting principles from U.S. GAAP.

A U.S. broker-dealer applicant will need to provide copies of the its Form X–17A–5 FOCUS Reports (''FOCUS Reports'') or Form G–405 Reports on Finances and Operations (''FOGS Reports'') for the last 24 months if a monthly filer or the last eight quarters if a quarterly filer submitted to its designated examining authority and any supplemental reports required to be filed with the Commission pursuant to Exchange Act Rule 17a–11[43] or 17 C.F.R. Section 405.3. A bank applicant will need to provide all quarterly financial statements covered by the last audited financial statement plus all subsequent quarterly financial statements. A U.S. bank applicant also will need to provide copies of its three most recent Consolidated Reports of Condition and Income (''Call Reports'') submitted to its appropriate regulatory agency and, to the extent not contained within such Call Reports or to the extent that the applicant does not have Call Reports, information containing each of the applicant's capital levels and ratios, as such levels and ratios are required to be provided to its appropriate regulatory agency. A non-U.S. bank applicant also will need to provide all material regulatory filings made with its primary regulator in its home country over the prior two years. If the applicant is a U.K. broker-dealer subject to regulation by the Securities Futures Association (''SFA''), it will need to provide EMCC with its SFA monthly reports and returns for the prior twenty-four months and if necessary and feasible, financial statements prepared in accordance with U.S. GAAP.

If required by EMCC, an applicant will need to provide a certificate of the chief executive or chief financial officer of the applicant that no material adverse changes have occurred in the financial condition of the applicant since the date of the most recent financial statements, FOCUS Report, FOGS Report, Call Report, or comparable reports to regulatory authorities, as applicable, filed with EMCC; that the applicant has not guaranteed the obligations of any other person; and that the applicant is not subject to any other contingent liabilities, except as set forth in such financial statements, FOCUS Report, FOGS Report, Call Report, comparable reports to regulatory authorities, or the certificate.

3. Admission Criteria for Members

The board or the membership and risk committee of the board may approve an application to become a member upon a determination that such applicant meets the applicable admission criteria. The applicant must have adequate personnel, physical facilities, books and records, accounting systems, and internal procedures to enable it to satisfactorily handle transactions and communicate with EMCC, to fulfill anticipated commitments to and meet the operational requirements of EMCC with necessary promptness and accuracy, and to conform to any condition and requirement that EMCC reasonably deems necessary for its protection or that of its members.

The applicant must have an established business history of a minimum of three years or personnel with sufficient operational background and experience to ensure, in the judgment of the board, the ability of the firm to conduct its business. The applicant must agree to make and have sufficient financial ability to make all anticipated payments required to be made to EMCC. The applicant must be in compliance with the capital requirements imposed by its designated examining authority or appropriate regulatory agency, any other self-regulatory organizations, and any other regulatory authority or self-regulatory authority to which it is subject by statute, regulation, or agreement. The applicant cannot be subject to an order of statutory disqualification as defined in Section 3(a)(39) of the Exchange Act[44] or an order of similar effect issued by a federal or state banking authority in the U.S. or any non-U.S. regulator.

EMCC must have received no substantial information that would reasonably and adversely reflect on the applicant or any associated person to such an extent that the applicant should be denied membership in EMCC. However, no application will be denied on such basis unless the board has

[42] *See supra* note 5.

[43] 17 CFR 240.17a–11.

[44] 15 U.S.C. 78c(a)(39).

reasonable grounds to believe that the applicant or any associated person meets a disqualification criteria specified in EMCC's rules.[45]

In addition, if the applicant is a bank, it must have net worth as of the end of the quarter prior to the effective date of its membership determined in accordance with U.S. GAAP of at least $500 million. However, an applicant bank may be accepted if it has a net worth of at least $200 million if the membership and risk committee of EMCC's board of directors makes a formal findings that will become part of EMCC's books and records to the effect that other credit factors of the applicant compensate for the lower net worth.[46]

If the applicant is a U.S. broker or dealer, its aggregate indebtedness/excess net capital ratio must be less than 950% or its excess net capital/aggregate debit items ratio must be in excess of 5.25% and its excess net capital must equal at least $100 million. However, a U.S. broker-dealer applicant may have excess net capital of at least $50 million if the membership and risk committee of EMCC's board of directors makes a formal findings that will become part of EMCC's books and records to the effect that other credit factors of the applicant compensate for the lower excess net capital.[47]

If the applicant is a U.K. broker or dealer, its financial resources must be at least 120% of its financial resources requirement and its excess financial resources must equal at least $100 million. However, the applicant may have excess financial resources of at least $50 million if the membership and risk committee of EMCC's board of directors makes a formal finding that will become part of EMCC's books and records to the effect that other credit factors of the applicant compensate for the lower excess financial resources.[48]

If a U.S. broker applicant is applying to become an interdealer broker member, it must have excess net capital of at least $10 million and must agree to submit trading data to EMCC in such instruments as requested by EMCC. EMCC will determine the interdealer broker's potential margin calls, and the interdealer broker must demonstrate an ability to meet such margin calls and loss allocation assessments. The interdealer broker can demonstrate this ability by agreeing to submit to EMCC only transactions with EMCC members on both sides and by demonstrating a low error rate.[49]

During the first six months of EMCC's operations, EMCC will permit an interdealer broker to become an EMCC member which does not meet the $10 million excess net capital requirement if it meets an alternate criterion. Such applicant must maintain a clearing relationship with an EMCC member which is not an interdealer broker. Pursuant to the clearing relationship, the clearing firm must take the place of the interdealer broker on T+1 on all trades which do not have EMCC members on both sides. The interdealer broker will have a fixed clearing fund deposit in lieu of the required margin deposit. However, EMCC will calculate each day for such interdealer broker a preliminary and final required fund deposit excluding any positions that resulted from a systems failure of a contraparty resulting in a failure to submit trade data. If the required fund deposit exceeds the broker's fixed deposit, EMCC will not guarantee any transactions to the broker until its required fund deposit is equal to or lower than its fixed deposit.[50] However, EMCC will guarantee completion of the interdealer broker's trades to the original EMCC contraparties.[51] In addition, if the interdealer broker's required fund deposit exceeds its fixed deposit, the interdealer broker will not be subject to assessment for loss allocations[52] and the interdealer broker will be charged a market rate of interest on the difference between its required fund deposit and its fixed deposit. EMCC will notify all dealer members whenever an interdealer broker's required fund deposit exceeds its fixed deposit. Comment is requested as to whether this alternative standard provides sufficient protection to EMCC. Specifically, EMCC will be guaranteeing trades to EMCC members in the event that an interdealer broker becomes insolvent even though it will not have collected margin from the broker to cover the loss. Furthermore, this provision does not set forth any minimum excess net capital requirements for brokers to meet before becoming EMCC members. Comment is requested as to whether such provisions are consistent with a clearing agency's obligations to have appropriate membership standards.

The foregoing financial responsibility standards are minimum requirements, and the board may impose greater standards based upon the level of the anticipated positions and obligations of an applicant, the anticipated risk associated with the volume and types of transactions an applicant proposes to process through EMCC, and the overall financial condition of an applicant. If an applicant does not itself satisfy the above minimum capital requirements, the board may include for such purposes the capital of an affiliate of the applicant if the affiliate has delivered to EMCC a guaranty, satisfactory in form and substance to the board, of the obligations of the applicant to EMCC.

4. Membership Agreement

Each applicant to become a member of EMCC will be required to sign a membership agreement pursuant to which the applicant agrees to abide by the rules of EMCC. Under the agreement, the member's books and records must at all times be open to inspection by EMCC, and EMCC must be furnished with all such information in respect of the member's business and

[45] For example, disqualification criteria will include closer than normal surveillance by the applicant's designated examining authority or appropriate regulatory agency, violations of the federal securities laws, convictions of any criminal offense involving securities transactions, or any injunction against engaging in securities transactions.

[46] In making such determination, EMCC will consider the applicant's return on average assets, capital to total assets ratio, non-performing assets to total assets ratio, and liquid assets to total assets ratio. EMCC also will consider the ratings assigned to the applicant by a nationally recognized statistical rating organization, any significant off balance sheet items, and the applicant's risk management controls.

[47] EMCC will consider any ratings assigned by a nationally recognized statistical rating organization, any significant adverse off-balance sheet items, and the applicant's significant business lines as compared to its internal risk management controls and short term funding arrangements.

[48] EMCC will consider any rating assigned by a nationally recognized statistical rating organization, any significant adverse off-balance sheet items, and the applicant's significant business lines as compared to its internal risk management controls and short term funding arrangements.

[49] If an interdealer broker has a margin payment because one of its contraparties fails to submit data on a trade prior to 8:00 a.m. ET on T+1, the contraparty must compensate the interdealer broker for the cost of financing the payment obligation and may be subject to fine by EMCC.

[50] The interdealer broker could lower its required fund deposit by depositing additional funds with EMCC. If it does not deposit additional funds, its required fund deposit will exceed its fixed deposit until at least the end of the next month (because its required fund deposit is based on the highest margin calculation during the current month and the prior month).

[51] Because EMCC is not guaranteeing trades to the broker, if a dealer contraparty becomes insolvent, the broker is responsible for completing the trade to its contraparty on the other side. As a result, the nondefaulting EMCC dealer member does not receive the benefit of EMCC's guarantee of brokered trades. If the broker is unable to complete the trade, EMCC will then guarantee the broker's trade to its EMCC member contraparty. However, the trade is treated as a direct trade between the broker and its contraparty. Thus, under the loss allocation rules, the dealer would be allocated a greater portion of its loss than if the broker had not exceeded its fixed deposit requirement.

[52] Because EMCC is not guaranteeing trades to the interdealer broker, there would be no loss from direct trades entered into with the broker. Therefore, there would be no reason to assess the broker for such loss.

transactions as EMCC may require. However, upon ceasing to be a member, EMCC cannot inspect such member's books and records or require information relating to transactions that occurred after the time when it ceased to be a member.

The member must agree to submit to the jurisdiction of the courts of the state of New York and the U.S. District Court for the Southern District of New York and to appoint a person acceptable to EMCC as its agent to receive on its behalf service of process. Under the agreement, membership in EMCC and use of EMCC's services is governed by the laws of the state of New York. The member must agree that any judgment obtained in an action or proceeding may be enforced in the courts of any jurisdiction where the applicant or any of its property may be found, and the applicant must irrevocably submit to the jurisdiction of each such court in respect of any such action or proceeding. To the fullest extent permitted by law, members must waive all immunity whether on the basis of sovereignty or otherwise from jurisdiction, attachment both before and after judgment, and execution to which it might otherwise be entitled in any action or proceeding in any county or jurisdiction relating in any way to the agreement or to any transaction.

The membership agreement also provides EMCC with an additional source of information for risk control purposes. Upon the request of and at no charge to EMCC, members must provide research that they provide to any of their customers relating to EMCC eligible instruments and events or conditions which might affect the price of EMCC eligible instruments.

F. Capacity To Enforce Rules

Section 17A(b)(3)(A) of the Exchange Act provides that a clearing agency must be organized and have the capacity to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) compliance by its participants with the rules of the clearing agency. In order to do so, a clearing agency must have procedures for determining whether a participant is experiencing financial or operational difficulties. Sections 17A(b)(3) (G) and (H) require that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violations of any provision of those rules and provide fair procedures for disciplining participants, denying participation in the clearing agency to any person, prohibiting or limiting access to the clearing agency's services, and reviewing summary suspensions.

1. Financial Standards

EMCC's Rule 13 will authorize EMCC to examine the financial responsibility and operational capability of any member or applicant to become a member and to require a member to furnish EMCC with adequate assurances of its financial responsibility and operational capability. Pursuant to this rule, a member may be required to provide additional assurances with respect to financial responsibility and operational capability, including additional reporting by a member of its financial or operational condition; increased clearing fund deposits by a member; and other assurances as may be required by EMCC.

EMCC also will have general continuance standards that require a member to promptly inform EMCC in the event that it no longer is in compliance with any of the relevant standards for membership or any materially adverse change. The board may require additional financial reporting if the member no longer meets the standards for admission to membership, it has violated any rule of EMCC, it fails to satisfy in a timely manner any obligation to EMCC, there is a material change in control or financial condition of such member, or the board determines that it is necessary or advisable to protect EMCC, its other members, or its creditors or investors, to safeguard securities and funds in the custody or control of EMCC, or to promote the prompt and accurate processing, clearance, or settlement of securities transactions. The board must also make a determination as to whether the member should be placed on surveillance status consistent with its rules.[53]

2. Ceasing to Act

Section 17A(b)(5)(C) provides that a clearing agency may summarily suspend and close the accounts of a participant that has been and is expelled or suspended from any self-regulatory organization; that is in default of any delivery of funds or securities to the clearing agency; or that is in such financial or operational difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors.

