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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-215]

Importation of Okra From the Dominican Republic

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule allows okra produced in the Dominican Republic to be entered into the United States without treatment for the pink bollworm, with the following restrictions: The untreated okra may not be moved into California during March 16 through December 31, inclusive; or into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel during May 16 through November 30, inclusive. Under these conditions, the okra will not present a pest risk because the areas into which the okra may be moved are either already generally infested with the pink bollworm or will not have the host material to sustain an infestation. This action relieves unnecessary restrictions on the importation of okra produced in the Dominican Republic.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 prohibit or restrict the importation of certain fruits and vegetables, as well as plants and portions of plants used as packing materials, into the United States because of the risk that they could introduce injurious insects.

Okra produced in the Dominican Republic presents a risk of introducing the pink bollworm (*Pectinophora gossypiella* (Saunders)). The pink bollworm is one of the most serious pests of cotton. Pink bollworms can cause extensive damage to cotton by feeding inside the squares and bolls. Okra is probably the preferred host after cotton.

Before the effective date of this rule, the regulations in § 319.56-2p (referred to below as the regulations) allowed okra from the Dominican Republic to be imported into the United States without restriction as to destination only with treatment for the pink bollworm. Treatment consists of fumigation with methyl bromide. Okra produced in the Dominican Republic could be entered into the United States without treatment for the pink bollworm only if the okra was entered into the United States through a North Atlantic port with approved treatment facilities and was destined to Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, or the District of Columbia, or any part of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel.

On October 24, 1988, we published in the **Federal Register** (53 FR 41604-41607, Docket 87-168) a proposal to allow okra produced in the Dominican Republic to be moved into additional areas of the United States without treatment for the pink bollworm, with the following restrictions: The untreated okra would not be allowed into California during March 16 through December 31, inclusive; or into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of 38th parallel during May 16 through November 30, inclusive. This proposal was based on our assessment that the pink bollworm would not present a pest risk in these additional areas, as restricted, because the areas are either already generally infested with the pink bollworm or would not have the host material to sustain an infestation.

We invited written comments on the proposed rule, which, to be considered, had to be postmarked or received on or before December 23, 1988. We received one comment, from the California Department of Food and Agriculture, which agreed with our analysis concerning pink bollworm, but expresed concern that okra produced in the Dominican Republic might introduce other harmful insect pests if allowed into California without fumigation during January 1 through March 15. Twenty-two types of insect pests that the commenter thought could be introduced into California by the okra were listed. The commenter requested that we either continue to require fumigation of okra produced in the Dominican Republic and moved into California, or, if fumigation is not required, that we inspect the okra for insect pests before it leaves the Dominican Republic and then carefully monitor the shipments of okra as they arrive in the United States.

We have carefully reviewed U.S. Department of Agriculture pest interception records for okra produced in the Dominican Republic and imported into the United States from 1971 through 1988. The records show 910 interceptions because of insect pests during this 18-year period, nearly all for pink bollworm. Insect pests listed by the commenter have been found only 9 times. In five of these instances, the insect pests were ants or beetles; one interception was for *Diaphania* sp. (Pyralidae); and the other three were for fruit flies (*Anastrepha* sp. and sp. of Tephritidae). We believe the occurrence of *Anastrepha* sp. and sp. of Tephritidae on okra produced in the Dominican Republic to be rare: okra is not listed in scientific literature as a host of these fruit flies, and there have been only three interceptions of these pests, in personal baggage, out of thousands of shipments of okra imported into the United States from the Dominican Republic over the past 18 years. The other pests can be readily detected by visual inspection at the port of arrival

For these reasons, neither the current fumigation requirements for okra produced in the Dominican Republic nor a pre-export inspection program appear to be necessary. We are, therefore, adopting our proposed rule without change.

Effective Date

The Administrator, Animal and Plant Health Inspection Service, has determined that this rule should be made effective upon publication in the **Federal Register**. This rule relieves unnecessary restrictions on the entry, into the United States, of okra produced in the Dominican Republic. One importer has expressed interest in moving okra produced in the Dominican Republic into the United States in accordance with the rule, and we find no reason to delay granting this request.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because of the proximity of the Dominican Republic to the Southeastern United States, this rule may provide importers in these states a convenient second source of untreated okra during the late fall, winter, and early spring. However, we know of only one entity interested in moving okra produced in the Dominican Republic into the United States without treatment for the pink bollworm. Importers in Arizona, New Mexico, Oklahoma, Texas, California, and Nevada will probably continue to buy most of their okra from Mexico. We do not expect this rule to affect the total amount of okra imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56-2p [Amended]

2. In § 319.56–2p, paragraph (a)(3) is amended by removing "and" before "(ii)"; removing the period after "Agriculture" and adding in its place a semicolon; and adding paragraphs (a)(3)(iii)–(vii) to read as follows:

(a) * * *

(3) * * * (iii) "Enter into the United States" means to introduce into the commerce of the United States after release from government detention; (iv) "Import into the United States" means to bring within the territorial limits of the United States; (v) "Port of arrival" means the first place at which a carrier containing okra stops to unload cargo after coming within the territorial limits of the United States; (vi) "Permit" means a document issued for an article by Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, stating that the article is eligible for importation into the United States; and (vii) "United States" means the several states of the United States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all other territories and possessions of the United States."

§ 319.56-2p [Amended]

3. In § 319.56–2p, paragraph (b)(1), the phrase "(Pectinophoragossypiella (Saund.)" is revised to read "(*Pectinophora gossypiella* (Saunders)".

§ 319.56-2p [Amended]

4. In § 319.56–2p, paragraph (b)(6), "as a condition of importation will be limited to entry" is revised to read "for the pink bollworm may be imported into the United States only"; and "as a condition of importation will be enterable" is revised to read "for the pink bollworm may be imported into the United States".

§ 319.56-2p [Amended]

5. In § 319.56–2p, paragraph (c) is revised to read as follows:

* * * * *

(c) *Importations of okra without treatment from Mexico and the Dominican Republic.* Okra produced in Mexico or the Dominican Republic may be entered into the United States without treatment for the pink bollworm only if:

(1) The okra is imported from the Dominican Republic or Mexico under permit;

(2) The okra is made available for examination by an inspector at the port of arrival and remains at the port of arrival until released by an inspector;

(3) During March 16 through December 31, inclusive, the okra is not moved into California; and

(4) During May 16 through November 30, inclusive, the okra is not moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, or any part of Illinois, Kentucky, Missouri, or Virginia south of the 38th parallel.

* * * * *

§ 319.56-2p [Amended]

6. In § 319.56–2p, paragraph (d), the paragraph designation "(1)" is removed; "may enter" is revised to read "may be imported into"; "port of entry" is revised to read "port of arrival"; "fumigation" is revised to read "treatment"; "except as provided in paragraph (d)(2) of this section" is revised to read "for the pink bollworm"; and paragraph (d)(2) is removed.

§ 319.56-2p [Amended]

7. In § 319.56–2p, paragraph (e), "may enter" is revised to read "may be imported into"; "fumigation" is revised to read "treatment"; "port of entry" is revised to read "port of arrival"; and the last sentence is removed.

§ 319.56-2p [Amended]

8. In § 319.56–2p, a new paragraph (f) is added to read as follows:

* * * * *

(f) *Treatment of okra for pests other than pink bollworm.* If, upon examination of okra imported in accordance with paragraphs (c), (d), or (e) of this section, an inspector at the port of arrival finds injurious insects, other than the pink bollworm, that do not exist in the United States or are not widespread in the United States, the okra will remain eligible for entry into the United States only if it is treated for the injurious insects in the physical presence of an inspector in accordance with the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. See § 300.1 of this chapter, "Materials incorporated by reference." If the treatment authorized by the Plant Protection and Quarantine Treatment Manual is not available, or if no authorized treatment exists, the okra may not be entered into the United States.

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19240 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-89-083FR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the Pear Commodity Committee (Committee) established under Marketing Order 917 for the 1989-90 fiscal year. It also authorizes the carry over of unexpended funds. The action is needed for the Committee to incur reasonable operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived primarily from assessments on handlers.

EFFECTIVE DATE: Section 917.253 is effective for the period March 1, 1989, through February 28, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919.

SUPPLEMENTARY INFORMATION: The final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 45 handlers of California pears under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Marketing Order 917, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of the regulated commodity. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The 1989-90 budget was formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity (36-pound carton or equivalent). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The budget and rate of assessment were recommended by the Committee after the season began, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Committee will have authority to incur reasonable expenses and have funds to pay its expenses.

The Committee met on June 28, 1989, and unanimously recommended 1989-90 fiscal year expenditures of $912,390 and an assessment rate of $0.22 per 36-pound carton or equivalent of assessable pears shipped under M.O. 917. For comparison, 1988-89 fiscal year expenditures were $698,719 and the assessment rate was $0.22 per carton or equivalent.

The major expenditure item this year is $733,800 for advertising, promotion, and food safety compared to $556,737 in 1988-89. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. A total of $10,000 is included for uncollected assessment accounts.

Estimated total income for 1989-90 will amount to $800,060, including assessment income of $786,060 based on shipments of 3,573,000 cartons of fresh pears, $2,000 from the California Department of Food and Agriculture, and $12,000 from other sources such as interest earned on the reserve fund. The reserve fund of $249,095 would be sufficient to cover the anticipated deficit.

Notice of this action was published in the **Federal Register** on July 20, 1989 (54 FR 30302). Comments were invited until July 31, 1989. No comments were received.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

After consideration of all relevant information provided including the Committee's recommendation, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be implemented promptly because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 917

California, Marketing agreements and orders, Peaches, Pears, Plums.

For the reasons set forth in the preamble, § 917.253 should be added as follows:

Note: This section will not be published in the annual *Code of Federal Regulations.*

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

2. New § 917.253 is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $912,390 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per 36-pound box or equivalent of assessable pears is established, for the fiscal year ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 11, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–19235 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket 89-085]

Ports Designated for Exportation of Animals, Chicago, IL

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. This action will add an additional inspection facility for the port. This facility meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. George O. Winegar, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 435–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States.

On March 7, 1989, we published in the **Federal Register** (54 FR 9459–9460, Docket Number 89–003), a document proposing to amend § 91.14 of the regulations by adding the Knief Quarantine Facility as an export inspection facility for the port of Chicago. Our proposal invited the submission of written comments. In the "DATE" section of that document, we inadvertently omitted the words "Consideration will be given only to comments received on or before" preceding the closing date for receipt of comments (May 8, 1989). This omission may have resulted in some confusion concerning the closing date for receiving written comments. Therefore, to ensure that interested persons were adequately advised of the opportunity to comment, we reopened and extended the comment period to June 15, 1989. We did this in a document published in the **Federal Register** (54 FR 23218–23219, Docket Number 89–089) on May 31, 1989. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is now only one export inspection facility currently approved in the Chicago area. There are fewer than 50 exporters using this facility. Most of these are considered small entities. This rule will allow exporters the option of an additional export inspection facility for the port of Chicago, Illinois, with minimal economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (4 U.S.C. 3501 *et seq.*).

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.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 is amended by adding a new paragraph (a)(4)(i)(B) to read as follows:

§ 91.14 [Amended]

(a) * * *

(4) *Illinois.*

(i) * * *

(B) Knief Quarantine Facility, 11 N 470 Chapman Road, Box 305, Burlington, Illinois 60109, (312) 683-3873.

* * * * *

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19241 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064-AA95

Advertisement of Membership

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation regarding advertisement of membership to require each insured savings association to display at each station or window where insured deposits are usually and normally received in its principal place of business a prescribed sign notifying the public of deposit insurance coverage. The FDIC is also amending its regulation to authorize insured banks to display the official sign presently prescribed by regulation ("bank sign") or, in the alternative, to display the sign prescribed for insured savings associations by this amendment ("savings association sign"). These actions are necessary in order to comply with the requirements of section 221 of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRRE") of 1989.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Attorney, Legal Division, (202) 898-3812, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this Notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Reason for Adoption Without Prior Notice and Comment

Immediate adoption of this final rule is necessary to comply with the requirements of section 221 of FIRRE. The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of the bank sign and the savings association sign. Section 221 provides that initial regulations under that section shall be prescribed on the date of enactment of FIRRE. This final rule prescribes the savings association sign. In order to be consistent with current regulations applicable to banks, and in order to assure depositors as to the safety of their insured deposits upon the abolishment of the Federal Savings and Loan Insurance Corporation, the final rule requires that the savings association sign be displayed at each station or window where insured deposits are usually and normally received in a savings association's principal place of business and in all of its branches. Due to the statutory time constraints, the FDIC finds that application of the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) to this action would be impracticable and contrary to the public interest. The FDIC finds that good cause exists for dispensing with the 30-day delayed effective date requirement. Since the FDIC has had to move so rapidly to implement the requirements of FIRRE, the FDIC has established only those requirements that are considered to be the minimum necessary to comply with FIRRE. Consequently, additional changes to the FDIC's regulation governing advertisement of membership are being considered, and comments are invited through an "Advance Notice of Proposed Rulemaking" published elsewhere in this issue.

Background

Section 221 of FIRRE amends section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)). Section 221 requires each insured savings association to display at each place of business maintained by the association a prescribed sign notifying the public of deposit insurance coverage. More specifically, the prescribed sign must contain only the following items, each of which is to be accorded substantially equal prominence: a statement that insured deposits are backed by the full faith and credit of the United States Government; a statement that deposits are federally insured to $100,000; and the symbol of an eagle. The sign may not contain any reference to a Government agency.

FIRRE provides that, not later than 30 days after the enactment of FIRRE, each insured bank shall display at each place of business maintained by such bank a sign notifying the public of deposit insurance coverage. FIRRE gives insured banks the option of displaying the official bank sign required by FDIC regulation in effect on January 1, 1989, or the official savings association sign which insured savings associations must display.

The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of such signs, except that the size of the savings association sign shall be similar to the bank sign. Accordingly, the FDIC is issuing this final rule to prescribe the sign insured savings associations must display and the locations where the sign must be displayed. The final rule gives insured banks the option of displaying the official bank sign or the official savings association sign prescribed for savings associations. Insured savings associations are authorized to display the official savings association sign created by FIRRE but not the official bank sign.

The FDIC regulation presently in effect requires an insured bank to display an official sign at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches. This requirement has not been changed by this final rule except that banks may now display the official bank sign or the official savings association sign prescribed for insured savings associations. This final rule requires an insured savings association to display the sign prescribed by FIRRE at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches.

Prior to the enactment of FIRRE, section 18 of the Federal Deposit Insurance Act specifically required an insured bank to include in advertisements a statement to the effect that its deposits were insured by the FDIC. FIRRE does not retain this specific requirement. It appears the FDIC has the authority to retain its regulation requiring insured banks to include the currently prescribed statement in advertisements and to extend similar requirements to insured savings associations. Since section 18 of the Federal Deposit Insurance Act as amended by FIRRE no longer mandates a statement of insurance coverage in advertisements, however, the FDIC believes it is appropriate at this time to review the benefits and costs of such a requirement. In conjunction therewith, the FDIC notes that section 222 of FIRRE

adds a new section 28 to the Federal Deposit Insurance Act. This newly enacted section provides that any savings association the deposits of which are not insured by the FDIC shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured. This final rule, therefore, retains the advertising requirements applicable to insured banks but does not extend them to insured savings associations. The FDIC invites comment on this issue through a separately published "Advance Notice of Proposed Rulemaking" published elsewhere in this issue.

This final rule eliminates the reference to the "Official Catalogue of Insured Bank Signs" since this catalogue is no longer published.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–602) does not apply.

List of Subjects in 12 CFR Part 328

Advertising, Bank deposit insurance, Banks, Banking, Savings and loan associations, Savings associations, Signs and symbols.

PART 328—ADVERTISEMENT OF MEMBERSHIP

1. The authority citation for part 328 is revised to read as follows:

Authority: 12 U.S.C. 1819; 12 U.S.C. 1828(a), as amended by sec. 221, Pub. L. No. 101–73, 103 Stat. 183.

2. Section 328.0 is revised to read as follows:

§ 328.0 Scope.

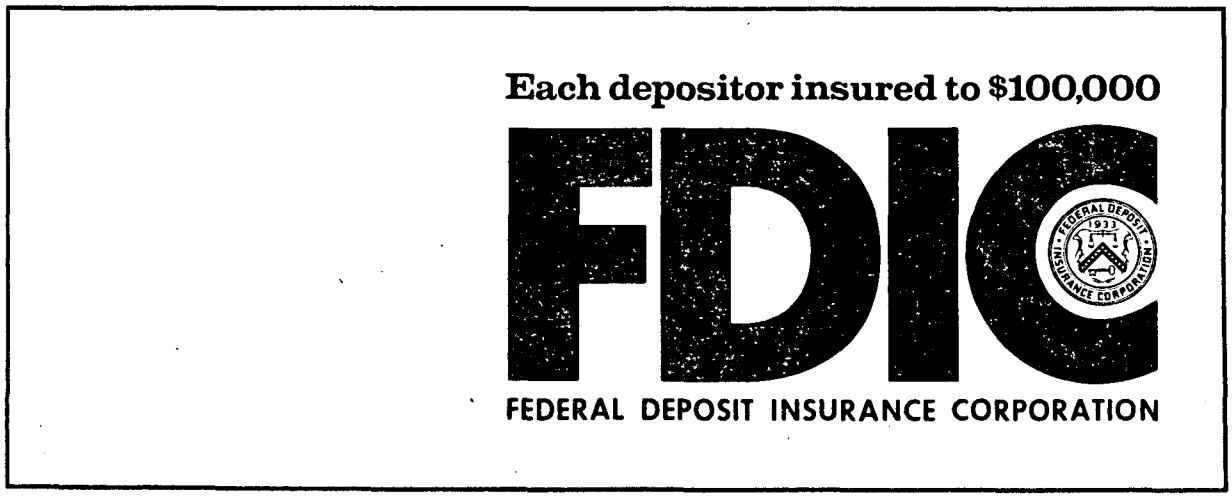
The regulation contained in this part describes the official signs of the FDIC and prescribes their use by insured depository institutions. It also prescribes the official advertising statement insured banks must include in their advertisements. Insured banks which maintain offices that are not insured in foreign countries are not required to include the advertising statement in advertisements published in foreign countries. For purposes of this part 328, the term "insured bank" includes a foreign bank having an insured branch.

§§ 328.2 and 328.3 [Redesignated from §§ 328.1 and 328.2 respectively]

3. Sections 328.1 and 328.2 are redesignated as §§ 328.2 and 328.3 respectively and a new § 328.1 is added to read as follows:

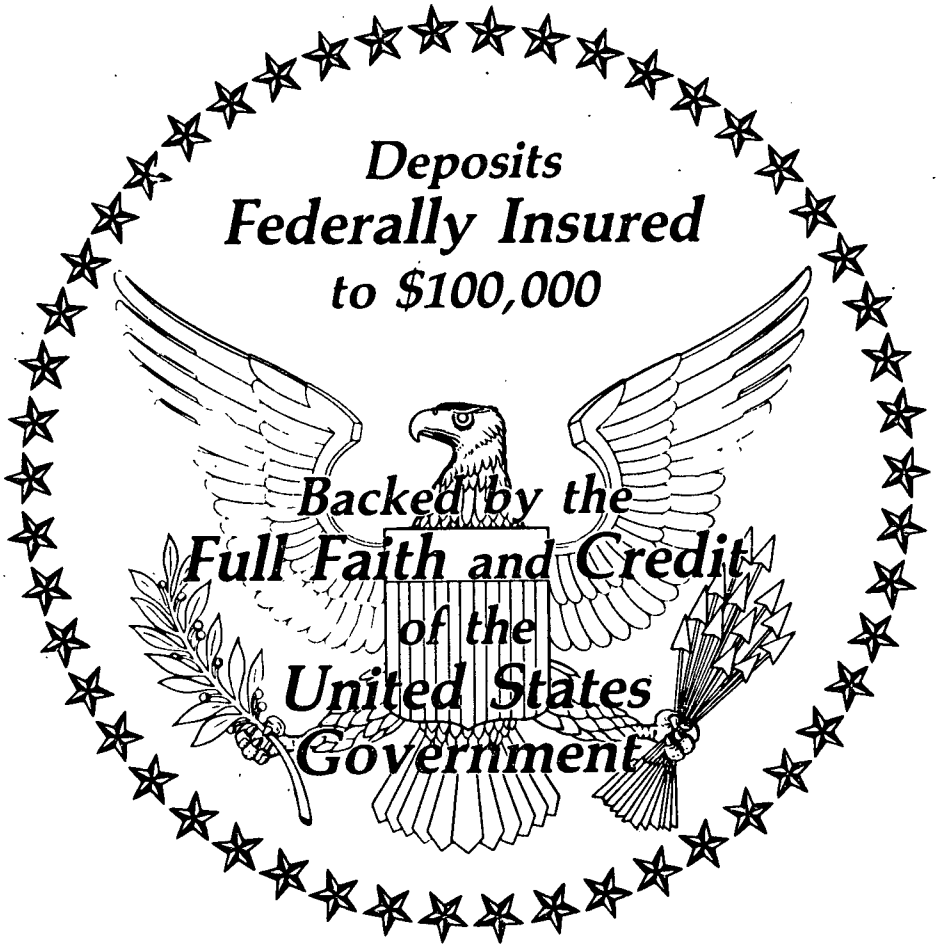
§ 328.1 Official signs.