Upon providing notice to the member, EMCC may at any time cease to act for a member if the board of directors determines that adequate cause exists to do so.[54] EMCC may cease to act either with regard to a particular transaction or with regard to transactions generally. EMCC will promptly notify all members when it ceases to act for a member. A member for which EMCC has ceased to act may request a hearing to review EMCC's decision.

If certain factors are present, EMCC will treat a member as insolvent.[55] EMCC will notify all members of the treatment of the member as insolvent. Upon a determination of insolvency, EMCC will immediately cease to act for such member. EMCC will delete all trades of that member to which EMCC's guaranty has not attached except trades that the board determines will promote an orderly market. EMCC will then close out the guaranteed trades and the trades that the board has accepted. EMCC will close out by buying in or selling out securities deliverable by or to the insolvent. The close out procedure will be completed by EMCC as promptly as practicable after EMCC has given notice of the treatment of the member as insolvent.

3. Hearing Procedures

Section 17A(b)(5) of the Exchange Act provides that in any proceeding to determine whether a participant should be denied participation, prohibited or limited with respect to access to the

[53] *See supra* note 30.

[54] Such cause may exist if one or more of certain factors are found, including: the member has failed to perform any of its obligations or has failed to make any required payment to EMCC; the member is no longer in compliance with the admissions standards or continuance standards; the board has reasonable grounds to believe the member has been responsible for any fraudulent or dishonest conduct or breach of fiduciary duty or has made any material misstatement to EMCC in connection with its application to be a member or any EMCC service; the board has reasonable grounds to believe the member is in financial or operation difficulty; the member is in breach of any requirement imposed by an appropriate regulatory agency, self-regulatory organization, or any regulatory body; the member is not paying its debts as they become due or is otherwise involved in a bankruptcy proceeding; the member is dissolved or ceases to carry on its business; the member contests the validity of any agreement with EMCC; the member fails to perform its contracts with EMCC; or the board has reasonable grounds to believe that ceasing to act is necessary either for the protection of EMCC or for any of the other members or to facilitate the orderly and continuous performance of EMCC's services.

[55] Such circumstances include: the member provides notice to EMCC that it is insolvent; the board or any regulatory body determines that the member is insolvent; a court order is entered adjudging the member to be insolvent; the member files or consents to the filing of a petition seeking bankruptcy relief; the member makes a general assignment to its creditors; the member is dissolved; or a resolution is passed by the member that it be wound up, liquidated, or dissolved.

clearing agency's services, or disciplined, the clearing agency must notify the participant of the specific grounds of the denial of services or the changes brought against the member. The clearing agency must provide the member with an opportunity to be heard on the grounds of the denial or to defend against any charges. The clearing agency must keep a record of the proceeding.

A member may request a hearing by filing with EMCC a written request setting forth the contested action of EMCC. Within seven business days after filing the request or three business days in the case of summary action, the objecting member must provide EMCC with a detailed written statement setting forth the contested action and the basis for objection. EMCC will notify the member in writing of the date and place of the hearing at least five business days prior to the hearing.

The hearing will be before a panel drawn from participant directors on the membership committee unless the contested action was taken by the membership committee. In such a case, the panel will be drawn from participant directors on the executive committee. The Committee will select the members of the panel. The objecting member will have an opportunity to be heard and may be represented by counsel. The panel will make a decision within ten business days after conclusion of the hearing. Although the panel's decision is considered final, the board may overturn any decision adverse to the member.

G. Equitable Allocation of Dues, Fees, and Charges

Section 17A(b)(3)(D) of the Exchange Act requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. EMCC's proposed fee schedule provides that it will charge $5 for input, $7.50 for late instructions after 9:00 p.m. on T, $25 for late instructions after 11:00 a.m. on T+1, and $7.50 for net settlement.[56]

H. Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Exchange Act. As discussed in Section III.A., EMCC will automatically receive data on all trades of EMCC members that have been submitted to TRAX or Match-EM. EMCC members do not have the ability to exclude trades from the EMCC clearance system unless they confirm trades without using TRAX's and Match-EM's automated confirmation system. Although EMCC's rules do not require that EMCC members submit all of their eligible trades to EMCC, as a practical matter EMCC members that want to obtain the benefit of Match-EM or TRAX must settle at EMCC. The Commission is concerned that this aspect of EMCC's operations could either force EMCC members to settle all their eligible trades at EMCC or result in trades being excluded from automated processing.[57] In addition, EMCC's arrangements with the locked-in trade sources could result in inhibiting future clearing agencies from beginning operations. Comment is requested as to whether this aspect of EMCC's operations is consistent with the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by August 11, 1997. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant Euroclear's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–30. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[58]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17987 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

[56] The Commission understands that EMCC may adjust its fee schedule soon after being registered (providing that the Commission grants EMCC registration).

[57] To exclude trades from EMCC settlement, EMCC members would be forced to use manual processes to confirm trades. Members may want to exclude trades from EMCC's system for various reasons. For example, if the trade would cause a member to exceed its overnight exposure cap, it may want to process the trade through other means. In addition, brokers may have agreed to only submit trades to EMCC with EMCC members on both sides. Information on such trades would then be generally unavailable which would reduce market transparency.

[58] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38811; File No. SR–BSE–97–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to the Authority and Responsibility of Floor Officials

July 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 1997, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to supplement its rule regarding the authority and responsibilities of Floor Officials, and the appeal of Floor Official rulings. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to more clearly define the authority and responsibilities of Floor Officials set forth in the Supplementary Material to Chapter I, Section 1 of the Rules of the Board of Governors, as well as to provide a mechanism for members

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

to appeal a ruling with which they may not agree. The current provisions are limited to defining who shall serve as Floor Officials and general jurisdiction of Floor Official authority. The Exchange seeks to explain in more detail the day-to-day functioning of the Floor Official in deciding issues that arise in regard to transactions on the floor or through Intermarket Trading System (''ITS'').[3] First, the Exchange proposes to add Supplementary Material .30, which states that the Board of Governors delegates authority to Floor Officials. Proposed Supplementary Material .30 also indicates that Floor Officials have numerous responsibilities regarding various rules, policies, and interpretations governing trading on the Exchange. In addition, the Exchange proposes to add Supplementary Material .40, which addresses the exclusion of Floor Officials from the ruling process due to conflicts of interest. Proposed Supplementary Material .50 and .60 refer to Floor Officials' responsibilities to keep apprised of new rules and policy determinations and to consult with other Floor Officials in making fair and consistent rulings. The Exchange also proposes to add Supplementary Material .70, which provides members with the ability to appeal an unfavorable decision by a Floor Official with which the member disagrees, or to bring changes in circumstances to the attention of the Floor Official involved in the ruling. Finally, Proposed Supplementary Material .80 deems the failure to comply with a Floor Official ruling to be a violation of the Rules of the Board of Governors. Although these provisions apply today in practice, the Exchange believes that their codification as part of the Exchange rules will clearly delineate member rights and obligations. The Exchange has further represented that the Rules are similar to practices established by the New York Stock Exchange concerning the authority and responsibilities of its floor officials.[4]

The basis for the proposed rule change is Section 6(b)(5) of the Act,[5] in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from June 18, 1997, the rule change proposal has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(e)(6)[7] thereunder. In particular, the Commission believes the proposal qualifies as a ''noncontroversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 BSE. All submissions should refer to SR–BSE–97–03 and should be submitted by July 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18092 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

[3] The ITS, a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter (''OTC'') market operated by the NASD, is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.

[4] NYSE Floor Official Manual, pp. 1–3 (June 1996).

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. § 78s(b)(3)(a).

[7] 17 CFR 240.19–4(e)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38812; File No. SR–NASD–97–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Prohibition on Members Receiving any Payment To Publish a Quotation, Make a Market in an Issuer's Securities or Submit an Application to Make a Market in an Issuer's Securities

July 3, 1997.

On April 18, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to prohibit members from receiving any payment to publish a quotation, make a market in an issuer's securities or submit an application to make a market in an issuer's securities. On May 19, 1997 and May 21, 1997, the NASD submitted two amendments (''Amendment No. 1'' and

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Amendment No. 2''), respectively, to the proposed rule change.[3]

The proposed rule change and Amendments No. 1 and No. 2 thereto were published for comment in Securities Exchange Act Release No. 38670 (May 22, 1997), 62 FR 29382 (May 30, 1997). No comments were received on the proposal. This order approves the proposed rule change.

I. Introduction

It has been a longstanding policy and position of the NASD that a broker-dealer is prohibited from receiving compensation or other payments from an issuer for quoting, making a market in an issuer's securities or for covering the member's out-of-pocket expenses for making a market, or for submitting an application to make a market in an issuer's securities. As stated in Notice to Members 75–16 (February 20, 1975), such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.

On October 27, 1994, the United States Court of Appeals, Tenth Circuit, reversed, in part, an SEC decision in the matter of General Bond & Share Co. (''General Bond'').[4] The NASD had held that General Bond had, among other things, violated Article III, Section 1 of the Association's Rules of Fair Practice (currently NASD Rule 2110) by accepting payments from issuers in return for listing itself as a market maker for the securities in the National Quotation Bureau, Inc. (''NQB'') Pink Sheets (''Pink Sheets''). The NASD position was based on NASD policy as articulated to the members in Notice to Members 75–16 (February 20, 1975). The SEC, in affirming the NASD decision, agreed with the NASD that this conduct was inappropriate and in violation of NASD rules.[5]

The Tenth Circuit decision held that the NASD rules at the time did not prohibit a member firm from accepting issuer-paid compensation for making a market in a security.[6] Although the NASD had previously stated that such specific conduct was prohibited, the Court held that the NASD was required by statute to submit a filing with the SEC amending NASD rules in this respect. The NASD is proposing this rule to clarify the application of NASD rules to situations involving the acceptance of compensation for market making activities.

II. Description of the Proposal

The NASD proposes to add Rule 2460 to prohibit receipt by a broker-dealer of ''any payment or other consideration'' from a prohibited party for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. It is intended to cover any form of payment in cash, non-cash items, or securities. The term ''consideration'' would include, for example, granting or offering of securities products on terms more favorable than those granted or offered to the public. This term would include the granting of options in any security, where the options are exercisable at a price that is discounted from the prevailing market price. The rule also would cover the purchase of securities by a member from a prohibited party at a discount from the prevailing market. Such payments are intended to be prohibited because they may, as discussed in Notice to Members 75–16, create a conflict of interest that would influence the member to enter a quotation or make a market in a security.

The proposed rule prohibits payments that are made ''for publishing a quotation, acting as a market maker in a security, or submitting an application in connection therewith.'' This language would apply the prohibitions of the rule to the entry of a quotation in a security, making a market in a security, and the entry of a quotation or the quotation of a security at a particular price.[7] The definition of ''quotation'' is drawn from Rule 15c2–11 of the Act[8] and includes indications of interest.[9] The proposed rule also specifies that a member may not impose a fee or accept a payment for submitting an application to enter quotations or make a market in an issuer's securities, *e.g.*, a NASD Form 211 application to enter a quotation in the OTC Bulletin Board or NQB Pink Sheets.

The proposed rule would apply to payments by an issuer, an affiliate of the issuer, or a promoter, whether received directly or indirectly through another party. Whether a person is considered an affiliate would be determined under the provisions of NASD Rule 2720 that relate to the existence of a control relationship between an issuer and a member. For purposes of NASD Rule 2720, the term ''affiliate'' shall mean ''a company which controls, is controlled by or is under common control with a member.'' In addition, the term ''affiliate'' is also presumed under certain circumstances in which a member or company is presumed to control, or presumed to be under common control, when the respective entities beneficially own ten percent or more of the outstanding voting securities of the other entity.[10]

The concept of ''promoter'' is broadly defined to encompass all persons other than the issuer and its affiliates who would have an interest in influencing a member to make a market in a security. Thus, the definition includes not only the organizer of the issuer's business, but also any director, employee, consultant, account, or attorney of the issuer. In addition, certain categories of securityholders are also within the definition, since these persons are considered to have an interest greater than that of the average securityholder in ensuring the existence of an active market. The categories in the definition, however, are intended to be illustrative only, and the proposed rule would prohibit payments by any similar person with an interest in promoting the entry of quotations or market making in the issuer's securities.

The proposed rule change does not specifically cover member-to-member payments in the express language of the proposed rule.[11] The reason for the exclusion of member-to-member conduct in the express language of the rule are as follows. This member-to-

[3] In Amendment No. 1, the NASD made technical corrections to the text of the rule, provided an explanation for not expressly prohibiting member-to-member payments for making a market, and added an explanatory footnote concerning the rule's coverage. Letter from Alden Adkins, Vice President and General Counsel, NASD Regulation, to Elaine Darroch, Attorney, Division of Market Regulation, SEC (May 16, 1997). Amendment No. 2 corrected a minor omission in Amendment No. 1. Letter from Alden Adkins, Vice President and General Counsel, NASD Regulation, to Elaine Darroch, Attorney, Division of Market Regulation, SEC (May 19, 1997).

[4] *General Bond & Share Co.* v. *Securities and Exchange Commission*, 39 F. 3d 1451 (10th Cir. 1994).

[5] In the Matter of General Bond & Share Co., Securities Exchange Act Release No. 32291 (May 11, 1993), 54 SEC Docket 129.

[6] The Court reversed the SEC's finding of violation that related to the firm's acceptance of issuer-paid compensation, but sustained all of the SEC's other findings of violation by General Bond. General Bond, 39 F.3d at 1458, 1461.

[7] NASD Notice to Member 75–16 states that questionable payments to a market marker have the potential to influence the member's ''* * * decision to make a market and thereafter, perhaps, the prices it would quote.'' NASD Notice to Members, *supra* note 5.

[8] 17 CFR 240.15c2–11(e)(3)

[9] The proposed rule would apply to any situation in which member broker-dealer quotations are published in any interdealer quotation system, or any publication or electronic communication network or device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy and sell at a stated price or otherwise, or invitations or offers to buy or sell. *See* Amendments No. 1 and No. 2, *supra* note 3.

[10] See NASD Rule 2720(b)(1)(B) (i), (ii) and (iii).

[11] *See* Amendment No. 1, *supra* note 3.

member conduct arguably is already covered by other provisions of the proposed rule, provisions of another proposed Conduct Rule, and an existing Conduct Rule.[12] First, the definition of a promoter could apply to payments by one member to another member to publish a quote, make a market, or file an application therewith for a particular security for the purpose of promoting interest in a particular security.[13] In addition, such payments may also fall within the scope of proposed conduct rule interpretation IM–2110–5 (SR–NASD–97–37),[14] which would prohibit certain anticompetitive conduct of member broker-dealers. In particular, the proposed rule interpretation would prohibit certain ''coordinated'' activity among member broker-dealers regarding prices (including quotations), trades, or trade reports. Thus, certain coordinated efforts in publishing quotations or setting prices may be subject to the provisions of the proposed rule. Furthermore, member-to-member payments in some cases may also be covered by NASD Conduct Rule 2110 as conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade. In addition, member-to-member payments not specifically prohibited under the provisions above may involve legitimate broker-dealer activity for which exemptions from the proposed rule would have to be crafted. Crafting appropriate exemptions would complicate the proposed rule unnecessarily in light of the absence of a history of abusive conduct in member-to-member payments.

The proposed rule also is intended to prohibit indirect payments by the issuers, affiliates, or promoters through other members. Thus, members may not accept payments from other members that originate from an issuer, affiliate, or promoter of the issuer.

In addition, the proposed rule contains a general exception that permits payments to a member by prohibited persons for ''*bona fide* services.'' Such *bona fide* services are intended to include, but not be limited to, investment banking services, including traditional underwriting compensation and fees. The proposed rule contains a further exemption for reimbursement of fees imposed by the SEC and the states, and listing fees imposed by self-regulatory organizations. Such fees have been generally considered costs of the issuer, even when paid by a broker-dealer.

The proposed rule is intended to apply a fair practice standard to a particular course of conduct of a member as described below. In addition, however, the action of a member in charging an issuer a fee for making a market, or accepting an unsolicited payment from an issuer where the member makes a market in the issuer's securities, could also subject the member to violations of the antifraud provisions of federal securities laws and NASD Rule 2120.[15] Further, the payment by an issuer to a market maker to facilitate market making activities also may cause the member to contribute to violations of Section 5 of the Securities Act of 1933.[16]

The proposed rule as originally proposed for public comment[17] included a third exception,[18] which was intended to encourage members to conduct an initial Rule 15c2–11 review[19] of the issuer and the security by permitting reimbursement of the member's reasonable out-of-pocket expenses related to this review. The third exception was eliminated from the proposed rule due to concerns that such payments could violate Section 17(b) of the Securities Act of 1933[20] and could be used inappropriately to avoid the limitations of the proposed rule.

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 association, and, in particular, with the requirements of Section 15A(b) of the Act.[21] Among other things, Section 15A(b)(6) of the Act 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, and in general, to protect investors and the public. The Commission believes that the proposed rule change in designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and to protect investors and the public.[22]

Specifically, the Commission finds that the rule preserves the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security. The decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace. The Commission finds that the proposed rule supports a longstanding policy and position of the NASD[23] and establishes a clear standard of fair practice for member firms.

[12] *Id.*

[13] *Id.*

[14] Securities Exchange Act Release No. 38715 (June 4, 1997), 62 FR 31845 (June 11, 1997) (notice of proposed rule change (SR–NASD–97–37)).

[15] Rule 2120 prohibits members from effecting transactions in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

[16] The insertion of quotations for a security in an interdealer quotation system in exchange for a payment by an issuer may result in a violation of Section 5 of the Securities Act of 1933 based on the issuer's interest in facilitating the subsequent sale. This ''second sale'' theory was articulated by the SEC and upheld by the court in *SEC* v. *Harwyn Industries, Inc.*, 326 F. Supp. 943 (S.D.N.Y. 1971). *See* Letter from Kenneth S. Spirer, Attorney, Division of Market Regulation, SEC, to Jack Rubens, Monroe Securities, Inc. (May 4, 1973).

[17] NASD Notice to Members 96–83 (December 1996).

[18] The third exception to the original proposed rule stated: (b) The provisions of paragraph (a) shall not preclude a member from accepting: * * * (3) reimbursement of reasonable out-of-pocket expenses on an accountable basis, not including the member's overhead, in connection with the member's initial review process in determining whether to agree to publish a quotation or to act as a market maker in a particular security.

[19] Rule 15c2–11 imposes an ''affirmative review'' obligation on a broker-dealer to form a reasonable belief that the information submitted in connection with an application to enter a quotation is accurate in all material respects and that the sources of the information are reliable. See Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991).

[20] Section 17(b) of the Securities Act of 1933 explicitly makes it unlawful for any person receiving consideration, directly or indirectly from an issuer, to publish or circulate any material which describes such issuer's securities without fully disclosing the receipt of such consideration, whether past or prospective, and the amount thereof.

[21] 15 U.S.C. § 78f(b).

[22] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[23] NASD Notice to Members 75–16 (February 20, 1975). *See also* Letter from Kenneth S. Spirer, Attorney, Division of market Regulation, SEC, to Mr. Jack Rubens, Monroe Securities, Inc. (May 4, 1973) (regarding acceptance of a fee or service charge from issuers in connection with making a market).

The Commission notes that the rule does not specifically prohibit member-to-member payments to make a market. Nevertheless, the Commission agrees with the NASD that the definition of a promoter in NASD Rule 2460 being approved today, is broad enough to cover payments by one member to another member to publish a quote, make a market, or file an application therewith for a particular security for the purpose of promoting an interest in a particular security. In addition, another proposed rule, IM–2110–5 (SR–NASD–97–37),[24] would prohibit certain anticompetitive conduct of broker-dealers. In particular, the rule would prohibit certain ''coordinated'' activity among member broker-dealers regarding prices (including quotations), trades, or trade reports. Thus, certain coordinated efforts in publishing quotations or setting prices may be subject to the provisions of the proposed rule. The Commission notes that the NASD was concerned that if all member-to-member payments were prohibited, then activity which involved legitimate broker-dealer activity would have to become subject to an exemption. The Commission agrees with the NASD that crafting appropriate exemptions would complicate the rule unnecessarily, when other provisions of the rule and other proposed rules cover the prohibited conduct.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASD–97–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18090 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

[24] Securities Exchange Act Release No. 38715 (June 4, 1997), 62 FR 31854 (June 11, 1997) (notice of proposed rule change (SR–NASD–97–37)).

[25] 15 U.S.C. § 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38813; File No. SR–PCX–97–13]

Self-Regulatory Organizations; Pacific Exchange; Order Approving Proposed Rule Change Relating to the Use of the Internet for Providing Market Quotations or Advertising to the General Public and Notice of Filing and Order Granting Accelerated Approval of Amendment Thereto

July 3, 1997.

I. Introduction

On April 23, 1997, the Pacific Exchange, Inc., (''PCX'' 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 proposed rule change relating to the use of the internet for providing market quotations or advertising to the general public. The proposed rule change was published for comment in Securities Exchange Act Release No. 38620 (May 13, 1997), 62 FR 27641 (May 20, 1997). The Commission received no comments on the proposal. On June 26, 1997, the Exchange amended the proposed rule change (''Amendment No. 1'') to narrow its scope to market quotations or advertising appearing only on the internet.[3] This order approves the proposed rule change and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The Exchange is proposing to add three provisions to the text of Rule 9.24, ''Radio, Television, Telephone Reports.''[4] The first provision provides that Members and Member Organizations desiring to make use of the internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Exchange by submitting an outline of the program to the Exchange.

The second provision provides that the text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by Member or Member Organizations on the internet, or program material supplied to such media, must be sent to the Exchange promptly following the program in which it is used.

Finally, the Exchange is proposing to clarify the limited scope of Rule 9.24 by stating expressly that it only applies to Members and Member Organizations for which the Exchange is the designated examining authority (''DEA'').

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, and Section 6(b)(5) of the Act[5] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

III. Discussion

The Commission believes PCX's proposed rule change is consistent with Section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to further investor protection and the public interest.[7]

PCX proposes requiring Members and Member Organizations to obtain the consent of the Exchange prior to making use of the internet for providing market quotations or advertising to the general public. The Commission believes that Exchange review of market quotations or advertising intended for the general public is necessary for investor protection and overall public interest. The Commission believes that Exchange review of market quotations or advertising appearing on the internet will ensure the accuracy of such information and result in a higher level of investor protection. Similarly, the Commission believes that the text of commercials and program material about securities or investing sponsored by Members or Member Organizations on the internet should be sent to the Exchange promptly following the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Margaret J. Blake, Division of Market Regulation, Commission (June 26, 1997). As originally filed, the proposed rule change applied to market quotations or advertising appearing on the internet or ''similar electronic networks.'' Amendment No. 1 removed all references to ''similar electronic networks.''

[4] Rule 9.24 currently provides that Member firms desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, shall first obtain the consent of the Exchange by submitting an outline of the program. The rule further provides that the text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by member firms on radio, television, or public telephone market reports, or program material supplied to these media shall be sent to the Exchange promptly following the program in which it is used.

[5] 15 U.S.C. § 78f(b)(5).

[6] 15 U.S.C. § 78f (b) (5).

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

program in which it is used. The Commission believes that this is appropriate as it will give the Exchange an opportunity to review and analyze the program material as it appeared on the internet, to assure the accuracy of the information, thereby resulting in continued investor protection and overall public interest.

Finally, the Commission believes that amending Rule 9.24 to state expressly that it only applies to Members and Member Organizations for which the Exchange is the DEA is appropriate, as it will clarify the scope of the rule and its application only to Members and Member Organizations.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the date of publication of the notice of filing because the Amendment does not affect the substantive rights of Members and accelerated approval will facilitate the uninterrupted implementation of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–13 and should be submitted by July 3, 1997, in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the PCX, and in particular Section 6(b)(5).

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–PCX–97–13) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18091 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38809; File No. SR–PHLX–97–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing Amendments to Its Certificate of Incorporation and By-Laws

July 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 25, 1999, the Philadelphia Stock Exchange, Inc. (''PHLX'' or Exchange'') filed with the Securities and Exchange 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 PHLX hereby proposes amendments to its Certificate of Incorporation and By-Laws. A Table of Contents that provides a section-by-section description of the proposed amendments and the text of the proposed amendments are available at the places specified in Item IV below.

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 section A, B, and C below, of the most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX hereby proposes amendments to its Certificate of Incorporation and By-Laws that are designed to promote an enhanced governance structure for the Exchange. These reforms were based upon recommendations made by a Special Committee appointed by the PHLX Board to review and make recommendations regarding the Exchange's governance structure, including the operations of the Exchange and the composition of its Board, committees and other entities involved in the governance of the Exchange.