(a) *Official bank sign.* The official sign referred to in this paragraph ("bank sign") shall be 7" by 3" in size and of the following design:



The "symbol" of the Corporation shall be that portion of the official bank sign represented by the letters and the Corporation seal contained upon the official bank sign.

(b) *Official savings association sign.* The official sign referred to in this paragraph ("savings association sign") shall be 5¼" in diameter and of the following design:



4. Newly redesignated § 328.2 is revised to read as follows:

§ 328.2 Mandatory requirements with regard to the official sign and its display by banks.

(a) *Insured banks to display official sign.* Each insured bank shall continuously display an official bank sign or an official savings association sign at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches, except on automatic service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received. However, no bank becoming an insured bank shall be required to display such an official sign until twenty-one (21) days after its first day of operation as an insured bank. An official sign may be displayed by an insured bank prior to the date display is required. Additional bank signs or savings association signs may be displayed in other locations within an insured bank in other sizes, colors, or materials. An insured bank may display an official sign at a remote service facility, provided that if there are any noninsured institutions which share in the remote service facility, any insured bank which displays the official bank sign must clearly show that the sign refers only to a designated insured bank or banks.

(b) *Obtaining official signs.* (1) Any insured bank may procure official bank signs with black letters on a gold background or official savings association signs with black letters, stars, and eagle, on a gold background, from the Corporation for official use at no charge. The Corporation shall furnish to banks an order blank for use in procuring the official signs. Any bank which promptly, after the receipt of the order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, DC 20429, shall not be deemed to have violated this regulation on account of not displaying an official sign, or signs, unless the bank shall omit to display such official sign or signs after receipt thereof.

(2) Official signs or signs reflecting variations in size, colors, or materials may be procured by insured banks from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured bank or institution.* An insured bank is forbidden to receive deposits at any teller's station or window except a remote service facility as defined in paragraph (a) of § 303.14, where any noninsured insitution receives deposits or similar liabilities.

(d) *Required changes in official sign.* The Corporation may require any insured bank, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of depositors or others.

5. The heading of newly redesignated § 328.3 is revised to read as follows:

§ 328.3 Mandatory requirements with regard to the official advertising statement and manner of use by banks.

6. A new § 328.4 is added to read as follows:

§ 328.4 Mandatory requirements with regard to the display of the official savings association sign by insured savings associations.

(a) *Insured savings associations to display official savings association sign.* Each insured savings association shall continuously display an official savings association sign at each station or window where insured deposits are usually and normally received in its principal place of business and at all of its branches, except on automatic service facilities including automated teller machines, cash dispensing machines, point-of-sale terminals, and other electronic facilities where deposits are received. However, no savings association becoming an insured savings association as a result of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or otherwise, shall be required to display an official savings association sign until twenty-one (21) days after its first day of operation as an insured savings association. The official savings association sign may be displayed by any insured savings association prior to the date display is required. Additional savings association signs in other sizes, colors, or materials, may be displayed in other locations within an insured savings association. An insured savings association may display the official savings association sign at a remote service facility, provided that if there are any noninsured institutions which share in the remote service facility, any insured savings association which displays the sign must clearly show that the official savings association sign refers only to a designated insured savings association or associations.

(b) *Obtaining official savings association signs.* (1) Any insured savings association may procure official savings association signs with black letters, stars, and eagle, on a gold background from the Corporation for official use at no charge. The Corporation shall furnish to savings associations an order blank for use in procuring the official savings association sign. Any savings association which promptly, after the receipt of the order blank, fills it in, executes it, and properly directs and forwards it to the Federal Deposit Insurance Corporation, Washington, DC 20429, shall not be deemed to have violated this regulation on account of not displaying an official savings association sign, or signs, unless the savings association shall omit to display such official sign or signs after receipt thereof.

(2) Official savings association signs or signs reflecting variations in size, colors, or materials may be procured by insured savings associations from commercial suppliers.

(c) *Receipt of deposits at same teller's station or window as noninsured institution.* An insured savings association is forbidden to receive deposits at any teller's station or window except a remote service facility as defined in paragraph (a) of § 303.14, where any noninsured institution receives deposits or similar liabilities.

(d) *Required changes in official sign.* The Corporation may require any insured savings association upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of depositors or others.

(e) *Display of official bank sign by insured savings association prohibited.* An insured savings association shall not display the bank sign at its principal place of business or at any of its branches.

By order of the Board of Directors.

Dated at Washington, DC, this ninth day of August, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-19220 Filed 8-15-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

[T.D. 88-72]

Customs Regulation Amendment Relating to Customs Bonds; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, correction.

SUMMARY: A document was published in the **Federal Register** as T.D. 88-72 (53 FR 45901) on November 15, 1988, amending part 113, Customs Regulations (19 CFR Part 113) as they relate to Customs Bonds. This document corrects a paragraph designation in that document which was incorrect.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Regulations and Disclosure Law Branch, (202) 566-8237.

SUPPLEMENTARY INFORMATION:

Background

A document, published in the **Federal Register** as T.D. 88-72 (53 FR 45901) on November 15, 1988, amended Part 113, Customs Regulations relating to Customs Bonds. A different document, published earlier in the year had also amended that part and redesignated certain paragraphs of that part. When T.D. 88-72 was published, one of the paragraphs in the regulation it amended was misidentified. This document corrects that error by properly identifying the paragraph which was amended by T.D. 88-72.

Correction

On page 45902 of the document, in the Amendment to the Regulation portion, in the third column, the reference to § 113.63(g)(1) should be changed to read § 113.63(h)(1).

Dated: August 10, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-19135 Filed 8-15-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA), in amending the sponsor entries on April 7, 1988 (53 FR 11492), in 21 CFR 510.600(c) (1) and (2) and a sponsor change in 21 CFR 540.274b(c)(3)(ii), used an incorrect drug labeler code for Norbrook Laboratories, Ltd. This document corrects those errors.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 7, 1988 (53 FR 11492), FDA amended the list of sponsors of approved NADA's in 21 CFR 510.600(c) (1) and (2) to add an entry for Norbrook Laboratories, Ltd., Station

Works, Newry BT35 6JP, Northern Ireland, drug labeler code "055558". This document removes drug labeler code "055558" and replaces it with "055529."

In addition, in providing for an NASA sponsor change to Norbrook Laboratories in 21 CFR 540.274b(c)(3)(ii), the incorrect drug labeler code "055558" was used. This document also removes that drug labeler code and replaces it with "055529".

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, parts 510 and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table of paragraph (c)(1) in the entry "Norbrook Laboratories, Ltd.," and in the table of paragraph (c)(2) under the heading "Drug labeler code", by removing the entry "055558", and replacing it with "055529".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.274b [Amended]

4. Section 540.274b *Procaine penicillin G aqueous suspension* is amended in paragraph (c)(3)(ii) by removing the number "055558" and replacing it with "055529".

Dated: August 8, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–19187 Filed 8–15–89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Animal Drugs, Feeds, and Related Products; Sterile Procaine Penicillin G Aqueous Suspension (Injectable)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplement provides for reduction of the milk discard period from 72 hours to 48 hours following treatment of cattle with sterile injectable procaine penicillin G aqueous suspension.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Myron C. Rosenberg, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42nd St., New York, NY 10017, is sponsor of NADA 65–110 which provides for injectable use of sterile procaine penicillin G aqueous suspension to treat cattle, sheep, swine, and horses. The supplement provides for reduction of the milk discard period after treating lactating cattle from 72 hours (6 milkings) to 48 hours (4 milkings). The supplement is approved and 21 CFR 540.274b(c) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 540.274b is amended by revising paragraphs (c)(3)(ii) and (c)(5)(i) to read as follows:

§ 540.274b Procaine penicillin G aqueous suspension.

* * * * *

(c) * * *

(3) * * *

(ii) *Sponsor.* See No. 055529 in § 510.600(c) of this chapter.

* * * * *

(5)(i) *Sponsor.* See Nos. 000069 and 010515 in § 510.600(c) of this chapter.

* * * * *

Dated: August 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–19188 Filed 8–15–89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 573

[Docket No. 86F–0060]

Selenium; Environmental Impact; Opportunity for Comment; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Opportunity for comment on tentative responses to certain objections to final rule; extension of comment period.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine is extending the comment period of its tentative responses to certain environmentally based objections to the agency's final rule of April 6, 1987 (52 FR 10887), raising the level of selenium permitted in animal feeds. The opportunity for comment on those responses is to assist FDA in determining whether to grant a formal evidentiary public hearing on objections received in the formal rulemaking proceeding.

DATES: Written comments by September 11, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, identified with the docket number found in brackets in the heading of this document. Copies of the environmental impact analysis report, the finding of no significant impact, the objections, the references cited in initial notice, and any comments received are available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1989 (54 FR 29019). FDA's Center for Veterinary Medicine (CVM) published a notice providing an opportunity for interested parties to comment on its tentative responses to certain environmentally based objections to the agency's rule of April 6, 1987 (52 FR 10887), raising the level of selenium permitted to be added to animal feed. A comment period of 30 days was provided to August 10, 1989.

A request has been received for an extension of the comment period for an additional 30 days to permit completion of certain relevant studies, and consultation with scientific experts on the subject. Good cause having been shown, CVM is extending the comment period as requested. (The 30th day falling on a Saturday, the comment period will conclude on September 11, 1989.)

Interested persons may, on or before September 11, 1989, submit to the Dockets Management Branch (address above) written comments regarding the agency's tentative responses. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: August 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-19184 Filed 8-11-89; 10:53 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1305

Registration of Manufacturers, Distributors and Dispensers of Controlled Substances and Order Forms

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends DEA regulations concerning the storage of potent animal immobilizing agents to include a recently controlled substance subject to this classification.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On April 21, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 FR 16130-16131) amending 21 CFR parts 1301 and 1305 to include the recently controlled substance carfentanil in the class of extremely potent narcotic substances approved for use as an immobilizing agent in veterinary medicine. Carfentanil is said to be several thousand times as potent as morphine. Because of the potency and potential hazard this drug poses to humans, DEA proposed that the additional security and recordkeeping requirements currently required for etorphine hydrochloride and diprenorphine also apply to carfentanil. The proposed rule provided the opportunity for interested parties to submit comments or objections on these proposed amendments on or before May 21, 1989. No comments or objections were received.

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(e)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review to the Office of Management and Budget. This action has been analyzed in accordance with the principals and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.1000 and 0.104, the Deputy Assistant Administrator hereby amends 21 CFR part 1301 and 21 CFR part 1305 as follows:

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, drug traffic control, security measures.

21 CFR Part 1305

Drug Enforcement Administration, drug traffic control, reporting requirements.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

§ 1301.74 [Amended]

2. 21 CFR 1301.74(g) is amended by inserting the word "carfentanil", before the words "etorphine hydrochloride".

§ 1301.75 [Amended]

3. 21 CFR 1301.75(d) is amended by inserting the word "carfentanil", at the beginning of the sentence.

PART 1305—ORDER FORMS

1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b).

§ 1305.06 [Amended]

2. 21 CFR 1305.06 (b) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

§ 1305.13 [Amended]

3. 21 CFR 1305.13 (d) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

§ 1305.16 [Amended]

4. 21 CFR 1305.16 (a) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

5. 21 CFR 1305.16 (b)(1) is amended by inserting the word "carfentanil" before the words "etorphine hydrochloride".

Dated: July 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-19134 Filed 8-15-89; 8:45 am]

BILLING CODE 4410-09-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1627

Congressional Action Concerning the Commission's Final Rule Allowing for Non-EEOC Supervised Waivers Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of congressional action regarding final rule on ADEA waivers.

SUMMARY: On July 30, 1987 the Equal Employment Opportunity Commission voted to approve a final rule creating a legislative regulation and administrative exemption allowing for non-EEOC supervised waivers of private rights under the Age Discrimination in Employment Act (under section 9 of the ADEA and 29 CFR 1627.15). This final rule was published in the **Federal Register** of Thursday, August 27, 1987 (52 FR 32293).

On October 1, 1988 the President signed Public Law 100-459 (appropriations for fiscal year 1989) which includes the following language:

Provided, That the final rule regarding unsupervised waivers under the Age Discrimination in Employment Act, issued by the Commission on August 27, 1987 (29 CFR 1627.16(c)(1)-(3), shall not have effect during fiscal year 1989; Provided further, That none of the funds may be obligated or expended by the Commission to give effect to any policy or practice pertaining to unsupervised waivers under the Age Discrimination in Employment Act, except that this proviso shall not preclude the Commission from investigating or processing claims of age discrimination, and pursuing appropriate relief in Federal court, regardless of whether an unsupervised waiver of rights has been sought or signed.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: John K. Light, Attorney-Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663-4690.

Signed this 10th day of August 1989, at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-19139 Filed 8-15-89; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Geographic Reporting of Certain Domestic Currency Transactions

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 6185(c) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, November 18, 1988, permits the Secretary of the Treasury to issue an order to require financial institutions or groups of financial institutions in certain geographic locations to report currency transactions in amounts less than $10,000 for a limited period of time. This Final Rule establishes the procedures that Treasury would follow in issuing such an order.

DATE: This final rule is effective September 15, 1989.

ADDRESS: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: Section 6185(c) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5326 to the Bank Secrecy Act, 31 U.S.C. 5311-5326.

Section 5326. Records of Certain Domestic Coin and Currency Transactions

(a) *In general.* If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area—

(1) To obtain such information as the Secretary may describe in such order concerning—

(A) Any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) Any other person participating in such transaction;

(2) To maintain a record of such information for such period of time as the Secretary may require; and

(3) To file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) *Maximum effective period for order.*— No order issued under subsection (a) shall be effective for more than 60 days unless renewed pursuant to the requirements of subsection (a).

The practical effect of this amendment is to permit the Secretary to lower the currency transaction reporting threshold of § 103.22(a) for some or all types of currency transactions, for some or all types of customers, for a financial institution or a group of financial institutions in a specified geographic area of the United States for a limited period of time. This reporting requirement would be in addition to the present requirement in 31 U.S.C. 5313 and 31 CFR 103.22(a) that requires financial institutions to report currency transactions over $10,000. The reason that Congress amended the Bank Secrecy Act to permit the lowering of the current currency reporting threshold was because of its concern with schemes involving the structuring of currency transactions below $10,000 to avoid the Bank Secrecy Act reporting requirements in certain areas of the country. *See* H. Rep. No. 100-716, 100th Cong., 2d Sess. 8.

Notice of Proposed Rulemaking

On March 24, 1989, Treasury published a Notice of Proposed Rulemaking in which it proposed procedures and limitations to govern the issuance of an order under section 5326(a). 54 FR 12238. Under the proposed rule, prior to selecting an area of the country for targeted reporting, Treasury would be required to make a determination that there may exist a significant level of drug money laundering or other illegal activity being conducted in that geographic area at levels below the current $10,000 currency reporting threshold. Treasury then would identify the affected financial institution or institutions in the geographic area that would receive the targeting order. In the preamble to the proposed regulation, Treasury stated that, at least initially, geographic areas subject to the enhanced reporting

requirement could be as small as a few city blocks or as large as a major metropolitan area.

Under the proposed regulation, each financial institution in a targeted area would receive an order requiring it to keep a record of specified currency transactions at or above a specified monetary limit for a certain period of time (not to exceed 60 days), with respect to all or certain types of cutomers, and to file a report as prescribed by Treasury on those transactions and the individuals involved in those transactions beginning on a date designated in the order. The proposed regulation further provided that the order would set forth all the information required to be reported, instructions on how and where to file the reports (not necessarily the Detroit Computing Center), and the length of time that the records generated in response to an order issued under section 5326 were to be retained. Treasury notes that there may be variations in the orders received by the targeted financial institutions within a specific geographic area.

Treasury stated that it would be as specific as possible in delineating what would be expected of a financial institution served with a section 5326 geographic targeting order and that it would consider the amount of time necessary to implement the order. In addition, Treasury stated that it would make every effort to work with the targeted financial institutions to ensure maximum compliance with the targeting order at a minimum burden to the financial institutions. For this reason, Treasury said that the name of a Treasury contact would be provided for assistance if needed.

In the proposed rule, Treasury emphasized that in complying with a geographic targeting order, financial institutions would not be required to purchase additional computer hardware or software. However, Treasury encouraged, but indicated that it would not require, financial institutions, when feasible, to adjust any existing computerized aggregation systems that they had in place in order to capture the information specified in the order. Treasury also stated that it did not expect financial institutions with manual aggregation systems to have any problems adjusting their manual systems in order to capture the data required to be reported. Treasury emphasized, however, that if a financial institution had knowledge through other means, *e.g.*, the personal knowledge of a bank employee, that there were aggregated transactions falling within the limits described in the order, the financial institution would be required to report those aggregated transactions, regardless of whether the existing system at the financial institution was able to identify the aggregated transactions. Finally, Treasury said that it would make every effort to work with financial institutions filing magnetically who received a section 5326 order so as not to disrupt the magnetic media filing process.

Treasury stated that geographic targeting orders would not be published in the **Federal Register**, but would be issued only to the affected financial institutions. Treasury made clear that issuance of a section 5326 order to a financial institution would not exempt that institution from its duty to report all over-$10,000 currency transactions.

In the preamble, Treasury explained that the Right to Financial Privacy Act, 12 U.S.C. Chapter 35, would not apply to geographic targeting orders because that information is required to be reported by law. 12 U.S.C. 3413. Therefore, targeted financial institutions would not be required to notify customers of their temporarily enhanced reporting requirements. In order to ensure proper use of the order, Treasury stated that it would normally request targeted financial institutions not to notify the public of the enhanced reporting requirement limit.

Treasury further proposed that in order to comply with a section 5326 order, financial institutions generally would be required to use IRS Form 4789, the Currency Transaction Report ("CTR"), which currently is used by financial institutions to report currency transactions over $10,000. In addition, Treasury explained that, in general, unless otherwise specified in the order, all the provisions of 31 CFR Part 103 relating to the reporting of currency transactions in excess of $10,000 would apply to reports filed on transactions falling within the scope of a section 5326 order, and that, unless otherwise noted in the order, existing exemptions granted by a targeted bank under 31 CFR 103.22(B) prior to the time it received the order could continue to be utilized in complying with a section 5326 order. However, Treasury emphasized that no new exemptions could be granted to businesses that have regular and frequent currency transactions in amounts either above or below $10,000, without the approval of Treasury. Finally, while the legislation gives Treasury the authority to include other monetary instrument transaction reporting in such an order, Treasury indicated that it anticipated that, as a general rule, it would use section 5326 orders to require reporting on currency transactions only.

Discussion of Comments

Thirty-three comments were received on the above-described Notice of Proposed Rulemaking. These comments have been considered carefully in drafting the final rule. A discussion of the major comments follows.

Systems Issues

Most commenters stated that they would not be able to use their computer systems if only one branch of a financial institution were targeted for the lower reporting requirement. As a result, they explained that they would be forced to adopt a temporary manual system for processing the reports, which possibly could lessen the accuracy of reports and pose additional problems for the financial institution. Many also sought guidance in handling aggregated transactions conducted by or on behalf of the same person when the transactions took place at branches both in and outside of the targeted area.

After carefully considering these issues, Treasury has decided that it will require reporting of currency transactions at or below $10,000 only for those transactions that occur at the branch of the financial institution that is targeted. Thus, only those transactions occurring at the targeted branch should be aggregated for purposes of complying with a geographic targeting order. If a financial institution aggregates transactions among its branches, it should report transactions in currency conducted by or on behalf of the same person that exceed $10,000 in the normal manner, *i.e.*, on a CTR to the Detroit Computing Center. Only aggregated transactions resulting solely from the targeted branch which exceed the lowered reporting threshold should be sent or made available in accordance with the order. The order may also specify that photocopies of forms filed with the Detroit Computing Center also be sent to the address specified in the order or otherwise be made available as instructed in the order.