The Special Committee on Governance was organized in December 1996, Irving M. Pollack, a former SEC Commissioner, was appointed to chair the Committee. the other members of the Committee were: J. Cater Beese, Jr., a former SEC Commissioner, member of the PHLX Board and Chairman of Alex. Brown International; Ronald K. Brandes, a public member of the PHLX Board and Managing Director of Braddis Associates, Inc.; James Dimon, President and Chief Operating Officer of Travelers Group and Chairman and Chief Executive Officer of Smith Barney, Inc.; Joseph Grano, Jr., President of PaineWebber, Inc.; Stephen H. Hanke, a public member of the PHLX Board and Professor of Applied Economics at Johns Hopkins University's Department of Economics; Peter R. Kellogg, Chief Executive Officer and Senior Partner of Spear Leeds & Kellogg; Leon M. Schochet, a member of the PHLX Board and an Investment Limited Partner of J.C. Bradford & Co.; Michael D. Waber, President of Fairview Trading, Inc., and John F. Wallace, Chairman of the PHLX Board and President of Wallace Securities Corp.

On March 4, 1997, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (''OCIE'') issued a report based on a special examination of the Exchange (''OCIE Report''). The OCIE Report specifically recommended an increase in public Governor representation to at least fifty percent (50%) of PHLX Board composition, including non-industry Governors, among other governance reforms. On March 7, 1997, SEC Chairman Arthur

[8] 15 U.S.C. 78s (b) (2).

[9] 17 CFR 200.30–3(a) (12).

[1] 15 U.S.C. § 78s(b)(1).

Levitt personally addressed the PHLX Board of Governors to underscore the critical need to implement the recommended reforms expeditiously. Thereafter, the PHLX Board unanimously adopted a resolution committed to implement a series of major governance initiatives, including the Commission's recommendation regarding public and non-industry Governor representation on the PHLX Board.

On April 4, 1997, the Governance Committee issued its report entitled ''The Report to the Board of Governors by the Special Committee on Governance of the Philadelphia Stock Exchange, Inc.'' (''Governance Report''). The Governance Report was based upon comprehensive interviews with members, staff and others, significant document review and numerous Committee meetings. The Governance Report made a number of recommendations that would require amendments to the Exchange's By-Laws to implement such recommendations, including combining the position of Chairman of the Board of Governors with that of the Chief Executive Officer; reducing the size of the Board and increasing the number and proportion of non-industry and public Governors; restructuring the Board's key committees; revising the charters of certain committees; and establishing essential new committees.

On April 14, 1997, the Board adopted the Governance Report's recommendations with minimal changes. Thereafter, the Exchange's Legal Department, with assistance of the Governance Committee's counsel, drafted the proposed amendments to the Exchange's Certificate of Incorporation and By-Laws that will implement the recommendations. The Commission staff had been provided with the draft amendments. On May 21, 1997, the Board approved the draft amendments with certain minimal changes. Thereafter, with the PHLX Board's strong endorsement, the amendments were announced to the membership in accordance with Exchange By-Law Article XXII, Section 22–2.

As no written request was made for requesting a special meeting of the Exchange membership to consider the amendments, the PHLX Board on June 18, 1997 unanimously approved the proposed amendments for filing with the Commission.

Two of the most significant proposed changes to the By-Laws are reducing the size of the Board from 30 to 22 Governors and changing the composition of the Board to 11 non-industry Governors, of whom at least 5 shall be public Governors: 10 industry Governors; and a Chairman of the Board who will be the full time, paid Chief Executive Officer of the Exchange.[2]

The proposed By-Law amendments make significant changes to the Nominating Committee's charter. The amendments specify that a majority of the Committee be non-industry Governors and authorize the Committee to select non-industry and public Governors, nominees for industry Governor, committee chairs, and the Nominating Committee's successors, and to fill vacancies on the Board, all subject to Board approval.[3]

The proposed By-Law amendments specify the composition of the 10 industry Governors as follows: 2 Equity Floor industry Governors, 1 Equity Options Floor Specialist Governor and 1 Equity Options Floor Registered Options Trader Governor (all of whom shall work on the Exchange Floor or be a general partner, executive officer or member associated with a member organization primarily engaged in business on the Exchange Floor); 1 Equity Options Floor Broker Governor (who shall work on the Equity Options Floor); and 5 Off-Floor Governors.[4] Except for the Chairman of the Board, all Governors are subject to term limits of two consecutive three year terms.[5]

The manner in which the Vice Chairmen of the Board are selected also has been changed. Instead of the Vice Chairmen being elected by the membership, the Board will now appoint the Off-Floor Vice Chairman from among the Off-Floor Governors, and the On-Floor Vice Chairman from among the On-Floor Governors. If there is a contest for On-Floor Vice Chairman, a membership election will be held solely for the On-Floor Vice Chairman.[6]

The number of members required to file independent Governor nominations is proposed to be increased from 10 to 50 members for an individual nomination, and 30 to 75 members for nominating an entire slate or portion thereof.[7]

Substantial amendments relating to the Exchange's standing committees, including adding new standing committees of Automation, Compensation and Quality of Markets; reducing the size of standing committees to no more than 9 members except for floor committees, which may have no more than 12 members; requiring the committee chair and at least one other member to be a Governor; and revising the charter and composition of certain existing committees, all which have been proposed for By-Law Article X. Of particular note, the Executive Committee will be authorized, with Board approval, to appoint committee members other than committee chairs, and to act on behalf of the Board when the Board is not in session.[8] The Audit Committee will be composed of 3 public Governors and the Committee's charter will be significantly expanded to authorize the Committee's inquiries into all aspects of the Exchange's operations and finances, including regulatory matters.[9]

The Arbitration Committee's composition has been reduced from 25 to 4 members and member controversies will be handled in the same fashion as public customer controversies.[10]

Business Conduct Committee (''BCC'') appeals will be taken directly to the Board as the Disciplinary Review Committee is proposed to be eliminated.[11] The Exchange Enforcement staff will be entitled to petition the Board to appeal a BCC decision.[12]

Board Advisory Committees that hear appeals of standing committee decisions and are composed of 3 Governors, will now include at least 1 public Governor.[13]

Certain provisions of the PHLX Certificate of Incorporation and By-Laws are being proposed to be adopted and/or amended in order to attract qualified candidates to serve on the PHLX Board and committees, and to clarify the responsibilities and obligations of those who are appointed. In this regard, new Article XVIII to the PHLX Certificate of Incorporation is being proposed in order to limit liability of PHLX Governors, as permitted under the Delaware General Corporation Law. Additionally, current By-Law Article IV, Section 4–18, is proposed to be replaced entirely by a

[2] *See* By-Law Article IV, Section 4–1 and By-Law Article V, Section 5–1. Various other amendments to the By-Laws have been made in connection with these changes. For instance, references to ''President'' have been changed to refer to the ''Chief Executive Officer'' or ''Chairman of the Board'' and revisions to the number of Board members necessary to effect certain Board actions have been made, *e.g.*, in most cases where the affirmative vote of 15 of the current 30 Governors was required, the By-Law is changed to state that a majority vote is required.

[3] *See* By-Law Article III, Section 3–5.

[4] *See* By-Law Article IV, Section 4–1.

[5] *See* By-Law Article IV, Section 4–3.

[6] *See* By-Law Article IV, Section 4–2.

[7] *See* By-Law Article III, Section 3–7.

[8] *See* By-Law Article X, Section 10–14.

[9] *See* By-Law Article X, Section 10–9.

[10] *See* By-Law Article X, Section 10–8.

[11] *See* By-Law Article X, Section 10–11.

[12] *See* By-Law Article XI, Section 11–3.

[13] *See* By-Law Article XI, Sections 11–1 and 11–2.

provision that provides broad and comprehensive indemnification coverage and rights to Governors, committee members and officers of the Exchange, and provides discretionary authority for the Board to indemnify agents and employees of the Exchange.

By-Law Article IV, Section 4–8, is proposed to be amended so that no person shall participate in the ''determination'' as opposed to ''adjudication'' of any matter in which he is personally interested. This change would expand the coverage of this provision, which pertains to disqualification of Governors from participation in Board actions. Additionally, Article XIV of the PHLX Certificate of Incorporation is proposed to be replaced in its entirety with a current provision of the Delaware General Corporation Law regarding contracts and transactions entered into by the PHLX in which a Governor, director, or officer has a financial interest.

A number of other revisions to the By-Laws are proposed for the sake of organization or accuracy. For instance, the term ''Corporation'' has been changed throughout the By-Laws to ''Exchange,'' and By-Law Articles VI and VII regarding Vice Chairmen of the Board of Governors and Officers of the Corporation are being deleted in their entirety with the relevant sections being moved into Article V.

The proposed rule change is consistent with Section 6(b)(3) of the Act in that more Governors shall be representative of investors and not associated with a member of the Exchange, broker or dealer while promoting the opportunity to assure fair representation of PHLX members in the selection of nominees for Governors and the administration of the affairs of the Exchange. In addition, it is consistent with Section 6(b)(5) of the Act as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In accordance with PHLX By-Law Article XXII, Section 22–2, the membership was notified of the proposed amendment by Memorandum dated June 4, 1997 and no written request was filed within the 10 day period allowed by the By-Law. Thereafter, on June 18, 1997, a membership petition was received by the Board pursuant to PHLX By-Law Article XXII, Section 22–1, which offered, in writing, certain proposed amendments to the By-Laws. This petition currently is being held by the PHLX Secretary pending completion of certain revisions to the proposed amendments by the petitioners, after which such amendments will be submitted to the membership for vote thereon.

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 PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR–PHLX–97–31 and should be submitted by August 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17984 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38808; File No. SR–Phlx–97–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Elimination of the Enhanced Parity Split for the Specialist in the 3D German Mark Foreign Currency Options

July 1, 1997.

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 May 29, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx proposes to eliminate the enhanced split applicable to the specialist trading cash/spot German Mark (''3D'') foreign currency options[3] (''FCOs'') in Exchange Rule 1014(h). The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text

[14] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 3D FCOs are cash-settled, European-style, cash/spot FCO contracts on the German mark that trade in one-week and two-week expirations. *See* Securities Exchange Act Release No. 33732 (Mar. 8, 1994), 59 FR 12023 (Mar. 15, 1994).

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

In January, 1995, the Exchange adopted an enhanced split for its specialist in 3D FCOs in order to encourage the specialist to make deeper markets to attract order flow.[4] The rule provides that the Foreign Currency Option Committee (''the Committee'') would conduct a review of the entitlement to the enhanced parity split at the end of the first year and then every 6 months thereafter. Pursuant to the most recent review, the Committee determined to eliminate the enhanced split which was only applicable to this one product traded on the Foreign Currency Option Floor of the Exchange. The specialist in the product has not objected to the elimination of the entitlement. In fact, the specialist firm trading this product has indicated that the enhanced split is not particularly useful to the firm and that the firm does not generally take advantage of it.[5] In addition, the Exchange has represented that the order size in this product is generally not large enough to trigger the enhanced split.[6] The Exchange is proposing to eliminate the enhancement at this time in order to study the issue of enhanced splits for the Foreign Currency Option Floor on a broader basis.[7] By eliminating this enhanced split, parity and priority will be determined in accordance with Exchange Rule 119 and the remainder of section (h) to Rule 1014.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer the File No. SR–Phlx–97–25 and should be submitted by August 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–17985 Filed 7–9–97; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 35177 (Dec. 29, 1994), 60 FR 2419 (Jan. 9, 1995).

[5] *See* letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx to David Sieradzki, Attorney, Commission (June 30, 1997).

[6] Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, James T. McHale, Special Counsel, Commission and David Sieradzki, Attorney, Commission (June 19, 1997). Rule 1014(h) provides that ''[t]his enhanced split will not apply where a customer bid/offer for under 100 contracts has time priority.''

[7] The Exchange represents that it is in the process of considering new and different types of parity splits that, if adopted, would be applicable to all products traded by specialists on the foreign currency option floor or at least to a broader range of specialist traded products. *Supra* note 5.

[8] 15 U.S.C. § 78f.

[9] 15 U.S.C. § 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of North Carolina, New Bern Division, dated April 21, 1997, the United States Small Business Administration hereby revokes the license of Falcon Capital Corporation, a South Carolina corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–0091 issued to Falcon Capital Corporation on April 14, 1964 and said license is hereby declared null and void as of June 27, 1997.