Financial institutions may, but are not required to, change their computer systems to accommodate a lower reporting threshold at a targeted branch. If a financial institution's computer system cannot accommodate the lowering of the currency transaction reporting threshold over $10,000 for one or more of its branches, the financial institution will be required to use a manual system for completing the reports.

Procedural Issues

The comments raised numerous procedural issues. Many commenters requested that Treasury set forth in the final rule the minimum amount of time that financial institutions will be given to implement a geographic targeting order. Commenters estimated that they needed between 10 to 90 days advance notice of the imposition of an enhanced reporting requirement. After reviewing these comments and considering the different circumstances in which a targeting order may be issued, Treasury has concluded that it would be detrimental to define in advance, and without reference to particular facts, how much time should be given to implement an order. Treasury, however, will give as much time as feasible to implement a section 5326 order, and will work with each financial institution to ensure maximum compliance with an order.

Several commenters recommended that Treasury establish a dollar limit below which it would not target currency transactions. The specific recommendations asked for limits of between $3,000 and $5,000. After considering the comments, Treasury has decided that in order to be able to respond to changing law enforcement needs, it cannot set a dollar amount below which Treasury will not target currency transactions for special reporting. Treasury, however, notes that before granting a request for a targeting order and establishing reporting limits, it will consider the law enforcement need for the information.

A few commenters suggested that Treasury specifically provide in the regulations exactly who in the financial institution will be served with a geographic targeting order. Various suggestions were made as to who would be served, including the Chief Executive Officer ("CEO"), the manager of the targeted branch, or the Bank Secrecy Act compliance officer. Because Treasury believes that these suggestions have merit, it has amended the proposal to specify that the CEO of a targeted financial institution be served with a geographic targeting order. Treasury has selected the CEO as the person to be served because it believes that by serving the CEO, senior officials at the targeted financial institution will be informed of the issuance of the order.

Ordinarily, Treasury will serve a targeting order by sending it by certified or registered mail, return receipt requested. In addition, in order to ensure that the order has been received and is being implemented, in most cases, Treasury will contact the institution a few days after it has been sent.

Other issues that were raised by the comments concerned the actual filing of the reports: where to file, what type of report to file, and the time deadlines for filing. With respect to the place of filing, the final regulation provides that the order will indicate the specific place the reports are to be sent or will indicate that the reports are to be made available for pick up by designated individuals. If a financial institution that files CTR's by magnetic media is targeted, and the financial institution would like to report transactions for the targeted branch of the financial institution on magnetic tape, Treasury will work with the financial institution to determine where and how to file the reports.

As for the format of the report, Treasury has decided generally to require financial institutions to use the CTR form to file the information on transactions targeted below $10,000. Treasury made this decision because financial institutions are familiar with the CTR form and their employees know how to complete these forms. The regulation, however, provides Treasury with the ability to order targeted financial institutions to use a different format if the circumstances necessitate it. A geographic targeting order will specify the format in which the reports will be required to be filed.

Finally, with respect to the time required to file these reports, Treasury has decided that it will specify in each section 5326 order when the reports must be filed. Generally, however, Treasury anticipates that in most instances it will require the filing of these reports soon after the date of the transaction and no more than 15 days from the date of the transaction, as is required now for filing CTR's.

A few comments asked about the types of transactions in currency that would be targeted. One commenter requested that Treasury not differentiate among different types of transactions (*e.g.*, targeting only purchases of money orders and cashier's checks), while another asked that cash withdrawals not be included in targeting orders. Because each order will depend on the specific facts and circumstances surrounding the request for the targeting order, Treasury is not able to delineate in advance the types of transactions to be included in the order. In many cases, not all types of transactions in currency may be included in the order; in other cases, all types of currency transactions may be targeted. In some cases, only the currency transactions of certain types of customers may be targeted.

One commenter noted that any revisions to the original order should be made in writing. Treasury agrees with that comment and accordingly has included in the final regulation a provision that revisions to a geographic targeting order will not be effective until made in writing. This will ensure that a formal record is kept of all changes made to the original targeting order. It is anticipated that, in some cases, Treasury and the financial institution initially will discuss any revisions to the order, and that these revsions will be reduced to writing by Treasury later.

Several commenters requested that the regulation provide a limit on the number of times a section 5326 order may be renewed. Because there may be instances where an extended targeted period may be necessary, Treasury has decided not to put a limit on the number of times an order may be renewed. However, Treasury notes that in order to renew an order it must make a determination that there may be a significant level of drug money laundering or other illegal activity may be occurring in that area at levels below $10,000, keeping in mind Congress' admonition that these orders be of "limited duration."

Finally, many banks asked to be permitted to continue utilizing existing exemptions at the targeted branches of the banks and to be able to add new unilateral exemptions at exemption limits below $10,000. In the Notice of Proposed Rulemaking, Treasury had stated that banks would be able to continue to use their existing exemptions, unless otherwise indicated in the order, and that banks could not add new exemptions either above or below $10,000 unless approved by Treasury. Because Treasury wants to closely scrutinize currency transactions taking place at targeted financial institutions, it is standing by this position and is incorporating it into the final rule. Thus, unless otherwise noted in an order, during the course of a targeted reporting period, a targeted bank may not grant new exemptions, either above or below $10,000, but it may continue to use the exemptions it already has in place.

Customer Relations Issues

In the Notice of Proposed Rulemaking, Treasury indicated that generally it would request the targeted financial institution not to disclose the existence and specifics of an order to persons not employed at the financial institution. Many commenters had questions about such a requirement, including what potential penalties were applicable if

the financial institution made a disclosure, what specific guidelines to follow in handling customer inquiries, and whether therefore financial institutions could raise a good faith defense if information were disclosed. Treasury has considered these issues carefully. Treasury realizes that financial institutions may have difficulties with customers who will not be satisfied with a response that the information is required by Federal regulation, and that they will continue to press the financial institution as to why the information is required. Treasury has balanced this against the real probability that information disclosed by the financial institution, either upon request or voluntarily by an employee of the financial institution, could interfere with the ability of law enforcement to obtain useful information on drug money laundering and other illegal activities occurring in the targeted area. Treasury fears that once criminals learn of the enhanced reporting requirements and where they are applicable, criminals merely will move on to another non-targeted branch.

In light of these concerns, Treasury has decided to retain its initial proposal that the specifics of a geographic targeting order not be disclosed outside the targeted institution. Thus, an order issued under section 5326 will request that the existence of the order not be disclosed to anyone outside the financial institution. Treasury recommends that financial institutions tell customers who ask why the information is required only that they are required to fill out the report pursuant to a Federal regulation. Treasury further recommends that the financial institution notify Treasury in the event of any disclosure of the existence or specifics of an order to persons outside the targeted branch. Finally, Treasury recommends that if the customer's conduct raises the suspicions of the financial institution, that the financial institution report that activity to the Treasury contact person listed in the order.

Miscellaneous Issues

Several miscellaneous issues were raised in the comments. One nonbank financial institution with branches nation-wide requested that a financial institution be subject to no more than one section 5326 order at a time. While Treasury cannot guarantee that a financial institution will have to comply with only one order at a time, it does anticipate that initially targeting orders generally will be issued consecutively, and not concurrently, in order to assess their success.

Several commenters recommended that the regulation specify the maximum amount of time that the reports generated in response to a section 5326 order must be retained. Treasury agrees with these comments and, accordingly, the final rule provides that the maximum retention period for the reports and records of reports generated by a targeting order will be no more than five years, the current maximum retention period in the Bank Secrecy Act regulations.

Some commenters wanted to know what they should do if they observe suspicious activity at a targeted branch and whether the activity should be reported to the local office of the Internal Revenue Service Criminal Investigation Division pursuant to Bank Secrecy Act Administrative Ruling 88-1. If suspicious activity occurs at a targeted branch, Treasury would prefer the financial institution to report the activity to the Treasury employee named in the geographic targeting order as the contact person. As stated above, once an area has been targeted for enhanced reporting, Treasury will closely scrutinize all activity occurring in the targeted area, including reports of suspicious activity.

Finally, several commenters asked what the potential penalties were for failing to comply with a geographic targeting order. The penalties in 31 U.S.C. 5321 and 5322 that are applicable to failures to comply with the Bank Secrecy Act and its implementing regulations will be applicable to failures to comply with a section 5326 order. Civil penalties may be imposed up to the greater of the amount invoved in the transaction, if any, (not to exceed $100,000) or $25,000. Any person who willfully violates these provisions also would be subject to criminal penalties of not more than $250,000 or imprisonment of not more than 5 years, or both.

Conclusion

After careful consideration of the comments received in response to the Notice of Proposed Rulemaking, Treasury is adopting the regulation as proposed, with the changes noted above.

Executive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The estimated average burden associated with the collections of information contained in this Final Rule is a reporting burden of 100 hours per respondent (250 estimated annual responses per respondent times .40 hour estimated time per response) and a recordkeeping burden of 20 hours per recordkeeper. Comments concerning the accuracy of this burden should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth below in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. Part 103 is amended by redesignating §§ 103.26 and 103.27 as §§ 103.27 and 103.28 respectively, and by adding a new § 103.26 to read as follows:

§ 103.26 Reports of certain domestic coin and currency transactions.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this Part and to prevent persons from evading the reporting/recordkeeping requirements of this Part, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under section 103.22 of this Part prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term "geographic area" means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505–0063)

3. It is proposed to amend § 103.33 to add at the end a new paragraph (d) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 103.26(a), not to exceed five years.

* * * * *

4. It is proposed to amend § 103.38 by adding in paragraph (d), after the first sentence, a new sentence to read as follows:

§ 103.38 Nature of records and retention period.

* * * * *

(d) * * * Records or reports required to be kept pursuant to an order issued under § 103.26 of this part shall be retained for the period of time specified in such order, not to exceed five years. * * *

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Dated: August 8, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–19199 Filed 8–15–89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-04]

Special Local Regulations: Fresh Water Kilo Trials, Buffalo Outer Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Fresh Water Kilo Trials. This event will be held on the Buffalo Outer Harbor on 9 September 1989 from 11:00 a.m. e.d.s.t. to 3:00 p.m. e.d.s.t. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate on 9 September 1989.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 16 May 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 21074). Interested persons were requested to submit comments and no comments were received.

This event has not been held in the past, but is being held in conjunction with an event that has been conducted in the past and no objections were received from either cargo or passenger vessel operators during the public comment period.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Office of Search and Rescue and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unecessary. This event will draw a large number of

spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

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

Federalism

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0904 to read as follows:

§ 100.35–0904 Fresh Water Kilo Trials, Buffalo Outer Harbor, Buffalo, NY.

(a) *Regulated area:* The Buffalo Outer Harbor, including the Northern, Middle, and Southern channels, and the Outer Harbor Turning Basin. Any vessel with a verifiable need to pass will be allowed to do so between individual trials with permission from the Coast Guard Patrol Commander.

(b) *Special local regulations:* (1) The above area will be closed to navigation or anchorage from 11:00 a.m. e.d.s.t. until 3:00 p.m. e.d.s.t. on 9 September 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 11:00 a.m. e.d.s.t. to 3:00 p.m. e.d.s.t. on 9 September 1989.

Dated: July 27, 1989.

D. H. Ramsden,

Capt. U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89–19159 Filed 8–15–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD13 89–07]

Special Local Regulations: Richland, WA, 1989 West Coast Outboard Championship Hydro Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Richland, Washington 1989 West Coast Championship Hydro Race to be held on the waters of the Columbia River in Richland, Washington. This event will be held on August 18, 19, and 20, 1989; 9:00 a.m. PDT until 6:00 p.m. PDT. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on August 18, 19, and 20, 1989 at 6:00 a.m. PDT and terminate at 6:00 p.m. on August 18, 19, and 20, 1989 or upon completion of each event.

FOR FURTHER INFORMATION CONTACT: BMC F.L. Casanova, Coast Guard Marine Safety Office, Portland, Oregon, (503) 240–9319.

SUPPLEMENTARY INFORMATION: On 12 July 1989, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** for these regulations (54 FR 29348). Interested persons were requested to submit comments. None were received.

Drafting Information

The drafters of this notice are BMC F.L. Casanova, USCG, Project Officer, USCG Marine Safety Office, Portland, Oregon, and Lt. Deborah Schram, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office, Seattle, Washington.

Discussion of Regulations

The Sunfest West Coast Championships is sponsored by the Seattle Outboard Association and Richland Sunfest Association and this rulemaking is undertaken at the request of the City of Richland, Washington, the host city. The event is a series of outboard hydroplane races covering a 2-mile long course in front of the Howard Amon Park on the Columbia River in Richland, Washington. This three day event is expected to draw more than 100 participants and a huge crowd of spectators to the waters of the Columbia River. To promote the safety of the participants and spectators, special local regulations are required. The economic impact of this regulation is expected to be minimal as it affects a small section of the Columbia River with no commercial traffic and will only be in effect for approximately twelve hours each day on August 18, 19, and 20, 1989.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will affect a short section of the Columbia River which experiences no commercial traffic. The regulations will be in effect for only three days and two of those days are Saturday and Sunday. The Coast Guard Patrol Commander will allow any commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact

on a substantial number of small entities.

Federalism Assessment

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

List of Subjects in 33 CFR Part 100

Regattas and marine parades.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33, CFR 100.35.

2. A temporary § 100.35T1302 is added to read as follows:

§ 100.35T1302 Richland, WA, 1989 West Coast Outboard Championship Hydro Races.

(a) *Regulated area:* By this regulation, the Coast Guard will restrict general navigation and anchorage on the waters of the Columbia River between Mile 337 and Mile 339. This restricted area includes all waters between the above mile marks in Richland, Washington and is approximately 2 miles long.

(b) *Special local regulations:* (1) This event will take place from 6:00 a.m. PDT to approximately 6:00 p.m. PDT on August 18, 19, and 20, 1989, in the described waters of the Columbia River, Richland, Washington.

(2) No person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard Patrol Commander.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to control the movement of vessels in the regulated area and adjoining waters during the hours these regulations are in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective times and dates:* These regulations become effective on August 18, 19, and 20, 1989, at 6:00 a.m. PDT and terminate on August 18, 19, and 20, 1989 at 6:00 p.m. PDT or upon completion of each event.

Dated: August 4, 1989.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District DOT—U.S. Coast Guard.

[FR Doc. 89-19160 Filed 8-15-89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88-2]

Establishment of Special Rules of Practice and Procedure for Use in Consideration of Express Mail Market Response Filings

Issued: August 10, 1989.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by the Postal Service, the Postal Rate Commission initiated this rulemaking to consider whether to adopt special rules of practice and procedure for use in proceedings to consider Postal Service requests for changes in Express Mail rates prompted by developments in the market. Interested persons were invited to participate. 53 FR 16885–86 (May 12, 1988). After considering presentations of the participants, the Commission fashioned a set of procedural rules and published them for public comment. 54 FR 11394–413 (March 20, 1989). After reviewing the thoughtful comments which presented a wide diversity of views, the Commission modified its set of proposed rules and published them for public comment. 54 FR 25132–42 (June 13, 1989). The Commission has made further modifications to the rules, and is adopting the set of rules published here as final.

This set of rules compresses, to the extent consistent with due process, the time necessary for the procedural steps in an Express Mail Market Response case. The rules make provision for automatic intervention, and describe filing requirements. They are subject to a 5-year "Sunset" provision to provide a convenient time for reviewing whether they have functioned as anticipated and making any appropriate changes.

DATES: These rules will become effective for a trial period beginning upon publication in the **Federal Register** and ending 5 years thereafter if not re-enacted by the Commission after the provision of an opportunity for public comment.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION:

Introduction and Summary

The Postal Rate Commission is amending its rules of practice (39 CFR part 3001) to provide for expedited proceedings on certain requests by the Postal Service for changes in rates for its Express Mail service. This rulemaking was initiated following a request by the Postal Service, which included a draft of suggested rules. The Commission established Docket No. RM88–2 and invited interested persons to participate. 53 FR 16885–86 (May 12, 1988). After considering testimony and other presentations by interested parties,[1] the Commission published a Second Notice of Proposed Rulemaking which invited comments on a proposed set of rules. 54 FR 11394–413 (March 20, 1989).

The Postal Service, the Commission's Office of the Consumer Advocate (OCA), Federal Express Corporation (Federal Express) and United Parcel Service (UPS) filed comments in response to the Second Notice. Having considered these comments, we incorporated some of the suggestions from each commenter into a set of proposed rules which we offered for public comment. The Third Notice was published at 54 FR 25132–42 (June 13, 1989). Federal Express, United Parcel Service and the Postal Service filed comments.[2]

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[1] The Postal Service presented direct and rebuttal testimony. A trial-type hearing was held on the rebuttal testimony. The Commission's Office of the Consumer Advocate and the staff of the Bureau of Economics of the Federal Trade Commission offered alternative suggestions. The American Newspaper Publishers Association suggested a modification. Other parties active in this phase of the rulemaking were Federal Express and United Parcel Service.

[2] The parties' comments we refer to in this text are those filed in response to the Third Notice unless otherwise designated. Any reference to comments filed in response to the Second Notice are so described.

Background Information

In the first phase of this rulemaking, the Postal Service presented considerable information on the need for an accelerated method for changing Express Mail rates in response to changes in the expedited delivery market. The Postal Service presented sufficient information to support the conclusion that a set of rules for expediting such proceedings might help the Commission in carrying out its statutory obligations. Therefore, the Commission decided that it was appropriate to fashion a set of rules that might answer the Postal Service's concerns while protecting the due process rights of interested parties. Because of the uncertainties involved, the Commission has decided that the rules would be subject to a 5-year "Sunset" provision. They will expire at the end of 5 years after implementation if not re-enacted.

These rules are designed to promote expedition in the type of cases the Postal Service had described. In our final rules, the two primary methods for shortening the proceedings are (1) compressing procedural schedules as much as is consistent with due process and (2) clearly setting out information requirements before the filing of the first Express Mail Market Response case.

General Comments

In response to the Third Notice, both Federal Express and UPS restate their position that the Commission should not adopt any rules for the expedited consideration of Express Mail Market Response cases. They do not offer any arguments which have not been previously presented to the Commission and considered. The Commission's treatment of this issue can be found at 54 FR 11398. The Commission considered the Postal Service's uncontroverted presentation on the workings of the expedited delivery market and Express Mail's position in it. Then the Commission decided that it is appropriate to develop a set of procedural rules for a trial period in response to the asserted need for speed in changing rates when the market changes. We find that our reasoning in the Second Notice remains valid.

The Postal Service believes that the Commission could have fashioned—consistent with due process—rules which meet the goal of expedition through the methods of issue limitation and reliance on prior decisions, rather than the methods adopted in the Second and Third Notice. Postal Service Comments at 3.

As we stated in the Second Notice (54 FR 11400–03), the Postal Service's approach as shown in its initial suggested rules does not meet the due process requirements found in the statute. Similarly, the Commission pointed out due process problems within the set of suggested rules which the Postal Service filed in response to the Second Notice. 54 FR 25134–38. However, the compression of the procedural schedules and establishment of information requirements to shorten the initial stages of the proceeding found in our final rules are consistent with the due process rights the statute provides.

We turn now to a discussion of the comments as they pertain to specific rules published in the Third Notice.

Rule 3001.57(a), purpose of rules and description of proposals. Stating that the detailed explanations of the rules which we have provided in this rulemaking can provide valuable guidance, the Postal Service requests that the Commission make a formal reference to these explanations. Postal Service Comments at 23. We have included the reference in this section. We agree that participants in these cases may find these explanations helpful by giving a more detailed description of what is meant by the rules which necessarily contain less detail.

Federal Express suggests that the Postal Service be prohibited from filing an Express Mail Market Response case until it has at least two full postal quarters of experience with the rates and classifications established in the most recent omnibus rate case. Federal Express explains that the Postal Service could file a case under the new rules the day after Express Mail rates recommended in the rate case are established—even though the Commission and the parties may have expended a significant amount of time and effort in the development of the recommendations. Federal Express adds that, in those circumstances, it would be impossible to judge the accuracy of the projections made in the omnibus rate case. Federal Express Comments at 2–3.

We are not adding the restriction suggested by Federal Express. We agree that filing an Express Mail Market Response case immediately after new rates and classifications are implemented could undermine any thorough assessment of the omnibus rate case's assumptions and projections. However, the availability of expedited consideration under the rules for express Mail Market Response cases is explicitly conditioned on the Postal Service's showing of a change in the market which threatens the contribution Express Mail makes to institutional costs. Rules 57(a) and 57a(h).

The Postal Service does not control the timing of changes made by competitors in the market. Therefore, it would not be appropriate to deny the authority to file a case under these rules for a period which could be longer than 6 months from the time competitors brought about a change in the market. A change of the magnitude which would support the filing of an Express Mail Market Response case could also very well discredit the reliability of the projections made in the omnibus rate case in any event, since it would not have been taken into account in making the necessary projections.

Rule 3001.57a(b), incorporation of rule 3001.54 filing requirements. UPS argues that the rules should require the Postal Service to file information on all of the Express Mail subclasses, even if it proposes to change rates for only one of them. UPS points out that a request for a change in rates for Post Office to Addressee service—the most likely subclass to be the subject of such a filing—would necessarily affect the other subclasses. According to UPS, requiring that information at the outset would eliminate the need for some discovery and possibly motion practice. UPS Comments at 2–3. In a footnote, UPS also states that the Commission has recognized "the clear link between Express Mail costing and Priority Mail costs." *Id.* at fn. 1.

The citation UPS gives for that conclusion concerns the Second Notice's discussion of the breakdown required by rule 57a(j) for the types of mail using the hub network. That discussion dealt with a specific instance in which a pool of costs must be attributed between Express Mail and Priority Mail. There was no general finding of a "clear link" between Express Mail costing and Priority Mail costs.

We are not including the requirement for data on the subclasses of Express Mail for which the Postal Service does not request a rate change in Market Response cases. While a case meeting the description provided by the Postal Service in this rulemaking has yet to be filed, we believe that the present makeup of Express Mail would permit adequate consideration of the case without the additional filing requirement suggested by UPS.

If the Postal Service wished to change rates only for the Post Office to Addressee subclass, which currently dominates the class, information concerning the subclass can be expected to provide an adequate foundation. If the Postal Service wished to change

rates for the other subclasses, we believe that focusing on data concerning them would be sufficient. For a further discussion of this issue, see 54 FR 25135.

If it appears that the data on all four Express Mail subclasses should be required in the rules, we will have a convenient opportunity to consider that issue when reviewing our experience with the rules in accordance with the Sunset provision. If a problem appears before then, we can consider amending the rules at that time.

Rule 57a(d), filing of changes to regulations. The Postal Service opposes any requirement of filing the Domestic Mail Manual (DMM) changes it intends to make if the Commission recommends its proposal in an Express Mail Market Response case. The Postal Service points out that the Commission has no jurisdiction over the DMM, and adds that it does not know what might be gained by having contemplated DMM language in the record. Finally, the Postal Service states that it ordinarily does not formulate DMM language until after the Commission has issued its recommended decision. Postal Service Comments at 15–16.

We are eliminating this requirement. The cases contemplated by these rules are most likely to be simple rate adjustments with no more than minor classification changes. In these circumstances, the Postal Service's preliminary DMM language might not make a large contribution to the understanding of the case—unlike proposals where significant classification changes are contemplated.

Rule 57a(f), notice of important operational changes. The Postal Service raises a number of objections to providing a description of those operational changes which have an important effect on Express Mail costs, as well as an analysis estimating the extent of that impact. Postal Service Comments at 17–18.

We are retaining this requirement. The Postal Service's first objection is that providing a description of the change would intrude upon the power of the Board of Governors to manage the Postal Service. Postal Service Comments at 17. The Postal Service further states that it does not want to provide its competitors with sensitive commercial information. *Id.* The Postal Service, however admits that the Commission may require information on changes in attributable costs. *Id.* at 17. Requiring a description of the operational change that brought about a cost change is simply a corollary to that authority. If the Postal Service were to present greatly changed costs for Express Mail, but no explanation of how those changes occurred, the record so developed would not be sufficient to support a recommendation for changing rates.

These rules do not contemplate trenching on the discretion of the Board of Governors to manage the Postal Service. They only require that an analysis of the effects of the exercise of the Board's power be presented when the Postal Service wishes to change rates. Similarly, the rules do not require a minute detailing of the operational changes. Rather, the rule contemplates a more general description of the change. The level of detail need be no greater than that presented with regard to the hub network in Docket No. R87–1. *See* PRC Op. R87–1, paras. 3625–51.

The Postal Service's assertion that only the costs in the Cost Revenue Analysis (CRA) would be available is not an adequate reason for eliminating this requirement. The Postal Service itself notes that information on the operational change taken into account in Docket No. R87–1 was made available to the Commission even though not yet reflected in the CRA. Furthermore, the Postal Service cannot be expected to make an operational change in Express Mail that would have an important impact on costs without making projections of the costs affected. The Postal Service should be able to use those projections to provide the analysis required.

We understand the Postal Service's problem with regard to the exact definition of "important impact." Postal Service Comments at 18. However, these rules are designed to handle an entire category of cases, and we have not been given information on what type of operational changes the expedited delivery industry, and the Postal Service, might make in the future. In these circumstances, we can do no more than write the rule in plain language with the expectation that the Postal Service and the parties will give it a reasonable interpretation.

In our Second Notice (54 FR 25136), we provided specific examples of what would and would not be considered an operational change having an important impact on costs. In general, operational changes that have only a local impact would not be included. Nationwide changes should be considered for inclusion based on the extent of their use and the magnitude of their effect on costs. A recent example of an operational change that would be covered by this rule is the reported significant change in contractor, price and size of the hub air transportation network.

Rule 57a(h), change in market and identification of needs of customers. The Postal Service's complaint with regard to this rule deals with the requirement of describing the market segments which have been affected by the change in the market and would be affected by the Postal Service's proposal. The Postal Service foresees that other parties would introduce delay into the proceeding by raising detailed questions concerning the market Express Mail serves, and by presenting analyses using novel segmentation of the market as permitted under rule 57b(d). Postal Service Comments at 19. The Postal Service also is concerned that the rule might require it to provide sensitive commercial information, if the level of detail is too great. The Postal Service recommends substitution of the more general provision it offered in response to the Commission's Second Notice. *Id.* The difference found in the Postal Service's language is the omission of any mention of the customers and market segment that might react to the change in the market and the Postal Service's response to that change. *See* Postal Service Comments to Second Notice at 28.

We are retaining the requirement that the Postal Service address the customer needs in its requests to change rates in response to developments in the market. This requirement is not onerous, because before a firm offering a service changes its prices, it should consider what its various customers want, need, are willing to pay for, and can obtain elsewhere.

We also believe that the Postal Service's fear that the rule will require it to release proprietary information is misplaced. In previous cases involving Express Mail, the Postal Service has discussed expedited delivery market segments without jeopardizing its legitimate interests in keeping commercial secrets. *See* Docket No. R87–1, USPS–T–18 at 33–38. Indeed, the Postal Service's witness in Docket No. R87–1 discussed the detailed information that could be obtained regarding customers' aspects such as "shipment size, characteristics, mode selection, preferred carriers and other shipping attributes such as discounts and reasons for selecting carriers." USPS–RT–15 at 18. Taking into account the type of information which is publicly available, the Postal Service should be able to meet the requirements of rule 57a(h) without difficulty while maintaining its legitimate business secrets. We note that the rule does not call for anything as detailed as a list of customers or a marketing plan the Postal

Service might use if it obtains its requested rates.

The Postal Service's concerns about the potential for delay do not override the importance of an understanding of the market in question in these cases. With the expertise the Postal Service gains from operating in this market, we are confident that it will be able to describe the market so that no party could delay the proceeding by attacking the sufficiency of the description. Similarly, we believe that the option of providing analyses using a different—and we hope more refined—market segmentation offers the possibility of making a contribution to the proceeding that outweighs its potential to cause delay. If a more refined analysis is presented, the Postal Service will benefit from both the potential for a better recommended decision and a greater understanding of the market in which it operates.

Rule 57a (i), before-and-after estimates. The Postal Service says that, in principle, it has no objection to this provision. However, the Postal Service cautions that providing the information with the degree of reliability generally expected by the Commission may prove difficult. Postal Service Comments at 19–20. As the Postal Service points out, the Commission has previously addressed the degree of refinement expected in the analyses to be filed with these requests. The Commission is not requiring a higher level of precision with this section of rule 57a than for the other sections of our rules of practice.

UPS suggests a word change which it says will assure that the test period cost information will be presented in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case. We are making this change.

Rule 57b (b), conditions for proposed rates. The Postal Service opposes the restrictions that the proposed rates not be lower than the average attributable cost as calculated in the most recent omnibus rate case or the most recent fiscal year available. The higher figure is to be used. The other restriction the Postal Service opposes is that the proposed rate for any cell not be lower than the estimated cost of providing service for that cell.

We address the restriction regarding the average attributable cost threshold first. The Postal Service acknowledges that the rules it suggested when asking the Commission to initiate this proceeding contained this restriction. Postal Service Comments at 5. The Postal Service, however, offers the explanation that this threshold was linked to suggested reductions in data filing requirements and limitations on issues. *Id.* at 5. We note, however, that the Postal Service's rules suggested in response to the Second Notice also contained the attributable cost threshold even though the Postal Service was offering an alternative "modeled upon the Commission's approach." Postal Service Comments to Second Notice at 3 and 31.

The Postal Service says that it sees no logical justification for retaining this requirement, and states that it would be contrary to its statutory authority to submit those proposed rate changes it deems suitable. Postal Service Comments at 5. The Postal Service is also concerned that the requirement might cause delay if other parties challenge the reliability of the figures presented. Id. at 6.

In considering this question, it is important to remember the unusual, historic relationship between the Express Mail rate schedule and its per piece attributable cost—which is simply the attributable costs for the class divided by the number of pieces. All Express Mail rates in Docket No. R87–1 were set well above Express Mail's per piece attributable cost of $7.40. *See* PRC Op. R87–1, App. G, Schedule 1. This situation was merely a continuation of consistent, past practice for Express Mail.

Per piece attributable costs might not be an appropriate threshold requirement for proposed rate changes for some of the other classes of mail. The rate schedules of some classes regularly include rates below that figure. For example, the Docket No. R87–1 per piece attributable cost for parcel post was $2.93, while its rate schedule contains a number of rates below that figure. *See* PRC Op. R87–1, App. G. Schedule 1. However, we are attempting to fashion a set of rules only for Express Mail proposals brought under certain, specified conditions, and whether this threshold test might be appropriate for other classes is not at issue.

Express Mail's per piece attributable cost has been lower than every rate in its schedules because of the light weight of the typical piece and its traditionally high cost coverage. Continuation of this situation in Express Mail Market Response cases—in which the effect on other classes is expected to be kept to such a minimum that the case can be considered on a record focusing only on Express Mail—is one reason to retain the per piece attributable cost requirement. It will provide one indication that the relationships among the classes of mail—in terms of contribution to institutional costs—are disturbed as little as possible. Those relationships are established following the consideration of the record in the most recent omnibus rate case.

As the usual relationship is for every rate which the Postal Service proposes to be higher than the per piece attributable cost, the argument that the provision would prohibit it from requesting rates below that figure even for rate cells in which the cost of service is lower than the per piece attributable cost appears to have theoretical, rather than practical, significance. For example, the lowest individual Express Mail rate proposed by the Postal Service in Docket No. R87–1 was $7.75, which is higher than the per piece attributable cost as initially calculated by the Postal Service as well as that figure after adjustment by the Commission. The Postal Service's request for speed in considering its requests can best be achieved in cases in which it does not attempt to introduce novel relationships between costs and proposed Express Mail rates.

The Postal Service's present opposition to this provision is unexpected. We had assumed that it was acceptable to the Postal Service, since both sets of rules it suggested included the requirement. The per piece attributable cost threshold was a reasonable requirement under the Postal Service's two sets of suggested rules for expedited consideration of certain cases with limited impact on the other mail classes. It remains reasonable with our rules, which have been designed to eliminate the due process problems found in the Postal Service's suggestions.

In its Petition [3] requesting that the Commission initiate this rulemaking, the Postal Service included its first discussion of this requirement. The attributable costs to be used would be either those developed by the Commission in the most recent omnibus rate case, or those adjusted for changes in Postal Service costs for the most recent fiscal year for which data are available. Postal Service Petition at 9. The Postal Service assured the Commission and interested parties that "proposals under the proposed rules would also reflect all criteria previously

[3] In its Petition, the Postal Service also offered examples of regulatory agencies which had made provision for expedited procedures for rate changes as well as adopting other modifications to their ratemaking proceedings to take advantage of a competitive market's ability to set appropriate prices. In the examples described with some detail, the pricing flexibility was given only for changes that meet specific, previously established limitations. Postal Service Petition at 6–8.

considered by the Commission in the last omnibus rate case." *Id.* at 12.

If the Postal Service were to file an Express Mail Market Response case without information showing that the proposed rates were higher than the per piece attributable cost, serious questions would be raised concerning the consistency of the proposal with the statute, particularly, section 3622(b)(3). We can reasonably predict that a considerable amount of time at the initial stage of the proceeding would be taken up by the Postal Service defending the propriety of proposing such rates against challenges from parties that the proposal should not be considered under rules established in a docket in which interested parties had been led to believe that only Express Mail concerns would be considered.

We expect that any one who did not wish the Postal Service to change its Express Mail rates would argue, with apparent justification, that the case should be heard under the regular rules for a rate change, because of the implications for all other classes of mail. As the Postal Service explained in its Petition, the purpose of the attributable cost requirement is to eliminate the risk that new Express Mail rates would be a burden on other classes of mail. *Id.* at 11. If this assurance is eliminated, the limitation of information concerning other classes of mail and the possible effect on them would be inappropriate.

In fashioning these rules, we have used the description of the potential cases presented by the Postal Service in an effort to eliminate potentially time consuming issues whenever possible. We have tried, to the extent possible in the absence of an actual proposal, to develop rules which identify those proposals which can indeed be considered—consistent with the statute—with the narrow focus that promotes expedition. For example, following the Postal Service's suggestion, these rules are to be available only in the situation in which the market has changed because of the actions of competitors. Rule 57(a).

If we are to be successful in our attempt to develop rules which meet due process standards and can be used to expedite cases to the extent requested by the Postal Service, those cases must be kept within well-defined limits. With regard to the Postal Service's argument that the threshold could be considered a limitation on its statutory discretion to make the rate proposals it chooses, we note that the Postal Service would be able to make such a proposal for consideration under the Commission's regular rules for changing rates. If the Postal Service wishes to file cases including novel proposals, the potential for focusing consideration within the limitations that these rules necessarily imply will be lost. Our rules are based upon the idea that the Postal Service and the parties should know what will be expected of them even before the first case is filed, including what information and other filing requirements will apply, as well as the schedule under which the Commission intends to proceed.

When considering this requirement, one should remember that UPS argued that the threshold should be set at a level higher than the per piece attributable cost test the Postal Service first proposed. UPS argued that the rules should require proposed rates to be above that figure multiplied by a pre-determined cost coverage. However, the Commission decided to use the Postal Service's suggested limitation in order to eliminate a potential controversy, since the Postal Service should have no difficulty in demonstrating that it has met this requirement. 54 FR 25138.

This development of procedural rules has been a process of refining the rules to meet the Postal Service's, the Commission's and the parties' needs with regard to cases which might be filed some time in the future. If future developments show that the per piece attributable cost requirement poses a particular problem, or that it is otherwise not necessary in these cases because of some change in the future, we will be able to eliminate it. Consideration of that change would come either when the Commission reviews these rules before the end of the 5-year period, or sooner, if problems are evident.

At this stage of the rulemaking, to re-examine the propriety of a position that the Postal Service had put forth and supported until this time would be time consuming without being particularly helpful. The Postal Service has stated that it would like to have the Commission bring this proceeding to an end by issuing a final rule. Postal Service Comments at 23. Our acceptance of its late-stated opposition to the attributable cost requirement, however, would delay considerably the completion of this proceeding. The parties and the Commission have relied on the Postal Service's apparent agreement that proposed rates should not be lower than reported attributable costs. Therefore, the focus has been on the reliability of the figures to be used for attributable costs rather than whether that requirement should be included. At this point, to eliminate the threshold would necessitate another round of comments to permit parties to address the fundamental change in position espoused by the Postal Service.

Particularly in light of the Postal Service's stated hope that the Commission issue a final set of rules for expedited consideration of Express Mail Market Response cases, the Postal Service's current opposition to a provision that it first put forward is not an appropriate reason to change the requirement.

The Postal Service also objects to the requirement that its proposed rates for the various cells be higher than the estimated costs of providing service to those cells. Postal Service Comments at 8. The Postal Service says there is no statutory basis for such a filing requirement, and it would impose an unprecedented limitation on the Postal Service's legal authority. *Id.* at 9. Pointing out the difficulty of developing estimates of costs by rate cell, the Postal Service fears delay caused by litigation over the details of its distribution of costs by cell. *Id.* at 11–14.

With the exception of the idea that the requirement had been part of the formulation of the rules being considered from the beginning of this rulemaking, much of what we have said about the per piece attributable cost threshold is also applicable to stricture that the proposed rates be higher than the estimated cost for serving the various rate cells.

In addressing this requirement, the Commission does not expect the Postal Service to present a distribution of costs to the various rate cells which is more elaborate than that accepted in the most recent omnibus rate case. We recognize the difficulty of attaining precision in such distributions, especially in classes such as Express Mail, where there is very little volume in particular rate cells. To meet this requirement, the Postal Service should find guidance in the most recent omnibus rate case.

We turn now to the Postal Service's argument that there is no statutory basis for such a filing requirement,[4] While no

[4] Other filing requirements to which the Postal Service does not object are also not found in the statute. Some of these requirements can be said to limit the Postal Service's authority regarding proposed changes to a much greater degree than the requirement that the proposed rate cells be shown to cover their attributable costs. For example, the Postal Service may not file a case under these rules in the absence of a change in the market which may adversely affect Express Mail's contribution to institutional costs. Rule 57(a). The principle that the Postal Service's request must fall within certain pre-determined limits if it is to take advantage of expedited rules developed for Market Response cases is the same for these requirements unopposed by the Postal Service.

explicit directive appears in the statute, it does list as one of the factors to be considered, "the establishment and maintenance of a fair and equitable schedule." 39 U.S.C. 3622(b)(1). The tracking of costs through the rates in the schedule has been—and remains—an important goal in postal ratemaking. Accepting this goal and moving toward it is consistent with the overall intent of the Postal Reorganization Act that rates apportion the costs "to all users of the mail on a fair and equitable basis." 39 U.S.C. 101(d).

While the Commission does not require, in its omnibus rate cases, blind adherence to a concept that the Postal Service must demonstrate that each rate in every rate schedule recovers the cost for serving that cell, the relationship between individual rates and costs remains very important. A fair and equitable rate schedule does not disregard this relationship—since the result might otherwise be mailers of one particular type of mail believe that they are subsidizing the costs of other types of mail paying rates from the same schedule.

The Commission's goal is to have rates track costs through the rate schedule to the extent that is practicable, given the information available. For example, in accepting the Postal Service's proposal for an Express Mail letter rate in Docket No. R87-1, the Commission pointed out that the new rate cell would "more reasonably reflect cost incurrence." PRC Op. R87-1, para. 6007. At other places in the decision, the Commission recommended rate schedules which reflect patterns of cost incurrence. *E.g., id.,* paras. 5408-09, 5909.

If the Postal Service, in the absence of this prohibition, proposed rate schedules which did not appear to recover costs for according service to the various rate cells, we would expect that intervenors would raise strenuous objections, which would require more time for consideration than the rules for market response cases permit. The Postal Service, if it believes a good reason exists, may propose a rate schedule in which this requirement is not met. However, such a request should be handled under the normal rules of procedure, not rules which have been specifically designed for a type of case in which the issues raised and decided have been kept to a minimum in order to further the expedition which the Postal Service says is necessary under certain circumstances.

In its Comments, the Postal Service points to examples which it says demonstrate the difficulty it might have in adhering to this requirement. The Postal Service says that aberrations in cost patterns might make the costs for a heavier package traveling from New York to Chicago lower than for a lighter package from New York to Boston. The Postal Service goes on to say that the effects of any such cost differences are now subsumed in the averaging and distribution process. Postal Service Comments at 13.

We understand that particular cost configurations can cause apparent anomalies if one focuses on the service required for individual parcels. However, this rule does not anticipate such a level of detail. We are not requiring cost distributions more detailed than those the Postal Service has experience with from the omnibus rate cases. The rule refers to the costs for rate cells, which already incorporate the averaging used to take into account the cost differences for providing service to a variety of parcels falling within one rate cell.

The Postal Service's examples, moreover, address the difficulty in distributing costs over a distance-based schedule. However, in Docket No. R87-1, in response to the Postal Service's request, the Commission recommended unzoned rate schedules for Express Mail. PRC Op. R87-1, para. 6011-17. Therefore, the distance-related differences have been averaged out, and the Postal Service's showing regarding the cost/rate cell relationship is limited to the weight categories for each rate schedule.