Dated: July 1, 1997.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–18076 Filed 7–9–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Opportunity to Apply for Nominations to the World Trade Organization Dispute Settlement Roster of Panel Candidates

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to apply for nomination by the United States to the indicative list of non-governmental

panelist candidates provided for in Article 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and in the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

SUMMARY: The DSU provides a mechanism for the settlement of disputes between the governments which are members of the WTO. A three-person panel conducts each dispute settlement proceeding and issues a report for consideration by the Dispute Settlement Body (DSB) in which representatives of all WTO members participate. The DSU also provides for the WTO Secretariat to maintain an indicative roster of well-qualified governmental and non-governmental individuals, to assist in the selection of panelists for dispute settlement proceedings.

Section 123(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–405, provides that the Trade Representative shall seek to ensure that persons appointed to the WTO roster are well-qualified and that the roster includes persons with expertise in all of the subject matters covered by the Uruguay Round Agreements. USTR invites citizens of the United States with appropriate qualifications to apply for consideration as a nominee to the roster.

DATES: Eligible citizens are encouraged to apply by August 10, 1997 to be considered for nomination to the roster in 1997.

FOR FURTHER INFORMATION CONTACT: For information concerning the form of the application, contact Ileana Falticeni, Litigation Assistant, USTR Office of Monitoring and Enforcement, (202) 395–3582. For information concerning WTO procedures or the duties involved, contact Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305 or Rebecca Reese, Director for Government Procurement (202) 395–3063. For information relating to the GATS, contact William Kane, Associate General Counsel, (202) 395–6800 or Peter Collins, Deputy Assistant USTR for Services and Investment, (202) 395–7271. Further information on the WTO and dispute settlement is available on the Internet at http://www.ustr.gov/reports/tpa/1997/contents.html; the text of the DSU is available on the Internet at http://www.wto.org/wto/dispute/dsu.htm.

SUPPLEMENTARY INFORMATION: Pursuant to Article 8 of the DSU, the WTO Secretariat is to maintain an indicative list of well-qualified governmental and non-governmental individuals, including persons who have served on or presented a case to a panel, taught or published on international trade law or policy, or served as a senior trade policy official of a WTO member country. The indicative list will be used to assist in the selection of panelists for dispute settlement proceedings. Panel members are to be selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience. The current roster list dates principally from 1995 (with the addition of a few persons nominated later and approved by the DSB). The list is available on the Internet at http://www.ustr.gov/reports/tpa/1997/part4__2__7.html. The roster list is updated each two years.

USTR currently seeks applications related to the list of non-governmental individuals. Persons selected by USTR will be nominated for inclusion on the WTO indicative roster subject to DSB approval. Inclusion of a name on the roster, however, does not necessarily mean that the individual will be selected for service on a panel. DSU Article 8.2 provides that citizens of WTO Members whose governments are parties or interested third parties to a dispute may not serve on the panel in that dispute unless the parties agree otherwise. For example, panels for disputes in which the United States is a party or interested third party cannot include any U.S. citizens unless the parties to the dispute agreed otherwise.

The Decision on Certain Dispute Settlement Procedures for the GATS requires that panels for GATS disputes include specific expertise on individual sectors. GATS disputes could involve the following eleven sectors: (1) professional and related technical services, including, for example, legal, accounting, auditing and bookkeeping, taxation, medical, dental and veterinary services, engineering, architectural, urban planning services, computer and related services, research and development services, real estate services, rental and leasing services, advertising and management services; (2) communication services (including audio-visual services); (3) construction and related engineering services; (4) distribution services; (5) educational services; (6) environmental services; (7) financial services, including insurance and insurance-related services, banking and securities services; (8) health-related and social services; (9) tourism and travel-related services; (10) recreational, cultural and sporting services, and (11) transport services.

Panels for GATS disputes are to be composed of well-qualified governmental or non-governmental individuals who have experience in issues related to GATS and/or trade in services, including associated regulatory matters. Dispute settlement panels concerning sectoral matters under the GATS must have expertise relevant to the specific service sector to which the dispute relates. The GATS Annex on Financial Services further provides that panels for disputes on prudential issues and other financial matters must have the necessary expertise relevant to the specific financial service under dispute.

WTO dispute settlement panels consist of three persons (unless the parties agree to have five panelists) whose function is to make an objective assessment of the matter under dispute, including an objective assessment of the facts of the case, the applicability of the relevant WTO agreements and the conformity of the measure under consideration with the obligations of those agreements. In addition, panels are to make such other findings as will assist the DSB in making the recommendations provided for in the WTO agreements.

Panelists must act in strict conformity with the provisions of the WTO agreements, including application of the appropriate standard of review. Panels are responsible for providing a report to the DSB, including recommendations if necessary, on the conformity of the matter under dispute with WTO obligations. Panelists must also comply with the WTO Rules of Conduct (available at http://www.ustr.gov/reports/tpa/1997/part4__2__8.html or http://www.wto.org/wto/dispute/rc.htm) relating to conflicts of interest and conduct as a panelist.

Procedures for Application

Non-governmental U.S. citizens (i.e., individuals not currently employed full-time by the U.S. Federal government or a state or local government) possessing expertise in international trade, services, intellectual property rights or other matters covered by the WTO agreements are invited to file an application for nomination to the WTO roster.

Applications must be typewritten and submitted along with two copies to Ileana Falticeni, Room 501, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. However, only one copy need be provided of speeches and publications submitted under item 9 below. Applicants are to provide the following information to the extent applicable:

1. Name of the applicant.
2. Business address, telephone number and, if available, fax number.

3. Citizenship(s).

4. Foreign language fluency, spoken and written.

5. Current employment, including title, description of responsibilities, and name and address of employer.

6. Relevant education and professional training, including particular service-sector expertise, if any.

7. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities.

8. Relevant professional affiliations and certifications.

9. List of publications and speeches; teaching experience in the area of trade; also, one copy of any speeches and publications relevant to the subject matter of the WTO agreements or service sector.

10. List of international trade proceedings or domestic proceedings relating to international trade (WTO) matters in which the person has provided advice or otherwise participated, including judicial or administrative proceedings over which that person has presided.

11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 et seq., and the dates of all registration periods; also, the names and nationalities of all foreign entities for which the applicant (or the applicant's employer on behalf of the applicant) is currently or has previously been registered under the Lobbying Disclosure Act of 1995 (P.L. 104–65), and the dates of all registration periods.

12. Names, addresses, telephone and, if available, fax numbers of three individuals authorized to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws and other areas of expertise, character, reliability and judgment.

13. A short statement of qualifications, including information relevant to the applicant's familiarity with international trade, services or other issues covered by the WTO agreements, and availability for service.

Information provided by applicants will be used by USTR for the purpose of selecting candidates for nomination to the WTO roster. Further information concerning potential conflicts may be requested from individuals and the possibility of significant conflicts will be taken into consideration in evaluating applicants. Copies of publications and speeches submitted under item 9 above will be returned to the applicant upon request. Information submitted may be subject to public disclosure. Any business confidential information that should not be disclosed to the public should be clearly indicated as such on each page of the submission, pursuant to 15 CFR section 2003.6.

U.S. citizens who are current members of the WTO roster and are interested in continuing to serve on the roster should reapply in response to this notice. Current members who are no longer interested in serving on panels need not notify USTR as they will be automatically removed from the list. Individuals who have previously applied but have not been selected for nomination may reapply.

USTR will contact applicants that qualify for further consideration as nominees regarding any additional information that may be required.

This notice contains a collection of information provision subject to the Paperwork Reduction Act (PRA) which has been approved by OMB. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish to voluntarily apply for nomination to the WTO roster. It is expected that the collection of information burden will be under 3 hours. This is a one-time-only collection of information, and contains no annual reporting and recordkeeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0006. Send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 123(b) of the Uruguay Round Agreements Act and 15 CFR section 2003. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the WTO roster. The information provided is needed, and will be used by USTR and other Federal government trade policy officials concerned with WTO dispute settlement, to select well-qualified U.S. roster candidates, and to complete standard curriculum vitae forms required by the WTO for each roster candidate. The information may be disclosed to members of the TPSC Subcommittee on WTO Disputes, for the purpose of evaluation of applications. Information nominees will be furnished to the WTO pursuant to requirements under the DSU.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–18069 Filed 7–9–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 30,1996 (61 FR, 68812–68813).

DATES: Comments must be submitted on or before August 11, 1997.

FOR FURTHER INFORMATION CONTACT: Complete copies of each NHTSA request for collection of information approval may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, SW., Room 6123, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration (NHTSA).

Title: Tires and Rims Labeling.

OMB No.: 2127–0503.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: New tire Manufacturers, retreaders and rim manufacturers.

Abstract: The labeling of motor vehicle tire and rims with information

required by the regulations and standards to benefit motor vehicle manufacturers and consumers. Primarily, these labeling requirements (49 CFR parts 569 & 574) help ensure that tires are mounted on appropriate rims; and that the rims and tires are mounted on vehicles for which they were intended.

Description of the need for the information and proposed use of the information—The agency has not considered methods of collecting the required information and providing it to consumers and tire dealers other than permanently labeling motor vehicles, tires, and rims. The safety information provided on the labels is needed throughout the useful life of the motor vehicle, tire, or rim. The permanent vehicle, tire, and rim labels are required by the federal standards for tires and rims. These standards are legal obstacles to reducing the burden of the labeling requirements. The labeling requirements apply to all motor vehicle tires and rims intended for use on the nation's highways regardless of the size of the manufacturer or retreader. The burden to small manufacturers and entities resulting from these labeling requirements cannot be adjusted or minimized since all tires and rims must be labeled with this information.

The estimated number of respondents totals is 6,673.

Annual estimate total burden: 264,444 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 2, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–18066 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–014; Notice 3]

Accuride Corporation; Grant of Application for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction to a notice.

SUMMARY: The Docket No. 96–119; Notice 2, as it appeared in the **Federal Register** on June 26, 1997, on pages 34492–34494 is incorrect. It should appear as Docket 97–014; Notice 2.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 7, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–18110 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–027; Notice 2]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction to a notice.

SUMMARY: The Docket No. 97–028; Notice 1, as it appeared in the **Federal Register** on April 22, 1997, on page 19651 is incorrect. It should appear as Docket 97–027; Notice 1.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 7, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–18111 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Civil Penalty Policy Under the Small Business Regulatory Enforcement Fairness Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of enforcement policy for small entities.

SUMMARY: This document announces NHTSA's civil penalty policy for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: This policy statement takes effect July 12, 1997.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 Seventh St. S.W., Washington, D.C. 20590 (tel. 202–366–5263).

SUPPLEMENTARY INFORMATION:

Background

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA or the Act) was enacted on March 29, 1996 (Pub. L. 104–121, 5 U.S.C. § 601 note). One of the purposes of the Act is to provide ''small entities with a meaningful opportunity for redress of excessive enforcement activities.'' (Section 203(7)).

Subtitle B of the Act, entitled REGULATORY ENFORCEMENT REFORMS, specifically Section 223, *Rights of small entities in enforcement actions,* addresses how this statutory goal is to be accomplished. For purposes of Subtitle B, a ''small entity'' has ''the same meaning as in section 601 of title 5, United States Code''; in turn, 5 U.S.C. § 601.6 states that a ''small entity'' has the same meaning as ''small business concern'' under section three of the Small Business Act. As explained in that Act (15 U.S.C. § 632), a ''small business concern'' is one that is independently owned and operated and not dominant in its field of operation. The Small Business Administration (SBA) has adopted additional criteria that include the concern's number of employees or the dollar volume of its business. 13 CFR Part 121, *Small business size standards.* Section 121.201 specifically identifies as ''small entities'' manufacturers of motor vehicles, passenger car bodies, and motor homes that employ 1,000 people or less, and manufacturers of motor vehicle parts and accessories that employ 750 people or less. See 61 FR 3280 (January 31, 1996).

Under the previous version of SBA's regulation (13 CFR § 121.601, as in effect before March 1, 1996), ''Major Group No. 37'' also specifically covered manufacturers of truck and bus bodies, truck trailers, travel trailers and campers, motorcycles and parts, and classified the manufacturers of these vehicles as ''small entities'' if they employed not more than 500 persons. Although these manufacturers are no longer identified by their products in new section 121.201, they are encompassed in the general specification that manufacturing entities, unless otherwise excepted (i.e., those with up to 750 or 1000 employees), are small businesses if they employ no more than 500 persons. Revised section 121.201 also considers as ''small entities'' dealers in new and used motor vehicles whose annual receipts do not exceed $21,000,000; dealers in used vehicles whose annual receipts do not exceed $17,000,000; and automobile dealers not otherwise classified whose annual receipts do not exceed $5,000,000. 61 FR 3292.

Section 223(a) of the SBREFA requires NHTSA, as an agency regulating small entities, to establish a policy ''to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.'' The Act allows NHTSA, ''under appropriate circumstances'', to ''consider ability to pay in determining penalty assessments on small entities.''

Section 223(b) requires every agency's small entity civil penalty policy to contain conditions and exclusions. These may include, but are not limited to, the following:

(1) Requiring the small entity to correct the violation within a reasonable correction period;

(2) Limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

(3) Excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) Excluding violations involving willful or criminal conduct;

(5) Excluding violations that pose serious health, safety or environmental threats; and

(6) Requiring a good faith effort to comply with the law.

Section 223(b), Public Law. 104–121.

Civil Penalties Under Statutes Enforced by NHTSA

NHTSA's primary civil penalty enforcement actions arise under 49 U.S.C. Chapter 301—MOTOR VEHICLE SAFETY (formerly known as Title I of the National Traffic and Motor Vehicle Safety Act of 1966, incorporating the Imported Vehicle Safety Compliance Act of 1988). Under Chapter 301, a violator is liable for a civil penalty of up to $1,100 for each violation, up to a maximum of $880,000 for a continuing series of violations (These amounts recently were raised from $1,000 and $800,000, respectively, pursuant to the Federal Civil Monetary Penalty Act of 1990 (P. L. 101–410), as amended by the Debt Collection Improvement Act of 1996, (P. L. 104–134). See 62 FR 5167).

Liability for a civil penalty is authorized for violations of ''any of sections 30112, 30115, 30117–30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of [title 49] or a regulation prescribed under any of those sections. * * *'' 49 U.S.C. 30165(a). These include the manufacture, sale, introduction into interstate commerce, or importation into the United States of motor vehicles and motor vehicle equipment that fail to conform to all applicable Federal motor vehicle safety standards (Section 30112(a)), or whose certification of compliance is false and misleading in a material respect (Section 30115). In addition, violations occur upon failure to provide notification of safety-related defects or noncompliances within a reasonable time and to conduct remedial campaigns, as well as upon making required safety equipment inoperative (Sections 30117–30122), failure to comply with regrooved tire regulations (Section 30123(d)), failure of a manufacturer to test-drive a school bus before introduction in commerce when required to do so by regulation (Section 30125(c), failure to comply with requirements for automatic occupant crash protection and seat belt use (Section 30127), failure to comply with the importation conformance and documentation requirements (Sections 30141–30147), and failure to keep required records or make required reports to NHTSA (Section 30166).

When a violation occurs, the statute provides that ''[i]n determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.'' 49 U.S.C. § 30165(c).

Historically, NHTSA has reached civil penalty settlements with companies that violated Chapter 301 which would be termed ''small entities.'' These penalties have ranged over the years from $250 to $10,000 for small entities, and represent amounts well below the statutory maximum.

NHTSA has also collected penalties for violations of 49 U.S.C. Chapter 327—ODOMETERS. Under Chapter 327, a violator is liable for a civil penalty of up to $2,200 for each violation, to a maximum of $110,000 for a related series of violations (also recently increased from $2,000 and $100,000 respectively. 62 FR 5167.)

Civil penalties under this provision may be incurred for tampering with odometers and for failing to provide a prescribed mileage disclosure statement at the time a vehicle is transferred. To date, all known violators who have been subjected to civil penalties under Chapter 327, with one possible exception, have been ''small entities.'' The penalties imposed have ranged from $250 to $32,500, with most of them $1,000 or less.

Finally, NHTSA collects civil penalties for violations of 49 U.S.C. Chapter 329—AUTOMOBILE FUEL ECONOMY. Under Chapter 329, a manufacturer is subject to civil penalties for failure to meet the Corporate Average Fuel Economy (CAFE) requirements in effect for each model year. These penalties are calculated according to a statutory formula. As the prescribed penalty formula is based upon the total number of vehicles manufactured in a given model year, the resulting penalty is often small for small manufacturers. Some past CAFE violators appear to have been small entities, such as Sun International, which paid a penalty of $45; Vector Aeromotive Corporation, which paid three separate penalties of $1,740, $1,740 and $870; Panoz Auto Development Corporation ($3,080); Autokraft, Ltd. ($2,590); and Consulier Industries, Inc. ($150). However, NHTSA's authority under the CAFE legislation to compromise or remit a civil penalty for violation of a CAFE standard is extremely limited. Under 49 U.S.C. § 32913(a), such a penalty may be reduced only to the extent ''(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles; (2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or (3) the Federal Trade Commission certifies under subsection (b)(1) of [section 32913] that a reduction in the penalty is necessary to prevent a substantial lessening of competition.'' These provisions also could afford a measure of relief to small manufacturers.

NHTSA'S Existing Civil Penalty Policy

NHTSA has had an unwritten policy in force for some years with respect to civil penalties against small entities. This policy originated in the statutory directive in the Vehicle Safety Act that, in determining the amount of a civil

penalty or compromise, NHTSA must consider ''the appropriateness of the penalty or compromise to the size of the business charged * * * '', (now codified at 49 U.S.C. § 30165(c)). When NHTSA's Office of Chief Counsel considers appropriate civil penalty action, it tries to determine the size of the manufacturer or other violator, often on the basis of the violator's position within its particular industry. If the number of employees and/or the amount of gross sales in the previous year are known, this information is also considered. When the Chief Counsel asks a violator to show cause why a penalty should not be imposed, the violator is informed of the statutory provision and asked to address the size of its business in its response.

Chapter 301 affords a defense of reasonable care to a violator of Section 30112(a). 49 U.S.C. § 30112(b)(2)(A). When the agency concludes that a manufacturer has a ''reasonable care'' defense, no penalty is imposed. If a violator is unable to establish that it exercised ''reasonable care'' in its response to the show cause letter, the Chief Counsel proposes a penalty figure that appears appropriate under the circumstances. In addition to the size of the business, the agency must also consider ''the gravity of the violation'' in setting this figure (49 U.S.C. § 30165(c)). The violator is then informed by a settlement letter that the proposed amount appears appropriate under the circumstances and that NHTSA would be willing to accept this sum to settle the matter if the violator wishes to offer it in compromise. In setting the suggested amount, the Chief Counsel attempts to be realistic about the financial capabilities of individual violators. While most violators accept the agency's proposed terms, NHTSA occasionally has accepted the offer of a smaller sum, or permitted payment of the sum originally suggested in installments to accommodate the financial needs of the violator.

Although NHTSA's past policy has not provided expressly for the reduction or waiver of civil penalties for small businesses, in practice NHTSA believes that it has been sensitive to the finances of small entities, and that its enforcement policy meets the intent of the Small Business Regulatory Enforcement Fairness Act. However, to more fully implement this new legislation, effective immediately, NHTSA will modify its policy by including in its civil penalty settlement letters a statement that informs violators who may be small entities of the definition of ''small entity.'' Upon a showing by a violator that it is a small entity, NHTSA will make appropriate adjustments to the suggested settlement amount, except for violations of CAFE standards, where NHTSA does not suggest a settlement but informs the violator of the penalties calculated under the statutory formula.

From time to time, a violator has made the argument to NHTSA that no penalties should be imposed because it is in compliance with other NHTSA standards and regulations. NHTSA has discounted this argument in civil penalty deliberations on the grounds that a person should not be rewarded for doing what it is legally obligated to do. NHTSA sees no justification for modifying this policy.

Exclusions From the Enforcement Policy

As discussed above, the SBREFA legislation sets forth six categories which may form the basis of exclusion from the small business enforcement policy, and permits the establishment of additional such categories as well. Each of the six statutory categories is discussed below, in the context of both past and future policy. In addition, this policy will not apply to civil penalties imposed under 49 U.S.C. § 32921(b) (failure to comply with fuel economy standards), due to the statutory limitations set out in 49 U.S.C. § 32913(a).

(1) Requiring the small entity to correct the violation within a reasonable correction period:

On a numerical basis, by far the greatest number of violations of Chapter 301 involve the manufacture and sale of noncomplying vehicles. These faults are required to be corrected ''within a reasonable time.'' 49 U.S.C. 30120(c)(1). Failure to repair a motor vehicle adequately not later than 60 days after its presentation for repair ''is prima facie evidence of failure to repair within a reasonable time.'' 49 U.S.C. 30120(c)(2). Thus, a manufacturer is required by statute to correct a violation within a reasonable period. Therefore, NHTSA cannot say to a small entity that it will not impose a penalty if the noncompliance is corrected within a reasonable time, since this would reward conduct that is already required.

Historically, the penalties that NHTSA imposes under Chapter 301 are almost always those for violations that the agency uncovers in the course of its testing and investigations. There have been two situations in which the agency has regularly chosen not to impose penalties for violations. The first is the case in which a manufacturer, independently of a NHTSA investigation, makes its own determination that it has failed to comply with a safety standard or regulation or has identified a safety related defect, and reports it to the agency in a timely manner. The reason for this policy is to encourage manufacturers to make their own determinations and file their own reports without the fear that they will be penalized for the violations.

The second situation in which NHTSA generally does not impose penalties is the case in which the agency has decided that a noncompliance is inconsequential to safety, and the manufacturer is therefore exempted from the statutory obligation to notify and remedy (see 49 U.S.C. §§ 30118, 30120). This waiver of the agency's right to impose a penalty is based upon the de minimis aspect of the violation.

NHTSA has a longstanding policy of considering the facts that a company, large or small, has been diligent in determining the existence of a noncompliance or safety related defect and reporting it to the agency, and has remedied it in a timely manner, as mitigating factors in deciding whether to seek civil penalties from violators. In response to the SBREFA, NHTSA will initiate a policy under which it will waive penalties when a noncompliance is determined to exist following a test failure in the product of a first offender small business, provided that the violation is not a knowing one, and that the manufacturer formally notifies the agency that it has made a noncompliance determination by the deadline for its response to OVSC's initial letter regarding the test failure.

(2) Limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State:

NHTSA has no compliance assistance or voluntary audit programs, either by itself or in conjunction with a state. Thus, it will not limit its policy to such situations.

(3) Excluding small entities that have been subject to multiple enforcement actions by the agency:

It has been NHTSA's practice to sharply increase penalties for repeated violations of the same standard or regulation, whether the violator is large or small. NHTSA plans to continue this practice.

(4) Excluding violations involving willful or criminal conduct:

NHTSA is unsure how ''criminal conduct'' could result in a ''civil'' penalty and not a criminal one. With the exception of the odometer legislation,

violations of NHTSA statutes are not defined as criminal offenses. The odometer legislation does prescribe criminal penalties for knowing and willful violations of its requirements, and civil penalties for other violations.

However, NHTSA agrees with the apparent idea behind this exclusion, *i.e.*, that enforcement relief should not be extended to small entities that willfully violate the law. In fact, a violator may not be found to have exercised reasonable care when it knows that its products failed to comply with an applicable Federal motor vehicle safety standard. In the agency's opinion, a company that acts, knowing that it is violating the law, is acting willfully, as that term is used in the SBREFA.

(5) Excluding violations that pose serious health, safety or environmental threats:

As stated above, 49 U.S.C. § 30165(c) already requires NHTSA to consider the ''gravity of the violation'' in compromising civil penalties. The agency will continue its present policy of doing so. Excluding violations that pose serious safety threats from a mitigation policy appropriately reflects current agency practice.

(6) Requiring a good faith effort to comply with the law:

The 1996 SBREFA legislation contemplates as a matter of policy that penalties may be waived or reduced against small entities that have made a good faith effort to comply with the law. This policy, in essence, is already in effect for violations of 49 U.S.C. § 30112. If a violator can demonstrate that it had no reason to know in the exercise of reasonable care that the motor vehicle or item of equipment involved failed to conform, the violator will be held not to have violated Section 30112. 49 U.S.C. § 30112(b)(2)(A). Where there is no violation, no penalty can be imposed.

Authority: Sec. 223(a), Pub. L. 104–121.

Issued on: July 3, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–18065 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Underground Storage of Natural Gas or Hazardous Liquids

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

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing an advisory bulletin to operators of gas and hazardous liquid underground storage facilities. The bulletin advises the industry about available design and operating guidelines and applicable state and RSPA regulations. Elsewhere in this issue of the **Federal Register**, RSPA concludes its proposed rule proceeding on underground gas and hazardous liquid storage facilities.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-4595.