The Postal Service also says that there is some doubt as to the definition for "rate cell" as used in the rule. The Postal Service notes that the structure of rate schedules is often influenced by historical and statutory considerations, as well as cost behavior. Postal Service Comments at fn. 4. Rate cell, as used in rule 57b(b)(2), has its common meaning of the grouping of mail to which an individual rate is assigned by the rate schedule. *E.g.,* PRC Op. R87-1, para. 6014. As the Express Mail rate schedule currently exists, those cells are defined in terms of weight. The first cell on each schedule is that for letter mail—pieces weighing up to 8 ounces. The rule contemplates that the Postal Service's demonstration be consistent with the rate cells then in effect.

The Postal Service says that the rule has economic and costing implications that have not, and could not, be addressed in this rulemaking procedure. The Postal Service believes those unexplored implications made it inappropriate to impose this requirement. Postal Service Comments at 14. The Postal Service, however, has long been aware that the Commission attempts to track costs and reflect their patterns to the greatest extent practicable in its recommendations. *E.g.,* PRC Op. R80-1, paras. 1139-49.

In addition, this provision was included in the rules published for public comment in the Second Notice. 54 Fed. Reg. 11412. The Postal Service addressed the rule in terms of the reliability of the distribution of costs to the rate cells, arguing that its burden of proof should not be greater than that borne in an omnibus rate case. Postal Service Comments to Second Notice at 24. As we have previously explained, the rule does not contemplate a showing more precise than what was used in the most recent rate case.

Rule 57b(d), costing and market demand. UPS suggests that the words "in a manner consistent with" be replaced by "in accordance with" when requiring that Express Mail costs be calculated using the methods adopted by the Commission in the most recent omnibus rate case. UPS Comments at 3-4. We are making this editorial change.

Rule 57b(e)(4), discovery disputes. The Postal Service opposes the method proposed to accelerate resolution of discovery disputes. The Commission proposed that a party who believed it had good grounds to refuse to answer an interrogatory file a Motion to Excuse from Answering, which would include all of its reasons. The party filing the interrogatory could then file a response, and the matter would be ready for the Presiding Officer to issue a Ruling.

The Postal Service points out the difficulties a party might have giving a complete presentation of why the interrogatory need not be answered—particularly in situations where the meaning of the interrogatory is not clear without further explanation from the party writing the interrogatory. The Postal Service describes how courts currently encourage—or even require—informal negotiations to settle such disputes. The Postal Service adds that the Commission would be required to rule on every objection. The Postal Service offers as an alternative, reducing the time periods for the usual steps in discovery disputes. Postal Service Comments at 20-23.

In reponse to the Postal Service's suggestion, we are adding a statement of the Commission's intent and expectation that counsel will communicate with each other about discovery problems in an effort to resolve them without any need for motion practice. A party has 10 days in which to file a Motion to Excuse from Answering. That period should be sufficient for a party's counsel to contact the counsel for the party writing the interrogatory and to receive whatever

further explanation might be available, as well as to settle those disputes which can be resolved without the Commission's involvement.

We encourage attempts to resolve discovery disputes through these informal methods. If the parties conscientiously pursue attempts at informal settlement, the amount of motion practice should be reduced. With regard to those disputes which are not settled before a party files a Motion to Excuse from Answering, the rules do not compel the party writing the interrogatory to file a Response. In some instances the reasoning in the Motion to Excuse from Answering may persuade that party to abandon pursuit of the answer to the interrogatory. Only in a very unusual situation would the Presiding Officer deny a Motion to Excuse from Answering which was unopposed by the party submitting the interrogatory.

We understand that this method for dealing with discovery disputes is untested in our cases. However, if we are to achieve the expedition that the Postal Service has said it requires, we must try every means consistent with due process that might speed the proceedings. If this rule proves unworkable in practice, we will change it at the end of the five year test period, or sooner. In this set of rules, we are adopting a number of innovative procedures. This means for settling discovery disputes is one more that should be given an opportunity to operate in an actual case to see whether it can provide the benefits expected.

UPS suggests that discovery should be permitted only on the Postal Service from the day the case is filed, rather than all the participants. UPS notes that other participants will not have filed any testimony at that time. UPS also points out that all the participants could not be identified on the day the case if filed, since the rules provide 28 days for those not registered for automatic intervention to become parties, and parties may withdraw. UPS Comments at 4–5. UPS did not offer any suggestion regarding when discovery directed to participants should begin.

We are retaining the provision allowing discovery directed to the participants from the beginning of the case. The Commission's current rules allow discovery beginning at the time a party files a notice of intervention. Discovery is permitted notwithstanding that other parties may subsequently intervene, or that in previous cases parties have decided to withdraw.[5]

[5] 39 CFR 3001.20(e), 3001.25(a). *E.g.*, PRC Order Nos. 761 and 777.

Under our regular rules, therefore, the circumstances with regard to identification of participants are similar to the reasons UPS has put forward for changing the proposed rule. Nevertheless, UPS has not shown how altering our usual practice might improve the procedure, nor has it pointed to any problems in its use in other cases. This rule may help the parties to develop, at an early stage, an accurate understanding of the change in the market for expedited delivery service which causes the Postal Service to submit its request.

Rule 57b, schedule. UPS states that it continues to believe that the procedural schedule published in the Second and Third Notices is unworkable. UPS again suggests the schedule it recommended in response to the Second Notice. UPS Comments at 5. For the test period, we are retaining the schedule found in the Second and Third Notice. The reasons for selecting that schedule remain as previously described. 54 FR 11410; 54 FR 25138.

Periodic reporting. UPS asserts that the Commission should bring back the periodic reporting requirement contained in the Second Notice, arguing that having that information would help the Commission and the participants facilitate the expedition requested by the Postal Service. UPS asserts that the Postal Service did not show how a competitor could use that information to the Postal Service's detriment. UPS Comments at 5–6.

In the Second Notice, the Commission proposed certain periodic information requirements for Express Mail. Having this information would give the Commission and the parties a "head start" in understanding the factual basis used to support the cases that the Postal Service might file. 54 FR 11410–11. The Postal Service pointed out that periodic reports showing volume and revenue by weight cells could be used to track the results of various marketing strategies. Postal Service Comments to Second Notice at 8.

After considering the argument against filing the material on a periodic basis, the Commission accepted the Postal Service's suggestion that such information be provided only when the Postal Service wishes to change Express Mail rates. 54 FR 25136–37. Taking into account the level of detail required by that proposal, we continue to believe the potential for competitive harm outweights the assistance having that periodic information would provide.

Impact of changes. Pursuant to Executive Order 12291, the Commission finds that this rule change does not constitute a "major rule." It affects only rules of practice governing hearing procedures, not the substance of the proceeding. Its economic impact will be negligible, including its impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, the procedural rule change will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that the rule change does not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

The rule change does not contain policies with Federalism implications, and therefore does not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal service.

For the reasons set forth in the preamble, 39 CFR Part 3001 is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.57, 3001.57a, 3001.57b, and 3001.57c are added to Subpart B to read as follows:

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals

and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on the ability of participants to review and comment on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the Federal Register which provides an appropriate opportunity for public comments.

§ 3001.57a Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by 3001.54(b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54 (j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attibutable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) Rates remain at their existing levels, and

(2) Rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) Up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1) (i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) That the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) That the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

§ 3001.57b Market response rate requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is

required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registratnt is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.57c Express mail market response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for

expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

By the Commission. Chairman Steiger not participating. Commissioner LeBlanc dissenting.

Charles L. Clapp,

Secretary.

[FR Doc. 89-19106 Filed 8-15-89; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300125A; FRL-3629-5]

Revocation of Heptachlor Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) revokes all interim tolerances and permanent tolerances for residues of the insecticide heptachlor (1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-4,7-methanoindene) and its oxidation product heptachlor epoxide (1,4,5,6,7,8,8-heptachloro-2,3-epoxy-2,3,3a,4,7,7a-hexahydro-4,7-methanoindene); (2) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) and to the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) to replace the revoked tolerances; and (3) lists EPA's recommendations to FDA, and to FSIS and the Agricultural Marketing Service (AMS) of USDA regarding existing action levels for commodities for which tolerances had not been established. EPA initiated this rule to remove pesticide tolerances for which related registered uses have been cancelled.

EFFECTIVE DATE: Effective on August 16, 1989.

ADDRESSES: Written objections, identified by the document control number [OPP-300125A], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposal, published in the **Federal Register** of December 11, 1985 (50 FR 50643), which proposed the revocation of all tolerances in 40 CFR 180.104 and the interim tolerances in 40 CFR 180.319 for residues of the insecticide heptachlor and its oxidation product heptachlor epoxide.

The December 11, 1985 **Federal Register** proposal also listed the action levels which EPA intended to recommend to FDA and USDA to replace the tolerances once the rule revoking the tolerances is final. The action levels would pertain to unavoidable pesticide residues which can continue to occur in the food and feed commodities for which tolerances had been established because of the persistence of the pesticide in the environment. The proposal also listed EPA's intended recommendations to FDA and USDA regarding existing action levels for food and feed commodities for which tolerances had not been established and which may contain unavoidable residues of the pesticide because of environmental contamination.

No requests for referral to an advisory committee were received in response to the notice of proposed revocation.

Two comments were received in response to the notice of proposed revocation.

The Platte Chemical Co. expressed concern that, with the final revocation of the heptachlor tolerances, remaining stocks of its heptachlor seed treater already in the distribution system might not be allowed to be sold or used; these stocks were in existence prior to the manufacturing cut-off date of March 6, 1978. Platte referred to a pesticide notice (PR Notice 78-2) issued by EPA on March 28, 1978, which discussed the cancellation and phase-out of products containing heptachlor. Platte pointed out that the PR Notice stated that sale and use of existing stocks of registered end-use products which were in existence on March 6, 1978, may be continued until such stocks are exhausted, provided that the product is not used inconsistently with its label.

The issue of the distribution of the remaining existing stocks of Platte's heptachlor seed treatment product is independent from this tolerance revocation action. However, the Agency does not expect residues of heptachlor to occur in crops grown from seeds which have been treated with heptachlor in accordance with its labeling. Therefore, the revocation of the heptachlor tolerances would not prevent the sale and distribution of any crops grown from any allowable use of heptachlor-treated seeds. EPA considers it appropriate to proceed with this revocation action in order to eliminate any implied sanctioning of the presence of heptachlor residues in food and feed commodities.

The National Food Processors Association (NFPA) requested that the recommended replacement action level of 0.02 part per million (ppm) residues of heptachlor and heptachlor epoxide on pumpkins be increased to 0.05 ppm. The Agency has reviewed the information submitted by the NFPA in support of this request and concludes that the current action level recommendation of 0.02 ppm is appropriate for residues of heptachlor and heptachlor epoxide in or on pumpkins.

Summarized below are the Agency's conclusions on the three general reasons NFPA gave as necessitating an increase in the action level for residues of heptachlor and heptachlor epoxide on pumpkins.

First, NFPA felt that no correlation exists between soil residues in pumpkin fields and residues in the pumpkins grown in these fields; therefore, residues in pumpkins are likely to be unpredictable and erratic and, therefore, could exceed the currently recommended action level of 0.02 ppm.

Based on its review of available data, EPA agrees with NFPA that there seems to be no correlation between soil residues of heptachlor in pumpkin fields and residues of heptachlor in the pumpkins grown in these fields. However, the Agency also believes, from statistical analyses of these residue data, that it is very unlikely that residues in pumpkins will exceed 0.02 ppm. This determination is based on the fact that each pumpkin sample comprising the residue data analyzed was from a field which had tested positive for soil residues of heptachlor during the same time period; statistical skewing was avoided by not including any pumpkin samples from fields which had been negative for detectable residues during this period.

Second, NFPA pointed out that heptachlor residues in soil do not appear to decline in a predictable fashion; in fact, residues measured in certain fields showed increases from one year to the next.

EPA agrees that the data NFPA submitted do show that soil residue values remain constant or even increase in some fields. However, EPA also agrees with NFPA's earlier statement that there seems to be no correlation between these soil residue increases and the residues being found in pumpkins. Therefore, since available

residue data suggest that it is unlikely that residues of heptachlor in pumpkins will exceed 0.02 ppm, the increase in soil residues in some fields is not considered significant at the present time.

Third, NFPA stated that fields containing soil residues of heptachlor greater than 0.02 ppm are rejected for the growing of pumpkins on the basis that, if pumpkins were grown in these fields, residues of heptachlor in the pumpkins would be likely to exceed the recommended action level of 0.02 ppm. NFPA did not identify who is responsible for rejecting these fields, the individual pumpkin growers or NFPA itself, nor who formulated the guidance to be followed to determine which fields of reject.

EPA concludes from its review of the available residue data that it is not evident that residues of heptachlor would be expected to exceed 0.02 ppm in pumpkins which are grown in fields containing soil residues of heptachlor greater than 0.02 ppm. No correlation is evident, in the studies submitted by NFPA, between soil residues up to 0.021 ppm and residues in the pumpkins. Therefore, this consideration does not support and increase in the proposed recommended action level.

Based on the information considered by the Agency and discussed in detail in the December 11, 1985, proposal and in this final rule, the Agency is hereby: (1) Revoking all tolerances for residues of heptachlor and heptachlor epoxide listed in 40 CFR 180.104, and (2) revoking the interim tolerances listed in 40 CFR 180.319 specifically for residues of heptachlor.

The tables which follow show the current tolerances (Table 1), interim tolerances (Table 2), and action levels (Table 3) for heptachlor, and the Agency's current recommendations for replacement action levels. Also included in these tables are the action levels which were previously recommended, based on older monitoring data, and published in the December 11, 1985, proposed rule.

Recommendations for individually listed commodities are incorporated into crop groups as described in 40 CFR 180.34(f) whenever possible. EPA has addressed all crop groupings for which there are residue monitoring samples, whether or not there are existing tolerances or action levels for a particular crop group.

EPA is recommending to FDA and FSIS that the following action levels for the sum of residues of heptachlor and heptachlor epoxide, expressed in parts per million (ppm), replace the tolerances for heptachlor and its oxidation product heptachlor epoxide, which are being revoked:

TABLE 1.—Current Tolerances and Recommended Replacement Action Levels for Heptachlor (Plus Heptachlor Epoxide)

Commodities	Current tolerances (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Alfalfa	[1] 0(0.05)	0.02	[2] 0.01
Apples	[1] 0(0.05)	0.02	[3] 0.01
Barley	[1] 0(0.03)	0.02	[4] 0.01
Beans, lima	[1] 0(0.03)	0.02	[5, 6] 0.01
Beans, snap	0.1	0.02	[5, 6] 0.01
Beets	[1] 0(0.05)	0.02	[5, 7] 0.01
Beets, sugar	[1] 0(0.05)	0.02	[5, 7] 0.01
Blackeyed peas	[1] 0(0.05)	0.02	[5, 6] 0.01
Brussels sprouts	[1] 0(0.05)	0.02	[8] 0.01
Cabbage	0.1	0.02	[8] 0.01
Carrots	[1] 0(0.05)	0.02	[5, 7] 0.01
Cauliflower	[1] 0(0.05)	0.02	[8] 0.01
Cherries	[1] 0(0.05)	0.02	[9] 0.01
Clover	[1] 0(0.05)	0.02	[3] 0.01
Clover, sweet	[1] 0(0.05)	0.02	[3] 0.01
Corn	[1] 0(0.05)	0.02	[4] 0.01
Cottonseed	[1] 0(0.05)	0.02	0.01
Cowpeas	[1] 0(0.05)	0.02	[5, 6] 0.01
Grapes	[1] 0(0.05)	0.02	[10] 0.01
Grass (pasture)	[1] 0(0.05)	0.02	[5, 11] 0.01
Grass (range)	[1] 0(0.05)	0.02	[5, 11] 0.01
Kohlrabi	[1] 0(0.05)	0.02	[8] 0.01
Lettuce	0.1	0.02	[12] 0.01
Meat	0	0.2	[13] 0.2 (fat basis)
Milk	[1] 0(0.1) (fat basis	0.1 (fat basis)	0.1 (fat basis)
Oats	[1] 0(0.03)	0.02	[4] 0.01
Onions	[1] 0(0.05)	0.02	[14] 0.01
Peaches	0(0.05)	0.02	[9] 0.01
Peanuts	[1] 0(0.05)	0.02	0.01
Peas	[1] 0(0.05)	0.02	[5, 6] 0.01
Pineapple	[1] 0(0.05)	0.02	0.02
Potatoes	[1] 0(0.05)	0.02	[5, 7] 0.01
Radishes	[1] 0(0.05)	0.02	[5, 7] 0.01
Rutabagas	0.1	0.02	[5, 7] 0.01
Rye	[1] 0(0.03)	0.02	[4] 0.01
Sorghum, grain (milo)	[1] 0(0.03)	0.02	[4] 0.01
Sugarcane	[1] 0(0.03)	0.02	[5] 0.01
Sweet potatoes	[1] 0(0.05)	0.02	[5, 7] 0.01
Tomatoes	[15] 0(0.02)	0.02	[5, 16] 0.01
Turnips (including tops)	[1] 0(0.05)	0.02	[5, 7] 0.01
Wheat	[1] 0(0.03)	0.02	[4] none

[1] The limit shown in parentheses was previously used by FDA to enforce the "zero tolerance."

[2] This commodity is included under the action level recommendation for the crop group "Non-grass animal feeds."

[3] This commodity is included under the action level recommendation for the crop group "Pome fruits."

[4] This commodity is included under the action level recommendation for the crop group "Cereal grains."

[5] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor epoxide).

[6] This commodity is included under the action level recommendation for the crop group "Legume vegetables."

[7] This commodity is included under the action level recommendation for the crop group "Root and tuber vegetables."

[8] This commodity is included under the action level recommendation for the crop group "*Brassica* (cole) leafy vegetables."

[9] This commodity is included under the action level recommendation for the crop group "Stone fruits."

[10] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

[11] This commodity is included under the action level recommendation for the crop group "Grassy forage, fodder, and hay."

[12] This commodity is included under the action level recommendation for the crop group "Leafy vegetables (except *Brassica*)."

[13] This commodity is included under the action level recommendation for "Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits."

[14] This commodity is included under the action level recommendation for the crop group "Bulb vegetables."

[15] The limit shown in parentheses in the current interim tolerance in tomatoes. This limit was previously used by FDA to enforce the "zero" tolerance.

[16] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

The limits in parentheses shown in Table 1 above have been modified from the limits which were listed in Table 1 of the proposed rule to agree with the limits curently being used by FDA for enforcement of the "zero" tolerances. FDA has improved the analytical capability of their multi-residue method since the limits were set. The limits in parentheses which were listed in the proposed rule represented the improved analytical capability of the multi-residue method at that time and also reflected the action levels which EPA intended to recommend to FDA at that time to replace the tolerances being revoked. Further improvements is analytical capability are now reflected in lower recommended action levels for many commodities.

EPA is recommending to FDA the action levels listed below for the sum of residues of heptachlor and heptachlor epoxide, expressed in ppm, to replace the following interim tolerances for residues of heptachlor, listed in 40 CFR 180.319, which are being revoked.

TABLE 2.—CURRENT INTERIM TOLERANCES AND RECOMMENDED REPLACEMENT ACTION LEVELS FOR HEPTACHLOR (PLUS HEPTACHLOR EPOXIDE)

Commodities	Current interim tolerances (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Blackberries	0.01	0.02	[1] 0.01
Blueberries	0.01	0.02	[1] 0.01
Boysenberries	0.01	0.02	[1] 0.01
Dewberries	0.01	0.02	[1] 0.01
Peppers	0.1	0.02	[2, 3] 0.01
Raspberries	0.01	0.02	[1] 0.01
Tomatoes	0.02	0.02	[2, 3] 0.01

[1] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

[2] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor epoxide).

[3] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

EPA is recommending to FDA, FSIS, and AMS the following action levels for the sum of residues of heptachlor and heptachlor epoxide, expressed in ppm, to replace the existing action levels. Individually listed commodities have been incorporated into crop groupings as described in 40 CFR 180.34(f) whenever possible; action levels are being recommended in terms of the crop when possible and for individual commodities for those commodities not included in crop groupings.