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1992, an uncontrolled release of highly volatile liquids from a salt dome storage cavern in the Seminole Pipeline System near Brenham, Texas, formed a large, heavier-than-air gas cloud that exploded. Three people died from injuries sustained either from the blast or in the fire. An additional 21 people were treated for injuries at area hospitals. Damage from the accident exceeded $9 million.

During its investigation of this accident, the National Transportation Safety Board (NTSB) found several deficiencies in the design of Brenham station, the most important of which was the lack of a fail-safe cavern shutdown system. In addition, a comprehensive safety analysis of the station had not been conducted to identify potential points of failure and product release.

Following its accident investigation, NTSB published pipeline safety recommendation No. P–93–9 regarding underground storage. Recommendation P–93–9 asks RSPA to develop safety requirements for storage of highly volatile liquids and natural gas in underground facilities, including a requirement that all pipeline operators perform safety analyses of new and existing underground geologic storage systems to identify potential failures, determine the likelihood that each failure will occur, and assess the feasibility of reducing the risk. The recommendation also suggests that RSPA require operators to incorporate all feasible improvements.

In response to the recommendation, RSPA held a public meeting on underground storage of gas and hazardous liquids on July 20, 1994, in Houston Texas (Docket PS–137; 59 FR 30567; June 14, 1994). The purpose of the meeting was to gather information on the extent of current regulation, and to help determine the proper action for RSPA to take regarding regulation of underground storage of gas and hazardous liquids. At the meeting, representatives of industry, state governments, and the public presented statements on safety issues, industry practices, the status of state underground storage regulations, and the need for additional federal regulations. While different views were expressed on whether RSPA should begin to regulate ''down hole'' pipe and underground storage, most persons spoke favorably of industry safety practices and state regulation, and did not recognize an immediate need for federal regulatory action.

After the meeting, RSPA surveyed a cross section of underground storage facilities in the U.S. to learn their existing safety systems, potential safety and environmental problems, staff expertise, and the extent of state regulation. A report [1] of the survey says that while all surveyed facilities train personnel in operating and emergency safety, operational procedures was the leading safety concern of both operators and state regulators. The report further says that about 85 percent of surveyed facilities are under some sort of state regulation. In addition, the report gives pros and cons of federal regulation and notes that additional data and site investigations would be needed to correlate increased safety with increased regulation.

Since the accident, RSPA has actively participated with the Interstate Oil and Gas Compact Commission (IOGCC) to develop standards. The IOGCC represents the governors of 36 states—29 members and seven associate states—that produce virtually all the domestic oil and natural gas in the United States. The mission of IOGCC is to promote conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment through sound regulatory practices. Regulatory coordination and government efficiency are chief interests of IOGCC.

IOGCC formed a subcommittee composed of federal and state regulators, including representatives from the Department of Energy, the National Association of Regulatory Utility Commissioners, American Gas Association, National Gas Supply Association, and Gas Research Institute. The subcommittee developed a report entitled ''Natural Gas Storage in Salt

[1] LRL Sciences, Inc., Underground Hydrocarbon Storage Facility Survey Summary, October 1996, Volume I and Volume II (Report No. DTRS–56–95-C–0001 available from National Technical Information Service, Springfield VA 22161)

Caverns—A Guide for State Regulators'' (IOGCC Guide). The IOGCC Guide provides safety standards for the design, construction, and operation of gas storage caverns. The standards are useful to the industry as well as state agencies. Copies of the IOGCC Guide can be obtained from the Interstate Oil and Gas Compact Commission, 900 N.E. 23rd Street, Oklahoma City, Oklahoma 73152–3127 (phone: 405/525–3556; e-mail: iogcc@oklaosf.state.ok.us).

In addition, the American Petroleum Institute (API) has published guidelines for the underground storage of liquid hydrocarbons. RP 1114, Design of Solution-Mined Underground Storage Facilities, June 1994, provides basic guidance on the design and development of new solution-mined underground storage facilities. All aspects of solution-mined storage are covered, including selecting an appropriate site, physically developing the cavern, and testing and commissioning the cavern. Also covered are plug and abandonment practices. RP 1115, Operation of Solution-Mined Underground Storage Facilities, September 1994, provides basic guidance on the operation of solution-mined underground hydrocarbon liquid or liquefied petroleum gas storage facilities. All aspects of solution-mined underground storage operation, including cavern hydraulics, brine facilities, wellhead and hanging strings, and cavern testing are covered. Both documents are available from API, 1220 L Street NW., Washington DC 20005 (phone: 202/682–8000; e-mail: publications@api.org).

Subsequently, in view of the IOGCC guidelines, API guidelines, and state regulations, and because of the varying and diverse geology and hydrology of the many sites, RSPA has decided that generally applicable federal safety standards may not be appropriate for underground storage facilities. Moreover, consistent with the President's policy on government regulation, before choosing a direct regulatory approach to a problem, we consider alternative solutions, such as eliciting state or local action, publishing advisories, encouraging the development and use of voluntary standards, and hosting cooperative federal/industry seminars. Therefore, RSPA, recognizing the value of underground hydrocarbon storage requirements tailored to a state's particular circumstances, is encouraging state action and voluntary industry action as a way to assure underground storage safety instead of proposing additional federal regulations. The following Advisory Bulletin is part of that effort.

II. Advisory Bulletin (ADB–97–04)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: Underground storage.

Purpose: Inform owners and operators of the availability of guidelines for the design and operation of underground storage facilities and advise them to follow applicable state and RSPA safety standards.

Advisory: RSPA believes the IOGCC Guide and API documents are appropriate for use by pipeline operators and by state regulatory agencies concerned about the safety of those portions of underground salt cavern storage facilities not covered by RSPA pipeline safety regulations. Through prior direct communication, RSPA has urged state agencies to use these resources in their safety programs so as to make new RSPA regulations unnecessary. And at this time, we urge operators of underground storage facilities that serve interstate gas or hazardous liquid pipelines to comply not only with the IOGCC Guide and API documents but also with the appropriate state underground storage regulations to the extent feasible.

We also remind facility operators that current RSPA safety standards for gas and hazardous liquid pipelines require operators to take preventive actions that include system safety analyses and follow-up. In particular, under 49 CFR 192.605(c)(1)(v) and 195.402(d)(1)(v), operators must identify any foreseeable malfunction of a component that may result in a hazard to persons or property and take steps to reduce the risk. Also, under §§ 192.617 and 195.402(c) (5) and (6), operators must analyze failures to learn their causes and minimize the possibility of a recurrence. We believe these standards substantially satisfy the need that NTSB recognized for a comprehensive safety analysis as it relates to piping at underground storage facilities.

(49 U.S.C. Chapter 601; 49 CFR 1.53)

Issued in Washington, DC, on July 1, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–17722 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33421]

West Virginia State Rail Authority—Acquisition Exemption—CSX Transportation, Inc.

West Virginia State Rail Authority, a Class III rail common carrier, for and on behalf of the State of West Virginia, has filed a notice of exemption under 49 CFR 1150.41 to acquire 29.59 miles of rail line from CSX Transportation, Inc. (CSXT) from milepost BUI–0.0, at Tygart Junction, to milepost BUI–28.4, at Elkins (known as the Belington Subdivision), and from milepost BUM–0.0, at Huttonsville Junction, to milepost BUM–1.19, at Elkins Junction, in Barbour and Randolph Counties, WV. CSXT will continue to be the operator of the property.

The transaction is expected to be consummated on or about July 4, 1997.

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. 33421, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Francis G. McKenna, Esq., Anderson & Pendleton, C.A., 1700 K Street, N.W., Suite 1107, Washington, DC 20006.

Decided: July 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18103 Filed 7–9–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on July 29 and 30, 1997, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by

Treasury staff on July 29, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On July 30, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on July 29 and will be open to the public. The remaining sessions on July 29 and the committee's reporting session on July 30 will be closed to the public, pursuant to 5 U.S.C. App. § 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b.

Dated: July 7, 1997.

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 97–18109 Filed 7–9–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5329

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 5329, additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, Modified Endowment Contracts, and MSAs.

DATES: Written comments should be received on or before September 8, 1997.

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 Brinson, (202) 622–3869, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, Modified Endowment Contracts, and MSAs.

OMB Number: 1545–0203.

Form Number: Form 5329.

Abstract: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are for excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.

Current Actions:

Changes to Form 5329

(1) The title of the form was changed to reflect the fact that an additional tax relating to medical savings accounts (MSAs) is now figured on this form.

(2) A caution was added after line 4 to alert taxpayers to the rules that apply to early distributions from SIMPLEs. This was done to reflect new Internal Revenue Code section 72(t)(6), which was added by section 1421(b)(4)(A) of P.L. 104–188.

(3) New Part III was added to reflect the additional tax for excess contributions to MSAs. This new tax was added by section 301(e)(4) of P.L. 104–191, which added section 4973(d) to the Code.

(4) Lines 18–26 in old Part IV, relating to the tax on excess distributions, were deleted. They were replaced with an explanation that the tax does not apply to distributions during years beginning after December 31, 1996, and before January 1, 2000. The application of this tax was limited by section 1452(b) of P.L. 104–188, which added section 4980A(g) to the Code.

(5) The first acceleration election was deleted under old Part V. This election was deleted because taxpayers would have no need to make the election since the tax on excess distributions does not apply for 1997, 1998, or 1999.

(6) In the instructions, Worksheets 1 and 2 were deleted. They dealt with the discretionary method and the attained age method of computing the unrecovered grandfather amount for purposes of the tax on excess distributions. They were deleted because the tax does not apply for 1997, 1998, or 1999.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 3 hours, 46 minutes.

Estimated Total Annual Burden Hours: 3,760,000.

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 2, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–18120 Filed 7–9–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 67 (Rev. 23)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The specific authority to sign the name of, or on behalf of, Michael P. Dolan, Acting Commissioner, Internal Revenue Service. The text of the delegation order appears below.

EFFECTIVE DATE: May 26, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald R. Ridgley, Chief, Office of Organizational Research, M:SP:A, Room 401, 1255 22d Street, NW, Washington, D.C. 20037, (202) 874–4479 (not a toll-free call).

Effective: May 26, 1997.

Signing the Commissioner's Name or on the Commissioner's Behalf.

Authority: To sign the name of, or on behalf of, Michael P. Dolan, Acting Commissioner of Internal Revenue.

Delegated to: Persons with existing authority to sign the name of, or on behalf of, Margaret Milner Richardson, Commissioner of Internal Revenue.

Redelegation: This authority may not be redelegated.

Source of Authority: Treasury Order 150–10.

This order is effective 12:01 a.m., May 26, 1997, and supersedes Delegation Order No. 67 (Rev. 22), effective May 12, 1993.

Dated: June 16, 1997.

Michael P. Dolan,

Acting Commissioner.

[FR Doc. 97–18119 Filed 7–9–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Civic Education Institute for the Middle East

ACTION: Request for proposals.

SUMMARY: The Study of the U.S. Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to conduct a 3–4 week U.S.-based institute on innovative approaches to curriculum development and teaching methodology in civic education and social studies for approximately 15 educators from Israel, Jordan, and West Bank/Gaza (Palestinian Authority). The purpose of this institute is to expose participants to recent developments in U.S. civic education curriculum and teaching practice, and to enable participants to examine and discuss their current/projects approaches with U.S. educators and with each other. Anticipated outcomes of the institute would be the development/refinement of viable curricular materials that will enable these educational sectors to prepare students to become responsible community members as the peace process develops. The long-term goal of the institute is to strengthen the teaching of citizenship skills in the region. Participants will have professional responsibilities which are concerned with the development/revision of up-to-date civic education and social studies curricular materials, and appropriate teaching methodologies for such materials. Overseas participants in this program will be identified and selected by U.S. Information Service (USIS) posts abroad, and will be English-speaking. The program should take place for 3–4 weeks during January/February of 1998.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright Hays Act.) The Fulbright program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau's authorizing legislation, programs must ''maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life,'' and must ''maintain their scholarly integrity and shall meet the highest standards of academic excellence * * *''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AAS–97–12.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, August 15, 1997. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals (including specific information on budget preparation), applicants should contact: Gretchen Christison, Study of the U.S. Branch, E/AAS, Room 256, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, tel: 202–619–4557 fax: 202–619–6790, Internet address gchristi@usia.gov.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Gretchen Christison on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: Civic Education Institute E/AAS–97/12, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges.

Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Proposed Budget

Total USIA-funded budget award (program and administrative costs) should not exceed $125,000. USIA-funded administrative costs should be as low as possible and should not exceed $25,000. Please note: USIA will fund all international travel directly, therefore international travel costs should not be included in the budget submission. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Program Objectives, Goals, and Implementation (''POGI'') in the Solicitation Package for complete budget guidelines and formatting instructions for proposals.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA offices for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of North African, Near Eastern, and South Asian Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 2, 1997.

James D. Whitten,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–17856 Filed 7–9–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 132

Thursday, July 10, 1997

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 HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 67

RIN 0919-AAOO

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts

Correction

In rule document 97–6758, beginning on page 12906, in the issue of Tuesday, March 18, 1997, make the following correction:

§ 67.15 [Corrected].

On page 12910, in the third column, in § 67.15 (d)(2)(i)(A), ''The number'' should read ''The member''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28930; Notice No. 97–9]

RIN 2120–AF82

Revision of Gate Requirements for High-Lift Device Controls

Correction

In proposed rule document 97–14886, beginning on page 31482, in the issue of Monday, June 9, 1997, make the following corrections:

On page 31482, in the first column, under **ADDRESSES**, in the 14th line, ''CMTS@Afaa.dot.gov.'' should read ''CMTS@faa.dot.gov.''

§ 25.145 [Corrected]

On page 31485, in the first column, in § 25.145(c), in the fifth line, ''positive'' should read ''position''.

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 62, No. 132

Thursday, July 10, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, JULY

35337–35658 1
35659–35946 2
35947–36198 3
36199–36446 7
36447–36644 8
36645–36964 9
36965–37124 10

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proclamation 7011) 35909
6763 (See Proclamation 7011) 35909
7011 35909
12721 (See EO 13054) 36965

Executive Orders:
12852 (Amended by EO 13053) 39945
13052 35659
13053 39945
13054 36965

5 CFR

7201 36447

Proposed Rules:
880 35693

7 CFR

300 36967
301 .....36645, 36976
318 36967
455 .....35661, 35662
456 35666
457 .....35662, 35666
946 36199
985 36646
1006 36650
1137 35947
1381 36651
1437 36978

Proposed Rules:
29 35452
450 37000
457 37000
920 .....36231, 36743
930 36020
981 36233
985 36236
1011 36022
1944 36467

8 CFR

316 36447

10 CFR

Proposed Rules:
430 36024
451 36025

11 CFR

104 35670

12 CFR

902 35948
338 36201

Proposed Rules:
9 36746

13 CFR

123 35337

14 CFR

39 .....35670, 35950, 35951, 35953, 35956, 35957, 35959, 36448, 36652, 36978
71 35894

Proposed Rules:
25 37124
39 .....35696, 35698, 35700, 35702, 35704, 35706, 35708, 35709, 35711, 36240, 36747
71 35713
401 36027
411 36027
413 36027
415 36027
417 36027
440 36028

15 CFR

922 .....35338, 36655

Proposed Rules:
30 36242

16 CFR

601 35586
1000 36450
1017 36450

17 CFR

200 36450
228 36450
229 36450
230 36450
232 36450
239 .....35338, 36450
240 .....35338, 36450
249 35338
260 36450
269 35338

Proposed Rules:
232 36467
240 36467
249 36467

18 CFR

35 36657
381 36981

20 CFR

416 36460

Proposed Rules:
702 35715

21 CFR

165 36460
178 36982

Proposed Rules:
Ch. I 36243
101 36749

1308 37004

24 CFR

Proposed Rules:
201 36194
202 36194
207 35716
251 35716
252 35716
255 35716
266 35716
950 35718
953 35718
955 35718
1000 35718
1003 35718
1005 35718

26 CFR

1 35673
54 35904
602 35904

Proposed Rules:
1 ..... 35752, 35755

28 CFR

17 36984

29 CFR

1600 36447
1650 36447
2200 35961
2203 35961
2204 35961
2520 36205
2590 35904
4000 36993
4001 35342
4007 36663
4010 36993
4011 36993
4043 36993
4071 36993
4302 36993

30 CFR

256 36995
902 35342
946 35964

Proposed Rules:
206 36030
935 36248

31 CFR

285 36205

Proposed Rules:
103 36475

32 CFR

176 35343
286 35351

33 CFR

27 35385
100 ..... 35387, 35388, 35390, 35391
144 35392
165 ..... 35392, 35393, 35394, 35395, 35396, 35398, 335398, 35399, 35400, 35401, 35402, 35403, 35405, 35680, 35968

Proposed Rules:
84 36037
117 35453

34 CFR

222 35406
685 35602

37 CFR

201 35420
202 35420
203 35420

38 CFR

1 35969
3 ..... 35421, 35969, 35970
9 35969
21 35423

Proposed Rules:
19 36038
21 ..... 35454, 35464

39 CFR

3001 35424

40 CFR

52 ..... 35441, 35681, 36212, 36214
60 36664
62 36995
63 36460
81 35972
180 ..... 35683, 36665, 36671, 36678, 36684, 36691
281 36698
300 ..... 35441, 35689, 35974, 36997
721 ..... 35689, 35690

Proposed Rules:
52 ..... 35756, 36249, 37007
60 36948
62 37008
70 36039
82 36428
141 36100
142 36100
180 35760
186 35760

42 CFR

67 37124

45 CFR

146 35904
148 35904

46 CFR

109 35392
159 35392
160 35392
199 35392

47 CFR

Ch. I 36216
59 36998
64 35974
68 36463
73 ..... 36226, 36227, 36699, 36700, 36701, 36678, 36684, 36691

Proposed Rules:
Ch. I 36752
52 36476
68 36476
73 ..... 36250, 36756, 37008

48 CFR

1803 36704
1804 36704
1807 36704
1809 36704
1813 36704
1815 36704
1816 36704
1819 36704
1822 36704
1824 36704
1825 36704
1827 36704
1832 36704
1836 36704
1837 36704
1839 36704
1842 36227
1844 36704
1845 36704
1852 36704
1853 36704
1870 36704

Proposed Rules:
4 36250
7 36250
8 36250
15 36250
16 36250
17 36250
22 36250
27 36250
28 36250
31 ..... 35900, 36250
32 36250
35 36250
42 36250
43 36250
44 36250
45 36250
46 35900
49 36250
51 36250
52 ..... 35900, 36250
53 36250

49 CFR

193 36465
1002 35692
1180 35692

Proposed Rules:
192 37008
195 37008
213 36138
385 36039
571 36251
1002 36477
1181 36480
1182 ..... 36477, 36480
1186 36480
1187 36477
1188 ..... 36477, 36480

50 CFR

17 ..... 36481, 36482
285 ..... 35447, 36998
648 ..... 36704, 36738
660 ..... 35450, 36228
679 ..... 36018, 36739, 36740, 36741

Proposed Rules:
17 35762
285 ..... 36040, 36739, 36872
600 35468
622 35774

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 10, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; published 7-9-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Hawaiian and territorial quarantine notices:

Papaya, carambola, and litchi; published 7-10-97

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act:

State operating permits programs—

Virginia; published 6-10-97

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 7-10-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

4-nonylphenol, formaldehyde and 1-dodecanethiol; published 7-10-97

NATIONAL SCIENCE FOUNDATION

Antarctica, medical screening of agency-sponsored personnel traveling to; published 6-10-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

McDonnell Douglas; published 6-25-97

Class D airspace; published 6-17-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Common crop insurance regulations:

Tobacco; comments due by 7-16-97; published 6-16-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Boll Weevil eradication loan program; implementation; comments due by 7-15-97; published 5-16-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Sodium acetate and sodium diacetate use as flavoring agents; comments due by 7-18-97; published 6-23-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications systems construction policies and procedures:

Digital, stored program controlled central office equipment; acceptance test policy; comments due by 7-16-97; published 6-16-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

At-sea scale certification program; comments due by 7-16-97; published 6-16-97

Ice and slime standard allowances for unwashed Pacific halibut and sablefish; comments due by 7-17-97; published 6-17-97

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE selected reserve dental program (TSRDP); comments due by 7-15-97; published 5-16-97

Federal Acquisition Regulation (FAR):

Contracting by negotiation; Phase I rewrite; comments due by 7-14-97; published 5-14-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

New Federal residential buildings; energy efficiency code; comments due by 7-14-97; published 5-2-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Secondary lead smelters, new and existing; comments due by 7-14-97; published 6-13-97

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 7-17-97; published 6-17-97

Illinois; comments due by 7-17-97; published 6-17-97

Michigan; comments due by 7-14-97; published 6-12-97

South Carolina; comments due by 7-16-97; published 6-16-97

Tennessee; comments due by 7-17-97; published 6-17-97

Virginia; comments due by 7-14-97; published 6-13-97

Wisconsin; comments due by 7-14-97; published 6-12-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Carbon disulfide; comments due by 7-15-97; published 5-16-97

Clopyralid; comments due by 7-15-97; published 5-16-97

Propamocarb hydrochloride; comments due by 7-15-97; published 5-16-97

Pyridaben; comments due by 7-15-97; published 5-16-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Terminal equipment, connection to telephone network—

Inside wiring; comments due by 7-17-97; published 7-8-97

Radio stations; table of assignments:

Minnesota et al.; comments due by 7-14-97; published 5-29-97

Missouri; comments due by 7-14-97; published 5-29-97

Television broadcasting:

Advanced television (ATV) systems; digital technology conversion; reporting and recordkeeping requirements; comments due by 7-15-97; published 5-16-97

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Insured status; notification of changes; comments due by 7-14-97; published 5-14-97

FEDERAL ELECTION COMMISSION

Rulemaking petitions:

Prohibited and excessive contributions; ''soft money''; comments due by 7-18-97; published 6-18-97

FEDERAL RESERVE SYSTEM

Truth in lending (Regulation Z):

Home equity loan market; disclosure requirements and closed-end mortgage loan limitations; hearings; comments due by 7-18-97; published 4-29-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contracting by negotiation; Phase I rewrite; comments due by 7-14-97; published 5-14-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:

Criteria clarification; comments due by 7-15-97; published 4-17-97

Medical devices:

Medical device corrections and removals; reporting requirements; comments due by 7-18-97; published 5-19-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

HUD building products standards and certification

program; use of materials bulletins; comments due by 7-18-97; published 5-19-97
HUD-owned properties:
HUD-acquired single family property; disposition; comments due by 7-14-97; published 6-13-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Contracts and grants:
Indian highway safety program; competitive grant selection criteria; comments due by 7-15-97; published 5-16-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Alexander archipelago wolf etc.; comments due by 7-14-97; published 6-12-97
'oha wai, et al. (ten plant taxa from Maui Nui, Hawaii); comments due by 7-14-97; published 5-15-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Utah; comments due by 7-14-97; published 6-13-97

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal, metal and nonmetal mine safety and health:
Roof and rock bolts and accessories; safety standards; comment period extension; comments due by 7-14-97; published 6-30-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Contracting by negotiation; Phase I rewrite; comments due by 7-14-97; published 5-14-97

NUCLEAR REGULATORY COMMISSION
Byproduct material; domestic licensing:
Radioactive drugs containing one microcurie of carbon-14 urea; distribution to persons for ≥in vivo≥ diagnostic use; comments due by 7-16-97; published 6-16-97

SECURITIES AND EXCHANGE COMMISSION
Securities:
Securities Act of 1933; section 18 covered securities; comments due by 7-17-97; published 6-17-97

STATE DEPARTMENT
Visas; immigrant documentation:
Diversity immigrant visa program; lottery administration fee; comments due by 7-16-97; published 6-16-97

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-97; published 4-18-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules:
Fees for air traffic services for certain flights through U.S.-controlled airspace; comments due by 7-18-97; published 3-20-97
Airworthiness directives:
Boeing; comments due by 7-17-97; published 6-6-97
Bombardier; comments due by 7-14-97; published 6-4-97
Raytheon; comments due by 7-18-97; published 5-13-97
Robinson Helicopter Co.; comments due by 7-18-97; published 5-19-97
Twin Commander Aircraft Corp.; comments due by 7-17-97; published 5-9-97
Class E airspace; comments due by 7-14-97; published 5-28-97

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Compressed natural gas fuel containers; comments due by 7-14-97; published 5-30-97

Pilots Records Improvement Act of 1996:
National Driver Register information; procedures for pilots to request and air carriers to receive; comments due by 7-18-97; published 5-19-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Contracts and exemptions:
Rail general exemption authority—
Nonferrous recyclables; comments due by 7-15-97; published 5-23-97

Rail licensing procedures:
Commuter rail service continuation subsidies and discontinuance notices; comments due by 7-14-97; published 6-12-97

TREASURY DEPARTMENT

Thrift Supervision Office

Liquidity; comments due by 7-14-97; published 5-14-97