TABLE 3—CURRENT ACTION LEVELS AND RECOMMENDED REPLACEMENT ACTION LEVELS FOR HEPTACHLOR (PLUS HEPTACHLOR EPOXIDE)

Commodities	Current action level (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Animal feed, processed	0.03		[1] 0.01
Artichokes	0.05	0.02	0.01
Asparagus	0.05	0.02	0.01
Beans, except snap beans	0.05	0.02	[1,2] 0.01
Brassica (cole) leafy vegetables [3,4]		0.02	0.01
Bulb vegetables [3]			0.01
Cereal grains [3]			0.01
Citrus fruits [3]	0.05	0.02	0.01
Cucumbers	0.05	0.02	[5] 0.02
Cucurbit vegetables [3]			0.02
Egglant	0.05	0.02	[1,6] 0.01
Eggs	0.03	0.02	[1] 0.01
Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits	0.3 (fat basis)	0.2 (fat basis)	0.2 (fat basis)
Figs	0.05	0.02	[1] 0.01
Fish	0.3	0.3	[7]
Fruiting vegetables [3] except cucurbits			[1] 0.01
Grass forage, fodder, and hay [3]			[1] 0.01

TABLE 3—CURRENT ACTION LEVELS AND RECOMMENDED REPLACEMENT ACTION LEVELS FOR HEPTACHLOR (PLUS HEPTACHLOR EPOXIDE)—Continued

Commodities	Current action level (ppm)	Previous recommended replacement action levels (ppm)	Current recommended replacement action levels (ppm)
Leafy vegetables [4]	0.05		[4] 0.01
Leafy vegetables (except *Brassica*) [4]		0.02	0.01
Legume vegetables [3]			[1] 0.01
Melons	0.05	0.02	[5] 0.02
Non-grass animal feeds [3]			0.01
Okra	0.05	0.02	[1,6] 0.01
Pears	0.05	0.02	[8] 0.01
Pimentoes	0.05	0.02	[1,6] 0.01
Pome fruits [3]			0.01
Pumpkins	0.05	0.02	[5] 0.02
Quinces	0.05	0.02	[8] 0.02
Rice, grain	0.03	0.02	[9] 0.01
Root and tuber vegetables [3]			[1] 0.01
Salsify tops [4]		0.02	[4] 0.01
Small fruits	0.05		[10] 0.01
Small fruits [3] and berries		0.02	0.01
Squash (summer or winter)	0.05	0.02	[5] 0.02
Stone fruits [3]	0.05	0.02	0.01

[1] The recommended action level is at or near the analytical method limit of detection (0.01 ppm for combined residues of heptachlor plus heptachlor epoxide).

[2] This commodity is included under the action level recommendation for the crop group "Legume vegetables."

[3] The commodities included in this crop group are listed in 40 CFR 180.34(f).

[4] Most of the commodities included under the old crop group "Leafy vegetables" are now included under one of the two crop groups "Leafy vegetables except *Brassica*" or "*Brassica* (cole) leafy vegetables." An exception to this is salisfy tops which will be examined separately (not as part of a crop grouping) for heptachlor action level evaluation (although it is now considered part of the crop group "Leaves of root and tuber vegetables").

[5] This commodity is included under the action level recommendation for the crop group "Cucurbit vegetables."

[6] This commodity is included under the action level recommendation for the crop group "Fruiting vegetables (except cucurbits)."

[7] The action level for residues of heptachlor in fish will not be reevaluated at this time, but will be examined as part of an ongoing fish action level reevaluation for several chlorinated pesticides. Refer to *Revocation of DDT and TDE Tolerances* Final Rule (51 FR 46658; December 24, 1986) for background information.

[8] This commodity is included under the action level recommendation for the crop group "Pome fruits."

[9] This commodity is included under the action level recommendation for the crop group "Cereal grains."

[10] This commodity is included under the action level recommendation for the crop group "Small fruits and berries."

The December 1985 proposed rule included references to action levels for the commodity "Fat of meat from cattle, goats, hogs, horses, sheep, poultry, and rabbits." In this final rule, the commodity is referred to as "Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits" to agree with the commodity definition currently used by FSIS. Tables 1 and 3 in the 1985 proposed rule listed the replacement action level recommended for this commodity incorrectly as 0.02 ppm; it should have been 0.2 ppm at that time. A correction notice was published in the **Federal Register** on December 31, 1985 (50 FR 53346).

In the 1985 proposed rule, EPA discussed Codex Maximum Residue Limits and indicated which of the action levels being recommended at that time were consistent with the Codex limits. Since that proposed rule was published, the Agency has acquired and evaluated more recent residue surveillance monitoring data (1983–1986) which reflect a general decrease in residues.

The action levels now being recommended to replace the tolerances upon their revocation are lower than the Codex Maximum Residue Limit for the same commodity, except for the action level recommended for pineapples. Compatibility is not expected since most of the Codex limits were set before 1978 to reflect residues resulting from actual application of the pesticide, whereas the recommended action levels are based on current unavoidable residues resulting primarily from past uses of the pesticide. Where no residues are expected, the action level is recommended at the limit of detection of the currently available analytical (enforcement) methodology.

Any person adversely affected by this regulation revoking the tolerance may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This action has been reviewed by the Office of Management and Budget as required under section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation for heptachlor. This analysis is available for public inspection in Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Executive Order 12291

As explained in the proposal published December 11, 1985, the Agency determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the December 11, 1985 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: July 21, 1989.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.104 [Removed]

2. By removing § 180.104 *Heptachlor and heptachlor epoxide; tolerances for residues.*

§ 180.319 [AMENDED]

3. By removing § 180.319 *Interim tolerances,* by removing the entry for heptachlor from the table therein.

[FR Doc. 89–19088 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6743.

[ID-943-09-4214-10; I-26703]

Jurisdiction Transfer, Hagerman Fossil Beds National Monument; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 3,787.62 acres of public lands located within the boundaries of the Hagerman Fossil Beds National Monument from the Bureau of Land Management to the National Park Service. The monument was established by Congress through Public Law 100–696. However, Public Law 100–696 did not specifically transfer jurisdiction of the lands. This order is to clarify the administrative record.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

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, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

Jurisdiction of the public lands within the boundaries of Hagerman Fossil Beds National Monument, which was established by Public Law 100–696, is hereby transferred to the National Park Service. The lands are described as follows:

Boise Meridian

T. 7 S., R. 13 E.,
- Sec. 9, SE¼SW¼, NE¼SE¼, and S½SE¼;
- Sec. 10, lots 3 and 6, SW¼, and NW¼SE¼;
- Sec. 15, lot 4;
- Sec. 17, NE¼NE¼, S½NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
- Sec. 20, E½E½;
- Sec. 21, lots 2, 3, 4, 7, and 8, W½NW¼, SE¼NW¼, N½SW¼, and SW¼SW¼;
- Sec. 28, lots 2, 3, 6, and 7, and NW¼NW¼;
- Sec. 29, E½NE¼, S½SW¼, and SE¼;
- Sec. 30, E½E½SE¼SE¼;
- Sec. 31, E½E½E½E½;
- Sec. 32,
- Sec. 33, lots 2, 3, 6, and 7, and SW¼SW¼.

T. 8 S., R. 13 E.,
- Sec. 3, lot 7 and SW¼;
- Sec. 4, lots 2, 3, 7, 8, and 9, S½NW¼, and S½;
- Sec. 5, lots 1 to 4, inclusive, and S½N½.

The area described contains 3,787.62 acres in Twin Falls County.

Dated: August 4, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89–19194 Filed 8–15–89; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations; Connecticut et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the

Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

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

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Cheshire (town), New Haven County (FEMA Docket No. 6946)	
Quinnipiac River:	
Downstream side of Cheshire Street Bridge	*111
At upstream corporate limits	*124
Mill River:	
Approximately 50 feet upstream of Mansion Road	*158
At downstream side of Williamsburg Drive	*209
Willow Brook:	
Approximately 50 feet upstream of downstream crossing of Higgins Road	*147
Upstream side of Ives Row Road	*160
Maps available for inspection at the Town Planning Department, Town Hall, Cheshire, Connecticut.	
FLORIDA	
Bradford County (unincorporated areas) (FEMA Docket No. 6951)	
Santa Fe River:	
At County Boundary	*74
At Little Santa Fe Lake outlet	*144
Little Santa Fe Lake: Along shoreline	*144
Santa Fe Lake: Along shoreline	*144
Maps available for inspection at the Planning and Zoning Department, County Courthouse, Starke, Florida.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Brooker (city), Bradford County (FEMA Docket No. 6951)	
Santa Fe River: Within community	*89
Maps available for inspection at the City Hall, Brooker, Florida.	
Hampton (city), Bradford County (FEMA Docket No. 6951)	
Santa Fe River: Within community	*140
Maps available for inspection at the City Hall, Hampton, Florida.	
GEORGIA	
Fitzgerald (city), Ben Hill County (FEMA Docket No. 6956)	
Satilla Creek Tributary:	
Just downstream of Colony City Industrial Drive	*337
About 1,900 feet upstream of Colony City Industrial Drive	*343
Turkey Creek:	
Just upstream of Industrial Drive	*316
Just upstream of North Merrimac Drive	*350
Turkey Creek Tributary No. 1:	
About 950 feet downstream of West Roanoke Drive	*329
Just upstream of Lincoln Avenue	*339
Turkey Creek Tributary No. 1A:	
Just upstream of mouth	*336
Just upstream of Lynn Road	*348
Willacoochee Creek:	
About 1,750 feet downstream of Irwinville Highway	*325
About 350 feet downstream of Irwinville Highway	*326
Maps available for inspection at the Building Inspector's Office, Municipal Building, Fitzgerald, Georgia.	
ILLINOIS	
Dowell (village), Jackson County (FEMA Docket No. 6951)	
South Tributary:	
Just downstream of Roosevelt Street	*395
Just downstream of Illinois Central Gulf Railroad	*397
Just downstream of Town Road	*403
North Tributary:	
At mouth	*403
Just downstream of Town Road	*406
Maps available for inspection at the Village Hall, Dowell, Illinois.	
Muddy (village), Saline County (FEMA Docket No. 6951)	
Middle Fork Saline River: Within community	*370
Maps available for inspection at the Village Hall, Muddy, Illinois.	
INDIANA	
Carroll County (unincorporated areas) (FEMA Docket No. 6951)	
Tippecanoe River:	
At southern county boundary	*545
Just downstream of Oakdale Dam	*579
Maps available for inspection at the Planning Commission, County Courthouse, Delphi, Indiana.	
KANSAS	
Jackson County (unincorporated areas) (FEMA Docket No. 6956)	
Elk Creek:	
About 4.1 miles downstream of State Highway 16	*985
About 1.1 miles upstream of U.S. Highway 75	*1,048

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Banner Creek:	
At mouth	*1,003
About 2.9 miles downstream of State Highway 79	*1,092
Maps available for inspection at the County Courthouse, Holton, Kansas.	
Parsons (city), Labette County (FEMA Docket No. 6956)	
Labette Creek:	
About 0.71 mile downstream of Southern Avenue	*864
About 400 feet upstream of 21st Street	*885
Little Labette Creek:	
About 1,450 feet downstream of Missouri-Kansas-Texas Railroad	*864
Just downstream of Missouri-Kansas-Texas Railroad	*865
Just upstream of Missouri-Kansas-Texas Railroad	*870
About 3,850 feet upstream of 32nd Street	*881
Maps available for inspection at the City Hall, Parsons, Kansas.	
LOUISIANA	
Thibodaux (city), Lafourche Parish (FEMA Docket No. 6956)	
Lateral B:	
Southwestern corner of community at South Barbier Drive	*6
At downstream corporate limits	*9
Approximately 125 feet upstream of Bayou Lane	*10
Maps available for inspection at 1309 Canal Boulevard, Thibodaux, Louisiana.	
MAINE	
Canton (town), Oxford County (FEMA Docket No. 6946)	
Androscoggin River:	
Approximately 400 feet downstream of Riley Dam	*375
At upstream corporate limits	*403
Whitney Brook:	
At confluence with Androscoggin River	*395
Approximately 220 feet upstream of State Route 108	*397
Maps available for inspection at the Town Clerk's Office, Town Hall, Canton, Maine.	
Jay (town), Franklin County (FEMA Docket No. 6951)	
Androscoggin River:	
Downstream corporate limits	*331
Approximately 1,300 feet upstream of Riley Dam	*382
Sevenmile Stream:	
Confluence with Androscoggin River	*371
Approximately 8,050 feet upstream of Morse Hill Road Bridge	*386
Meadow Brook:	
At confluence with Sevenmile Stream	*371
Approximately 4,150 feet upstream of State Route 17 Bridge	*373
Maps available for inspection at the Code Enforcement Officer's Vault, 99 Main Street, Jay, Maine.	
Millinocket (town), Penobscot County (FEMA Docket No. 6941)	
Millinocket Stream:	
Approximately 150 feet downstream of Granite Street bridge	*346
At upstream corporate limits	*354
Little Smith Brook:	
At confluence with Millinocket Stream	*352
At upstream corporate limits	*364
Ledge Cut Brook:	
At confluence with Little Smith Brook	*362

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*404
Maps available for inspection at the Planning Department Town Hall, Millinocket, Maine.	
Nobleboro (town), Lincoln County (FEMA Docket No. 6951)	
Damariscotta Lake: Entire shoreline within corporate limits	*58
Pemaquid Pond: Entire shoreline within corporate limits	*81
Duckpuddle Pond: Entire shoreline within corporate limits	*81
Salt Bay: Entire shoreline within corporate limits	*10
Maps available for inspection at Town Clerk's Office, Route 1, Nobleboro, Maine.	
MICHIGAN	
Brooks (township), Newaygo County (FEMA Docket No. 6951)	
Muskegon River:	
About 1.0 mile upstream of State Highway 37	*648
About 4.5 miles upstream of State Highway 37	*664
Maps available for inspection at 46 North State Street, Newaygo, Michigan.	
Manistee (township), Manistee County (FEMA Docket No. 6951	
Bar Lake Outlet:	
At mouth	*584
Just upstream of U.S. Highway 110	*585
Manistee River:	
About 1100 feet downstream of CSX railroad	*584
About 450 feet upstream of State Highway 55	*584
Lake Michigan: Along shoreline	*584
Bar Lake: Along shoreline	*585
Maps available for inspection at the Township Hall, 4100 Holden, Manistee, Michigan.	
MISSISSIPPI	
Columbus (city), Lowndes County (FEMA Docket No. 6932)	
Tombigbee River:	
About 1.0 mile downstream of Illinois Central Gulf Railroad	*170
About 1.3 miles upstream of Columbus Lock and Dam	*176
Luxapalila Creek:	
About 1.0 mile downstream of Illinois Central Gulf Railroad	*170
About 1.8 miles upstream of U.S. Highway 82	*184
Vernon Branch:	
Just downstream of Illinois Central Gulf Railroad	*180
About 3000 feet upstream of Illinois Central Gulf Railroad	*182
Magby Creek:	
At mouth	*177
Just downstream of Lehmbeig Road	*188
Maps available for inspection at the City Hall, Columbus, Mississippi.	
MISSOURI	
Bolivar (city), Polk County (FEMA Docket No. 6917)	
Town Branch:	
About 650 feet downstream of East Broadway Street	*981
Just downstream of East Broadway Street	*984
Just upstream of East Broadway Street	*989
Just downstream of South Springfield Avenue	*1026
Just upstream of South Springfield Avenue	*1031
About 1275 feet upstream of Burlington Northern railroad	*1069
South Tributary:	
About 0.5 mile downstream of South Springfield Avenue	*1024
Just downstream of South Springfield Avenue	*1047
Maps available for inspection at the City Hall, 116 East Jefferson Street, Bolivar, Missouri.	
NEW YORK	
Amenia (town), Dutchess County (FEMA Docket No. 6946)	
Wassaic Creek:	
Approximately 950 feet above confluence with the Tenmile River	*420
At confluence of Amenia Stream	*542
Webatuck Creek:	
Approximately 700 feet above confluence with Tenmile River	*420
Approximately 80 feet below County Route 2	*488
Amenia Stream:	
At confluence with Wassaic Creek	*452
Approximately 850 feet above State Route 343	*549
Tributary to Amenia Stream:	
At confluence with Amenia Stream	*543
Approximately 910 feet above upstream end of State Route 343 culvert	*550
Maps available for inspection at the Town Hall, Amenia, New York.	
Greenport (Town), Columbia County (FEMA Docket No. 6938)	
Claverack Creek:	
At downstream corporate limits	*122
Approximately .5 mile upstream of Webb Road	*137
Hudson River:	
Approximately 1.8 miles downstream of most upstream corporate limits	*12
At most upstream corporate limits	*12
Maps available for inspection at the Town Hall, Hudson, New York	
NORTH CAROLINA	
Aberdeen (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
About 1,000 feet downstream of U.S. Route 1	*321
About 1,800 feet upstream of Pages Dam	*334
Maps available for inspection at the Town Hall, Aberdeen, North Carolina.	
Moore County (unincorporated areas) (FEMA Docket No. 6951)	
Bear Creek:	
About 0.9 mile downstream of State Road 705	*353
About 2,600 feet upstream of Bear Creek Dam	*363
Crane Creek:	
At mouth	*204
Just downstream of Wood Lake Dam	*214
Jackson Creek:	
About 1.4 miles downstream of State Road 73	*392
About 1,300 feet upstream of State Road 73	*414
Jackson Creek Tributary:	
At mouth	*407
Just downstream of Jackson Creek Tributary Dam	*415
Just upstream of Jackson Creek Tributary Dam	*422
Just downstream of State Road 73	*450
Just upstream of State Road 73	*457
About 850 feet upstream of State Road 73	*457
Little River:	
About 2.5 miles downstream of Little River Dam	*200
About 1,500 feet upstream of Morrison Road	*209
About 3.3 miles downstream of SR 1802	*263
Just downstream of Thaggards Lake Dam	*285
Just upstream of Thaggards Lake Dam	*292
Just downstream of Farm Road	*325
Woods Lake	
Along shoreline	*229
Wads Creek:	
At mouth	*315
About 2,200 feet upstream of Wads Creek Farm Road	*326
Aberdeen Creek:	
At CSX railroad	*284
Just downstream of Loch Dornoch Dam	*341
Just upstream of Loch Dornoch Dam	*348
Just downstream of St. Andrews Drive East	*349
Just upstream of St. Andrews Drive East	*358
Just downstream of Morganton Road	*364
Aberdeen Creek Tributary:	
About 3,100 feet downstream of Aberdeen Tributary Dam	*358
Just downstream of Aberdeen Tributary Dam	*359
Just upstream of Aberdeen Tributary Dam	*366
Just upstream of U.S. Route 15	*372
Maps available for inspection at the Planning Office, County Courthouse, Carthage, North Carolina.	
Pinebluff (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
Just downstream of SR 1102	*291
About 1.2 miles downstream of Sandhill Boulevard	*314
Maps available for inspection at the Town Hall, Pinebluff, North Carolina.	
Pinehurst (village), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek:	
Just upstream of Morganton Road	*365
About 550 feet upstream of Morganton Road	*366
Maps available for inspection at the Village Hall, Pinehurst, North Carolina.	
Robbins (town), Moore County (FEMA Docket No. 6951)	
Bear Creek:	
About 700 feet downstream of State Road 705	*356
About 300 feet downstream of Bear Creek Dam	*361
Maps available for inspection at the Town Hall, Robbins, North Carolina.	
Southern Pines (town), Moore County (FEMA Docket No. 6951)	
Aberdeen Creek Tributary:	
Just upstream of U.S. Route 15	*372
Just downstream of Pinecrest School Road	*375
Just upstream of Pinecrest School Road	*386
About 2,450 feet upstream of Pinecrest School Road	*366
Aberdeen Creek:	
Just upstream of Morganton Road	*365
About 550 feet upstream of Morganton Road	*366
Maps available for inspection at the Town Hall, Southern Pines, North Carolina.	
Swain County (unincorporated areas) (FEMA Docket No. 6956)	
Tuckasegee River:	
About 0.6 mile downstream of confluence of Watkins Branch	*1712
About 0.3 mile upstream of confluence of Buckner Branch	*1717
Just downstream of confluence of Kirkland Creek	*1753
Just downstream of U.S. Route 19	*1761
Just upstream of U.S. Route 19	*1767
At confluence of Oconaluftee River	*1798
Oconaluftee River:	
At mouth	*1798
Just downstream of Bryson Dam	*1808
Just upstream of Bryson Dam	*1839
About 1.0 mile upstream of confluence of Raven Fork	*2056
Raven Fork:	
At mouth	*2021
About 1.6 miles upstream of mouth	*2088
Deep Creek:	
At mouth	*1741
About 1.2 miles upstream of Deep Creek Church Road	*1739

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the County Manager's Office, County Courthouse, Bryson City, North Carolina.	
Whispering Pines (village), Moore County (FEMA Docket No. 6951)	
Little River:	
About 2.0 mile downstream of SR 1802	*271
Just downstream of Thaggards Lake Dam	*285
Just upstream of Thaggards Lake Dam	*292
Just downstream of SR 1838	*304
Maps available for inspection at the Village Hall, Pine Ridge Road, Whispering Pines, North Carolina.	
OHIO	
Allen County (unincorporated areas) (FEMA Docket No. 6951)	
Dug Run:	
About 1,050 feet downstream of Pioneer Road	*790
About 4,000 feet upstream of Eastown Road	*828
Dug Run Tributary:	
At mouth	*816
Just downstream of Eastown Road	*824
Lost Creek:	
Just upstream of Reservoir Road	*865
Just downstream of Drop Structure	*881
Just upstream of Drop Structure	*891
About 2,000 feet upstream of Drop Structure	*894
Little Ottawa River:	
Just upstream of Fort Amanda Road	*827
Just downstream of Shawnee Road	*859
Freed Ditch:	
Just upstream of McClain Road	*881
Just downstream of Interstate 75	*883
Tributary A:	
At mouth	*831
About 2,500 feet upstream of mouth	*839
Tributary B:	
At mouth	*840
About 300 feet upstream of Hall Drive	*846
Tributary D:	
Just upstream of McClain Road	*881
About 1,050 feet downstream of Breese Road	*886
Riley Creek:	
Just upstream of Putnam Road	*784
About 1.2 miles upstream of Bentley Road	*815
Ottawa River:	
Just upstream of Adgate Road	*833
About 2,100 feet upstream of Conrail	*840
Pike Run:	
About 1,450 feet downstream of Brower Road	*832
Just downstream of Brower Road	*837
Lost Creek Tributary:	
About 0.9 mile downstream of 8th Street	*882
Just downstream of 8th Street	*887
Maps available for inspection at the Lima/Allen County Regional Planning Commission, 212 North Elizabeth Street, Lima, Ohio.	
Butler (village), Richland County (FEMA Docket No. 6951)	
Clear Fork Mohican River:	
About 0.6 mile downstream of State Route 95	*1063
About 0.4 mile upstream of State Route 95	*1071
Maps available for inspection at the Village Hall, 33 Elm Street, Butler, Ohio.	
Paulding County (unincorporated areas) (FEMA Docket No. 6951)	
Auglaize River:	
About 1.21 miles downstream of State Route 637	*702
About 1.40 miles upstream of State Route 637	*704
Flatrock Creek:	
About 0.55 mile downstream of confluence of Opossum Run	*714
About 0.96 mile upstream of County Route 107	*723
About 950 feet downstream of Norfolk Southern Railway	*738
About 1.02 mile upstream of State Route 49	*745
Maps available for inspection at the County Commissioner's Office, County Courthouse, Paulding, Ohio.	
Sabina (village), Clinton County (FEMA Docket No. 6951)	
Wilson Creek:	
About 1100 feet downstream of Plymouth Pike	*1032
About 1400 feet upstream of Polk Road	*1040
Mary's Fork:	
Just upstream of CSX railroad	*1043
Just upstream of Howard Street	*1047
Maps available for inspection at the Municipal Building, 99 North Howard Street, Sabina, Ohio.	
OKLAHOMA	
Guthrie (city), Logan County (FEMA Docket No. 6951)	
Cottonwood Creek:	
Approximately 528 feet downstream of College Avenue	*931
Approximately 660 feet downstream of confluence of Cottonwood Creek cut-off channel	*935
Deer Creek:	
Approximately 1 mile upstream of confluence with Cottonwood Creek	*992
Approximately 1.2 miles upstream of confluence of Cottonwood Creek	*993
Chisholm Creek:	
Approximately 1.2 miles upstream of crossing of county road	*992
Approximately 1.4 miles upstream of crossing of county road	*993
Maps available for inspection at the City Hall, 101 North 2nd, Guthrie, Oklahoma.	
Logan County (unincorporated areas) (FEMA Docket No. 6951)	
Cottonwood Creek:	
Confluence with Cimarron River	*926
Upstream side of Industrial Road	*947
Downstream side of State Route 74	*995
Bird Creek:	
Confluence with Cottonwood Creek	*929
Approximately .8 mile upstream of Interstate Route 35	*995
Deer Creek:	
Confluence with Cottonwood Creek	*991
Downstream of 3rd upstream crossing of County Road	*1,009
Chisholm Creek:	
Confluence with Cottonwood Creek	*984
Downstream of 4th upstream crossing of County Road	*1,015
Maps available for inspection at the Logan County Courthouse, 301 E. Harrison, Guthrie, Oklahoma.	
OREGON	
Burns (city), Harney County (FEMA Docket No. 6951)	
Drainage D:	
Approximately 1,300 feet south and 250 feet west of the intersection of West Pierce Street and South Nevada Avenue	None
Approximately 100 feet west of a point located 50 feet northeast along Saginaw Avenue from the southern corporate limits	None
Maps available for inspection at the City Recorder's Office, City Hall, 242 South Broadway, Burns, Oregon.	
Hines (city), Harney County (FEMA Docket No. 6951)	
Drainage D:	
Approximately 110 feet downstream of King Avenue Culvert	*4,195
Approximately 120 feet upstream of King Avenue Culvert	*4,200
Approximately 640 feet upstream of King Avenue Culvert (at Western Corporate limits)	*4,206
Approximately 300 feet North of the intersection of King Avenue and Tennyson Avenue	#1
Drainage D Split to King Avenue:	
At Saginaw Avenue	*4,181
Approximately 100 feet upstream of Tennyson Avenue	*4,198
Maps available for inspection at the City Recorder's Office, City Hall, 101 East Barnes, Hines, Oregon.	
Lake County (unincorporated areas) (FEMA Docket No. 6951)	
North Goose Lake Basin:	
Approximately 26,900 feet downstream of Stock Drive Road	*4,710
Approximately 770 feet upstream of Stock Drive Road	*4,730
Approximately 15,900 feet upstream of State Highway 66	*4,767
Chewaucan River:	
Approximately 2,250 feet downstream of State Highway 31	*4,346
Approximately 1,675 feet upstream of State Highway 31	*4,375
Approximately 400 feet upstream of Mill Street	*4,401
Maps available for inspection at the Lake County Courthouse, 513 Center Street, Lakeview, Oregon.	
PENNSYLVANIA	
Ashville (Borough), Cambria County (FEMA Docket No. 6951)	
Clearfield Creek:	
At downstream corporate limits	*1,614
Approximately .2 mile upstream of State Route 36	*1,626
Maps available for inspection at the Borough Building, Hickory Street, Ashville, Pennsylvania.	
Choconut (township), Susquehanna County (FEMA Docket No. 6938)	
Choconut Creek:	
At downstream corporate limits	*1,039
At upstream side of State Route 289	*1,120
Approximately 530 feet upstream from State Route 267	*1,271
Maps available for inspection at the Choconut Municipal Building, Choconut, Pennsylvania.	
Conneaut (township), Erie County (FEMA Docket No. 6951)	
East Branch Conneaut Creek:	
At abandoned railroad	*840
At confluence of Crane Creek	*871
Crane Creek:	
At confluence with East Branch Conneaut Creek	*871
At corporate limits	*878
Temple Creek:	
At confluence with East Branch Conneaut Creek	*861
At corporate limits	*869
Maps available for inspection at the Conneaut Municipal Building, Conneaut, Pennsylvania.	
Creekside (borough), Indiana County (FEMA Docket No. 6951)	
Crooked Creek:	
At downstream corporate limits	*1,033
At upstream corporate limits	*1,037
McKee Run:	
At confluence with Crooked Creek	*1,036
At upstream corporate limits	*1,038

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Mr. Shaeffer's home, Box 234, Creekside, Pennsylvania.	
Green (township), Indiana County (FEMA Docket No. 6951)	
North Branch Two Licks Creek:	
Approximately 1,440 feet downstream of confluence with Pompey Run	*1,336
Approximately 0.7 mile upstream of State Route 240	*1,417
Dixon Run:	
Downstream corporate limits	*1,261
Upstream corporate limits	*1,322
Maps available for inspection in care of Ms. Ruth Batik, Township Secretary, R.D. 2, Cherrytree, Pennsylvania.	
Hyndman (borough), Bedford County (FEMA Docket Nos. 6941 and 6956)	
Wills Creek:	
Approximately 60 feet downstream of CSX Transportation Railroad Bridge	*897
Approximately 0.3 mile upstream of upstream corporate limits	*986
Little Wills Creek:	
At confluence with Wills Creek	*933
At corporate limits	*935
Unnamed Tributary to Wills Creek:	
Approximately 200 feet upstream of CSX Transportation	*907
Approximately 240 feet downstream of corporate limits	*935
Maps available for inspection at the Hyndman Senior Citizen Building, Water Street, Hyndman, Pennsylvania.	
Irvona (borough), Clearfield County (FEMA Docket No. 6951)	
Clearfield Creek:	
At downstream corporate limits	*1,370
Approximately 180 feet upstream of upstream corporate limits	*1,378
Maps available for inspection at the Borough Building, Berwind Street, Irvona, Pennsylvania.	
Lower Towamensing (township), Carbon County (FEMA Docket No. 6951)	
Aquashicola Creek:	
At downstream corporate limits	*410
Approximately 0.55 mile upstream of S.R. 2009	*464
Buckwha Creek:	
At confluence with Aquashicola Creek	*444
Approximately 0.34 mile upstream of Chestnut Ridge Railway	*474
Mill Creek:	
At confluence with Aquashicola Creek	*410
Approximately 0.36 mile upstream of S.R. 2001	*614
Maps available for inspection at the Municipal Building, R.D. 32, Box 1211A, Palmerton, Pennsylvania.	
Morris (township), Clearfield County (FEMA Docket No. 6938)	
Moshannon Creek:	
At Conrail Bridge	*1,415
At upstream corporate limits	*1,422
Maps available for inspection at the Municipal Building, Oak Grove Road, Morrisdale, Pennsylvania.	
New Ringgold (borough), Schuylkill County (FEMA Docket No. 6951)	
Little Schuylkill River:	
At downstream corporate limits	*549
At upstream corporate limits	*573
Maps available for inspection at the Borough Hall, New Ringgold, Pennsylvania.	
North Manheim (township), Schuylkill County (FEMA Docket No. 6951)	
Mahonney Creek:	
At Meadow Drive (T-964)	*489
Approximately 0.45 mile upstream of State Route 443	*594
Schuylkill River:	
At downstream corporate limits	*488
Approximately 1.2 miles upstream of State Route 183	*553
Maps available for inspection at the Township Municipal Building, North Manheim, Pennsylvania.	
Petrolia (borough), Butler County (FEMA Docket No. 6951)	
South Branch Bear Creek:	
Downstream corporate limits	*1,152
Approximately 150 feet upstream corporate limits	*1,178
Maps available for inspection at Mr. Steel's residence, Box 92, Petrolia, Pennsylvania.	
Port Matilda (borough), Centre County (FEMA Docket No. 6946)	
Bald Eagle Creek:	
At downstream corporate limits	*977
At upstream corporate limits	*997
Laurel Run:	
At confluence with Bald Eagle Creek	*983
Approximately 125 feet upstream of upstream corporate limits	*1,018
Maps available for inspection at the Borough Building, 400 South High Street, Port Matilda, Pennsylvania.	
Shelocta (borough), Indiana County (FEMA Docket No. 6951)	
Crooked Creek:	
Approximately 0.15 mile downstream of State Route 156	*995
Approximately 0.36 mile upstream of State Route 156	*1,000
Maps available for inspection at the Indiana County Courthouse, Indiana, Pennsylvania.	
Unionville (borough), Centre County (FEMA Docket No. 6946)	
Bald Eagle Creek:	
Approximately 895 feet downstream of Chestnut Street	*771
Approximately 950 feet upstream of upstream corporate limits	*780
Dewitt Run:	
At confluence with Bald Eagle Creek	*774
Approximately 25 feet upstream of corporate limits	*812
Maps available for inspection at the Fleming Post Office, Route 220, Fleming, Pennsylvania.	
Walker (Township), Schuylkill County (FEMA Docket No. 6951)	
Little Schuylkill River:	
Approximately 0.6 mile downstream of confluence with Brushy Run	*635
Approximately 1.5 miles upstream of State Route 443	*742
Maps available for inspection at the Walker Township Municipal Building, Tamaqua, Pennsylvania.	
Washington (township), Cambria County (FEMA Docket No. 6941)	
Bear Rock Run:	
At downstream corporate limits	*1,935
Approximately 860 feet upstream of the confluence of Burgoon Run	*1,980
Burgoon Run:	
At the confluence with Bear Rock Run	*1,966
Approximately 1,100 feet upstream of the confluence with Bear Rock Run	*1,990
Maps available for inspection at the Township Building, Jones Street, Extension, Lilly, Pennsylvania.	
Weatherly (borough), Carbon County (FEMA Docket No. 6951)	
Hazle Creek:	
Approximately 960 feet upstream of confluence with Black Creek and Quakake	*1,032
Approximately 0.5 mile upstream of Main Street (SR 4010)	*1,153
Maps available for inspection at the Municipal Building, 10 Wilbur Street, Weatherly, Pennsylvania.	
TENNESSEE	
Maury County (unincorporated areas) (FEMA Docket No. 6951)	
Rutherford Creek:	
At mouth	*581
About 1.2 miles upstream of Warren Road	*714
Little Bigby Creek:	
At mouth	*577
Just downstream of Neely Hollow Road	*671
Lytle Creek:	
At mouth	*587
Just upstream of Iron Bridge Road	*592
Just downstream of State Route 50	*628
Just upstream of State Route 50	*634
Just downstream of CSX railroad	*638
Just upstream of CSX railroad	*643
Just downstream of Mooresville Pike	*651
Aenon Creek:	
At mouth	*661
About 0.8 mile upstream of Port Royal Road	*691
Carters Creek:	
At mouth	*595
Just downstream of Carters Creek Pike	*674
Grassy Branch:	
At mouth	*672
About 500 feet upstream of Port Royal Road	*694
Greenlick Creek:	
Just upstream of Hicks Lane	*580
At confluence of Greenlick Creek Tributary	*620
Greenlick Creek Tributary:	
At mouth	*620
About 1.5 miles above mouth	*646
McCormack Branch:	
At mouth	*686
Just upstream of Beech Grove Road	*739
McCutcheon Creek:	
At mouth	*659
About 0.3 mile upstream of Duplex Road	*708
Duck River:	
About 1.6 miles downstream of Industrial Park Drive	*575
At confluence of Bear Creek	*589
Sugar Fork:	
About 0.85 mile downstream of confluence of Quality Creek	*608
About 0.75 mile downstream of confluence of Quality Creek	*609
Sugar Creek:	
About 400 feet upstream of confluence of Quality Creek	*619
About 700 feet upstream of Arrow Lake Road	*654
Maps available for inspection at the County Courthouse, Columbia, Tennessee.	
TENNESSEE	
Williamson County (unincorporated areas) (FEMA Docket No. 6951)	
Harpeth River:	
About 1.0 mile downstream of CSX Railroad	*634

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Douglas Street	*645
West Harpeth River:	
Just downstream of confluence of Leipers Fork	*647
Just downstream of Interstate 65	*752
Rutherford Creek:	
At county boundary	*714
Just downstream of Bethesda Road	*783
Aenon Creek:	
At county boundary	*691
About 1,300 feet upstream of Duplex Road	*704
Murfrees Fork:	
At mouth	*657
Just downstream of Evergreen Road	*752
Grassy Branch:	
At county boundary	*694
About 0.4 mile upstream of Duplex Road	*711
Five Mile Creek:	
At mouth	*648
About 0.5 mile upstream of Goose Creek Bypass	*679
McCutcheon Creek:	
At county boundary	*708
About 1.5 miles upstream of county boundary	*743
Leipers Fork:	
At mouth	*647
Just downstream of Bailey Road	*670
Maps available for inspection at the County Courthouse, 1320 West Main Street, Suite 125, Franklin, Tennessee.	
TEXAS	
Dayton Lakes (city), Liberty County (FEMA Docket No. 6951)	
Trinity River	
Downstream corporate limits	*36
Approximately 1 mile upstream of upstream corporate limits	*36
Maps available for inspection at the grocery store on Trinity Road and County Engineers Office, Dayton Lakes, Texas.	
Poteet (city), Atascosa County (FEMA Docket No. 6946)	
Rutledge Hollow Creek:	
Approximately 1,850 feet, downstream of Seventh Street	*422
Approximately 500 feet upstream of upstream corporate limits	*441
Tributary A:	
At confluence with Rutledge Hollow Creek	*424
At Avenue F	*444
Tributary B:	
Approximately 75 feet downstream of downstream corporate limits	*466
At upstream corporate limits	*469
Tributary C:	
Approximately 1,600 feet downstream of Boyd Street	*444
Approximately 350 feet upstream of Boyd Street	*460
Maps available for inspection at the City Hall, 409 Avenue H. Poteet, Texas.	
Sulphur Springs (city) Hopkins County (FEMA Docket No. 6951)	
Rock Creek:	
Approximately 0.9 mile downstream of confluence of Gena Creek	*421
Approximately 600 feet upstream of Holiday Drive	*476
Town Branch:	
Approximately 850 feet downstream of Loop 301	*443
At downstream side of Putman Street	*484
Gena Creek:	
At FM 1870	*440
Approximately 1.2 miles upstream of FM 1870	*457
South Town Branch:	
Downstream corporate limits	*466
Approximately 80 feet upstream of Gilmer Street	*491

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Coleman Creek:	
Approximately 0.5 mile downstream of State Route 19	*436
Approximately 1,200 feet downstream of Interstate Route 30 & U.S. Route 67	*529
Turtle Creek:	
At State Route 11	*481
Approximately 2,400 feet upstream of Loop 313	*500
Maps available for inspection at the City Hall, Sulphur Springs, Texas.	
VIRGINIA	
Harrisonburg (city) (FEMA Docket No. 6946)	
Tributary No. 1:	
At confluence with Blacks Run	*1,265
Approximately 0.53 mile upstream from Route 974	*1,452
Tributary No. 2:	
At confluence with Tributary No. 1	*1,267
Approximately 0.63 mile upstream from Deer Run Road	*1,381
Tributary No. 3:	
At confluence with Tributary No. 1	*1,307
Approximately 1.21 miles upstream from Interstate 81	*1,416
Tributary No. 4:	
At confluence with Tributary No. 1	*1,407
Approximately 340 feet upstream from Keezletown Road	*1,440
Blacks Run:	
Approximately 550 feet downstream from State Route 988	*1,194
Approximately 1.09 miles upstream from State Route 753 (North Liberty Street)	*1,381
Sunset Heights Branch:	
Approximately 500 feet downstream of State Route 726	*1,264
Approximately 0.45 mile upstream from confluence of West Fork Sunset Heights Branch	*1,337
West Fork Sunset Heights Branch:	
At confluence with Sunset Heights Branch	*1,306
At upstream corporate limits	*1,359
Maps available for inspection at the Office of the City Engineer, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.	
Purcellville (town), Loudoun County (FEMA Docket No. 6951)	
South Fork Catoctin Creek:	
Approximate 375 feet downstream of downstream corporate limits	*485
Approximately 125 feet upstream of upstream corporate limits	*518
Maps available for inspection at the Town Office, 141 E. Main Street, Purcellville, Virginia.	
Urbanna (town), Middlesex County (FEMA Docket No. 6927)	
Rappahannock River:	
Entire shoreline within community	*7
Shoreline at the confluence of Urbanna Creek and Rappahannock River	*7
Maps available for inspection at the Town Hall, Urbanna, Virginia.	
Wise County (unincorporated areas) (FEMA Docket No. 6956)	
Callahan Creek:	
Approximately 1.02 miles upstream of confluence with Powell River	*1,660
Approximately 1.11 miles upstream of confluence with Powell River	*1,667
Downstream side of State Route 78	*1,733
Looney Creek:	
Approximately 0.18 mile upstream of confluence with Pigeon Creek	*1,624
Approximately 0.09 mile upstream of Southern Switchyard Road	*1,630

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Powell River:	
Approximately 0.9 mile downstream of Cadet School Bridge	*1,460
Approximately 1.4 miles upstream of Cadet School Bridge	*1,466
Approximately 4.05 miles upstream of Cadet School Bridge	*1,497
Approximately 0.75 mile upstream of Southern Railway	*1,611
South Fork Powell River:	
Approximately 0.09 mile upstream of downstream crossing of State Route 613	*1,495
Approximately 0.26 mile downstream of downstream crossing of Southern Railway	*1,507
Butcher Fork:	
At confluence with South Fork Powell River	*1,513
Approximately 1.2 miles upstream of State Route 683	*1,554
Maps available for inspection at the County Administrator's Office, County Courthouse, Wise, Virginia.	
WASHINGTON	
Clallam County (unincorporated areas) (FEMA Docket NO. 6951)	
Jimmycomelately Creek:	
At the confluence with Sequim Bay	*8
Approximately 3,600 feet upstream of State Highway 101	*60
Clallam River:	
Approximately 1,950 feet upstream of Weel Road	*21
Just downstream of State Highway 112	*34
Approximately 1,350 feet upstream of 3rd Crossing of Highway 112	*62
Soleduck River:	
Approximately 6,800 feet downstream of Quillayute Road	*147
Just downstream of Quillayute Road	*160
Dungeness River:	
Approximately 2,500 feet downstream of Marine Drive	*8
Just downstream of Marine Drive	*19
Approximately 300 feet upstream of Marine Drive	*21
Approximately 3,200 feet upstream of the confluence with Matriotti Creek	*41
Approximately 50 feet downstream of Woodcock Gaskell Road	*82
Just downstream of Old Olympic Highway	*109
Approximately 60 feet upstream of Old Olympic Highway	*112
Approximately 50 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*205
Approximately 150 feet downstream of the confluence with Bear Creek	*312
Approximately 6,400 feet upstream of the confluence with Caraco Creek	*665
Elwha River:	
Approximately 7,700 feet downstream from the divergence of Elwha River Overflow	*7
Approximately 5,700 feet downstream from the divergence of Elwha River Overflow	*12
Approximately 2,100 feet downstream from the divergence of Elwha River Overflow	*24
Strait of Juan De Fuca (at Bullman Beach):	
Approximately 1,850 feet west along the shoreline from the crossing of Highway 112 over Bullman Creek	*16
Approximately 250 feet north of the crossing of Highway 112 over Bullman Creek	*10
Approximately 1,750 feet east along shoreline from the crossing of Highway 112 over Bullman Creek	*14
Strait of Juan De Fuca (at Clallam Bay):	
Approximately 1,250 feet north of the intersection of Front Street with Washington Street	*16
Approximately 1,450 feet north along shoreline from the intersection of Division Street and Front Street	*13
Approximately 250 feet east of the intersection of Front Street with Washington Street	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 700 feet south along shoreline from the intersection of Division Street and Front Street	*13
Approximately 100 feet north of the crossing of Slip Point Road over Falls Creek	*12
Approximately 2,600 feet east along shoreline from crossing of Slip Point Road over Falls Creek	*14
Approximately 3,250 feet east along shoreline from crossing of Falls Creek and Slip Point Road	*8
Approximately 700 feet north of intersection of Slip Point Road with Bogachief Street	*10
Approximately 250 feet north of the intersection of Salt Air Street with Fisherman Street	*12
Approximately 2,000 feet north along shoreline from the intersection of Salt Air Street with Fisherman Street	*15
Strait of Juan De Fuca (at Crescent Bay):	
Approximately 2,600 feet due north of the intersection of ACI Park Access Road and Crescent Beach Road	*12
Approximately 1,400 feet along shoreline north of the intersection of ACI Park Access Road and Crescent Beach Road	*9
Approximately 175 feet north of the intersection of Crescent Beach Road and ACI Park Access Road	*8
Approximately 1,200 feet along shoreline east of the intersection of ACI Park Access Road and Crescent Beach Road	*10
Approximately 600 feet north of the crossing of Crescent Beach Road over Salt Creek	*8
Approximately 1,800 feet north along the shoreline from the crossing of Crescent Beach Road over Salt Creek	*12
Strait of Juan De Fuca (at Angeles Point):	
On the shoreline approximately 500 feet northwest from the intersection of Place Road and Dan Kelly Road	*10
Approximately 2,375 feet north of the intersection of Charles Road and Elwha Road	*9
On the shoreline approximately 1,600 feet northeast from the intersection of a private road with Lower Elwha Road	*10
Strait of Juan De Fuca (at Morse Creek):	
Approximately 2,200 feet west of the mouth of Morse Creek	*11
At the mouth of Morse Creek	*9
On the shoreline approximately 2,000 feet east from the mouth of Morse Creek	*11
Strait of Juan De Fuca (at Dungeness Bay):	
Approximately 4,800 feet west along the shoreline from the intersection of Three Crabs Road and Dungeness Road	*8
Just east of the intersection of Three Crabs Road with Golden Sands Place	*8
Approximately 350 feet east from the intersection of Golden Sands Place with Three Crabs Road	*9
At the mouth of Cassalery Creek	*8
Strait of Juan De Fuca (at Washington Harbor):	
On the shoreline about 2,000 feet north of the entrance to Sequim Bay	*8
Strait of Juan De Fuca (at Diamond Point):	
Approximately 575 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard	*9
Approximately 500 feet north of the intersection of Diamond Point Road with Diamond Point Boulevard	*8
Approximately 1,050 feet southeast of the intersection of Diamond Point Road with Diamond Point Boulevard	*8
Maps available for inspection at the Clallam County Courthouse, 223 East Fourth Street, Port Angeles, Washington.	
Wisconsin	
Eleva (village), Trempealeau County (FEMA Docket No. 6951)	
Adams Creek:	
At mouth	*855

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Eleva Pond Dam	*857
Just upstream of Eleva Pond Dam	*868
Just downstream of Eau Claire Road	*868
Just upstream of Eau Claire Road	*874
Buffalo River:	
About 650 feet downstream of Main Street	*853
About 625 feet upstream of Chimney Rock Road	*855
Maps available for inspection at the Village Hall, Eleva, Wisconsin.	
Park Falls, (city), Price County (FEMA Docket No. 6956)	
Flambeau River:	
About 0.3 mile downstream of Lower Dam	*1,452
Just downstream of Lower Dam	*1,453
Just upstream of Lower Dam	*1,468
Just downstream of Upper Dam	*1,473
Just upstream of Upper Dam	*1,487
About 1.2 miles upstream of Upper Dam	*1,488
Maps available for inspection at the City Hall, 400 4th Avenue South, Park Falls, Wisconsin.	
Price County (unincorporate areas) (FEMA Docket No. 6951)	
South Fork Flambeau River:	
About 1.6 miles downstream of County Highway F	*1,396
About 700 feet upstream of Balsam Road	*1,442
Maps available for inspection at the Country Zoning Department, Lake Avenue, Phillips, Wisconsin.	
Shawano (city), Shawano County (FEMA Docket No. 6951)	
Wolf River:	
About 0.6 mile downstream of Lieg Avenue	*797
Just downstream of Shawano Dam	*798
Just upstream of Shawano Dam	*804
At confluence of Shawano Creek	*804
Shawano Creek: Within community	*804
Shawano Lake: Within community	*804
Maps available for inspection at the Building Department, City Hall, 213 East Green Bay Street, Shawano, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

WEST VIRGINIA	
Grant County (unincorporated areas) (FEMA Docket No. 6941)	
South Branch Potomac River:	
Approximately 2,000 feet downstream of confluence of Mill Creek	*923
Approximately 3.4 miles upstream of the Town of Petersburg corporate	*989
Maps available for inspection at the County Assessor's Office, County Courthouse, 5 Highland Avenue, Petersburg, West Virginia.	

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-19192 Filed 8-15-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-589; RM-6482]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Taos Communications Corp., substitutes Channel 268C2 for Channel 269A at Taos, New Mexico, and modifies the license of Station KTAO to specify operation on the higher powered channel. Channel 268C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 kilometers (11.9 miles) south to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-589, adopted July 18, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Taos, New Mexico, is amended to add Channel 268C2 and remove Channel 269A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19127 Filed 8-15-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-31; RM-6479]

Radio Broadcasting Services; Comfort, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236C2 to Comfort, Texas, as that community's first local FM service, at the request of Comfort Broadcasting Company, Inc. See 54 FR 8220, February 27, 1989. The channel allotment requires a site restriction of 4.8 kilometers (3.0 miles) west of the community, at coordinates 29-57-53 and 98-57-54. Additionally, Mexican concurrence has been obtained for Channel 236C2 at Comfort. With this action, this proceeding is terminated.

DATES: Effective September 25, 1989; the window period for filing applications will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-31, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table FM of Allotments is amended under Texas, by adding Comfort, Channel 236C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19128 Filed 8-15-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 90890-9190]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce has determined that it is necessary to close a portion of the New England Area known as Georges Bank, defined as the fishing grounds east of 69° W. longitude, to fishing for surf clams. This area is closed for a period of 90 days from the effective date of this rule. This closure is implemented because of adverse environmental conditions that have resulted in high concentrations of paralytic shellfish poison (PSP) in surf clams from this area. These adverse environmental conditions preclude the harvest of healthful food products from this affected environment.

EFFECTIVE DATE: August 11, 1989 through November 9, 1989.

ADDRESSES: Copies of the environmental assessment may be obtained from John G. Terrill, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, telephone 508-281-9252.

SUPPLEMENTARY INFORMATION: This emergency action is taken by the Secretary of Commerce (Secretary) in response to the discovery of high levels of PSP in surf clams (*Spisula solidissima*) from the Georges Bank Area. The Massachusetts Department of Public Health reported results from five PSP tests on surf clams taken from the Georges Shoals area of Georges Bank, a traditional surf clam fishing ground. The tests determined PSP levels of between 384 and 533 micrograms/100 grams (μg/100g), which are significantly in excess of the 80 μg/100g maximum safe level. Ingestion of PSP toxin is known to cause severe illness or death in humans. For this reason, the PSP levels reported indicate a severe adverse environmental condition that warrants immediate closure of the Georges Bank Area.

Section 652.23 of the Surf Clam and Ocean Quahog regulations established three areas closed to fishing because of environmental degradation and adverse environmental conditions. That section authorizes additional closures by notice from the Secretary after a public hearing is held to determine the effects of the closure.

The emergency nature of the adverse environmental condition now occurring in the Georges Bank Area renders a public hearing contrary to the public interest. Consequently the emergency action authority vested in the Secretary under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(e), is invoked to dispense with the public hearing requirement.

This closure will prohibit surf clam fishing in the Georges Bank Area for 90 days, beginning on August 11, 1989. An extension of the closure, if warranted, is possible for an additional 90 days under the Secretary's emergency rulemaking authority. The occurrence of PSP wanes in the winter months. Therefore, the period during which the area may be closed under the Secretary's emergency authority should provide protection until PSP returns to a safe level.

During any extension of this emergency closure, NMFS will hold a public hearing in accordance with 50 CFR 652.23. Following the public hearing, a notice to close the area pursuant to that section may be published in the **Federal Register**. Such notice would supplant this action.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that, due to the severe adverse environmental conditions that exist in the area, it is impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of this rule under section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency rule is exempt from normal review procedures of Executive Order 12291 as provided in section (8)(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator finds no potential negative impact on the surf

clam resource in the Georges Bank Area as a result of this change. An environmental assessment is available at the address above (see **ADDRESSES**) that explains the projected effects of the rule and the impact on the human environment under the National Environmental Policy Act.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

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

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: August 11, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 652 is amended as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

1. The authority citation for part 652 continues to read as follows:

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

2. In § 652.23, effective from August 11, 1989, through November 9, 1989. A new paragraph (a)(4) is added to read as follows:

§ 652.23 Closed areas.

(a) * * *

(4) *Georges Bank.* That portion of the New England area that is located east of 69° W. longitude is closed to fishing. This closure does not affect fishing for ocean quahogs.

* * * * *

[FR Doc. 89-19219 Filed 8-11-89; 12:30 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision of the formula for determining mortality of Pacific halibut; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces revision to the formula for determining Pacific halibut mortality in the groundfish fishery in the Gulf of Alaska. The action is intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective August 11, 1989. Comments are invited through August 28, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

Section 672.20(f)(2)(i) specifies a framework procedure for setting prohibited species catch (PSC) limits for Pacific halibut. This procedure requires that the Secretary, after consultation with the North Pacific Fishery Management Council (Council), publish a notice in the **Federal Register** to establish PSC limits for Pacific halibut. For 1989, PSC limits were established by a notice published at 54 FR 6524 (February 13, 1989). The PSC limit for Pacific halibut was set at a level which would result in a mortality of no more than 2,000 metric tons (mt) of halibut. In determining this level, that notice announced certain theoretical assumptions to be used in the formula to calculate halibut mortality.

Halibut mortality was to be determined inseason by multiplying groundfish catches by assumed halibut mortality and halibut bycatch rates, all of which were published in the same notice. The Council recognized that the mix of initial groundfish apportionments would arithmetically result in a mortality in excess of the PSC limit of 2,000 mt if available groundfish total allowable catch (TAC) amounts were fully harvested. Rather than reduce groundfish TAC amounts, the Council recommended that the Regional Director manage the overall harvest to accomplish the Council's objective relative to the mortality goal for halibut. This procedure would allow the Secretary to more accurately determine the appropriate Pacific halibut bycatch and mortality amounts during the season based upon observed and reported harvesting activity.

Revision to Formula for Determining Pacific Halibut Bycatch and Mortality Amounts

The Secretary finds the assumptions published in the notice at 54 FR 6527 (February 13, 1989) are incorrect. These include gear shares of target species and the distribution of mid-water pollock catch between the Western and Central regulatory areas of the Gulf. The Secretary announces that the Regional Director will use a new formula for determining the mortality of Pacific halibut based on actual data rather than the assumptions announced in that notice. These data are derived from actual groundfish catches by gear and area as reported by DAP fishermen to the Alaska Department of Fish and Game and to NMFS each week. The revised formula, when applied to current groundfish catches, results in a halibut mortality estimate almost identical to that produced by the original formula. However, when expected annual total groundfish catches are considered, the revised formula produces a significantly lower estimate of halibut mortality than the amount predicted by the original formula.

Classification

This action is taken under § 672.22 and is in compliance with Executive Order 12291. Public comments on the necessity for and appropriateness of this action are invited for a period of 15 days.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 11, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-19252 Filed 8-11-89; 1:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

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 Grain Inspection Service

7 CFR Part 800

General Regulations; Soybean Oil and Protein

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final action and notice of withdrawal of proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) will offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS will use approved near-infrared spectroscopy (NIRS) equipment in performing these tests and report the results to the nearest tenth of a percent on a 13 percent moisture basis. Further, FGIS is withdrawing the proposal to amend the regulations to require the reporting of soybean oil and protein on official inspection certificates for grade effective September 2, 1991.

DATES: This withdrawal is effective September 4, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454. Telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Final Action

On February 23, 1989, FGIS proposed in the **Federal Register** (54 FR 7778) to offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS also proposed revising § 800.162(a) of the regulations to require the reporting of soybean oil and protein results on official soybean inspection certificates for grade effective September 2, 1991. Further, FGIS requested comments on the preferred constant moisture basis for reporting soybean oil and protein results.

FGIS received a total of 31 comments during the 60-day comment period. The comments were submitted from all segments of the soybean industry including processing firms, oilseed/grain handlers, producer and trade associations, foreign buyers, university professors and researchers, soybean producers, official inspection agencies, and a seed company.

On the basis of these comments and other available information, FGIS has decided to offer soybean oil and protein testing as official criteria effective September 4, 1989. FGIS will use approved NIRS equipment in performing these tests and will report the results to the nearest tenth of a percent on a 13 percent moisture basis.

Official Criteria Status

Twenty-six commentors were in favor of soybean oil and protein testing. Of those 26, 23 commentors specifically addressed the official criteria status and were in support of the FGIS proposal to offer soybean oil and protein testing as official criteria effective September 4, 1989. In addition, three other commentors favored soybean oil and protein testing in general. Only two commentors representing marketing and soybean processing interests were not in favor of this proposal. The opposition ranged from concern about the effect of soybean oil and protein testing on producers to concern about the accuracy of the NIRS equipment.

FGIS conducted a study to evaluate soybean oil and protein testing procedures under field conditions. The study results were shared with industry representatives at a public meeting held on May 10, 1989, in Kansas City, Missouri. Notice of that meeting was published in the **Federal Register** on April 25, 1989. The purpose of the meeting was to review with the industry and interested persons information concerning research data, proposed analytical procedures, NIRS calibration data and procedures, field test data, equipment type—evaluation data and the program and inspection procedures, if soybean oil and protein testing were adopted.

Based upon available information, including the comments received, FGIS has determined that including soybean oil and protein testing as official criteria under the United States Grain Standards Act (USGSA) will provide a simple, timely, repeatable and cost effective means of determining oil and protein content in soybeans. Expanding official criteria to include such testing will provide information concerning intrinsic properties which relate to user economics. Such information will be of benefit to the industry as a whole including soybean producers. Further, FGIS will continually monitor the soybean oil and protein testing program.

Accordingly, FGIS will expand official criteria under the USGSA to include soybean oil and protein testing, upon request, beginning September 4, 1989.

Moisture Basis

Twenty-three commentors suggested a moisture basis to be used in reporting soybean oil and protein results. Nineteen of the 23 commentors supported using a constant moisture basis for reporting oil and protein results. Opinions differed, however, as to what moisture level should serve as the constant. Nine supported a 13 percent constant level. Three would support any level from 12 to 13 percent, and four supported a "dry matter" basis. The four remaining commentors expressed preference for an "as is" moisture basis over a constant moisture basis for reporting oil and protein results.

Those in favor of using an "as is" reporting basis generally believe that the "as is" basis would better represent the value of the oil and protein within a specific lot of soybeans. Those in favor of using a constant moisture basis were of the view that the marketing of soybeans is dependent upon the market's ability to compare oil and protein results between soybean lots. Further more, reporting on a constant basis would also enable producers to more easily differentiate between two varieties with different chemical composition.

Oil an protein quantities of soybeans with different moisture contents cannot easily be compared when reported on an "as is" moisture basis. Soybean oil and protein content are inversely related to moisture content. Reporting oil and protein on a constant moisture basis will provide data which may be easily compared. A constant moisture basis will require adjusting the reported percentage of oil and protein when compared to an "as is" moisture basis. However, this adjustment is solely mathematical.

Noting the advantages and disadvantages of given moisture levels. FGIS requested comments in the February 23, 1989, proposal as to the preferred constant moisture basis (e.g. dry matter, 12 percent or 13 percent) to be used for reporting soybean oil and protein testing results. Concerning the dry matter basis, it noted that oil and protein percentages reported on a dry matter basis would be higher than other constant of "as is" moisture bases. However, excessively dry soybeans would have a potentially negative effect on storability by increasing the number of soybean splits. With respect to a 12 percent or 13 percent basis, it was noted that (1) reporting oil and protein on a moisture basis between 12–13 percent more closely reflects the actual oil/protein content of soybeans introduced into domestic and foreign markets; (2) the average moisture levels of soybeans marketed during the calendar years 1986 and 1987 in domestic and foreign markets was 12.55 percent and 12.75 percent, respectively; (3) reporting oil and protein on a 13 percent moisture basis might encourage producers to deliver soybeans with excessive moisture levels; and (4) a 12.5 percent moisture content is considered safe for long-term storage.

The majority of those supporting a constant moisture basis preferred a 13 percent level, because this level is the standard moisture level used in the current marketing of soybeans. That is, discounts generally are assesed for moisture levels above 13 percent to cover drying and weight loss costs. These discounts should address any excessive moisture level concerns. The commentors also believed that adopting 13 percent as the constant basis would minimize confusion within the market. One commentor who recommended 12 percent as the constant moisture level explained that such a level would more closely reflect the crop average and would encourage producers to deliver soybeans close to the average. However, the average moisture levels of soybeans marketed during the calendar years 1986, 1987, and 1988 were 12.55, 12.75, and 12.86 percent, respectively. Three of those that preferred the dry matter basis offered no explanation for their position. The fourth commentor in favor of dry matter stated, ". . . the dry matter basis may provide the preferable reporting basis since there would be no further downward adjustments in oil and protein results." However, in the proposal, the possible excessive drying of soybeans if a dry matter basis were adopted was raised.

Based upon all information available including the comments received, FGIS has determined that it will use a constant moisture basis when reporting soybean oil and protein results and that the 13 percent moisture basis will best serve the needs of the national inspection system and will minimize any confusion in the marketplace.

Additional Comments

Cleaned vs. Uncleaned Samples

Several commentors expressed concern as to whether oil and protein tests should be run before or after a sample is cleaned. Three commentors suggested that oil and protein tests be run on soybean samples after cleaning. Two other commentors, however, recommended that oil and protein tests be run on soybean samples before cleaning. The reasons given for testing an uncleaned sample were (1) that it would serve as an incentive for shippers to clean soybeans to achieve higher oil and protein results, and (2) that it would allow buyers to determine more closely how much protein and oil can be extracted from a given tonnage of soybeans.

The decision on whether to use a cleaned or uncleaned sample is governed by the testing methodology used. FGIS study results show that the varying percentage of foreign material found in soybean samples would make it virtually impossible to establish standard calibration equations for the NIRS equipment. As a result, this would create uncertainty as to the accuracy of oil and protein test results. Therefore, FGIS testing procedures as described in the FGIS instructions will require that the test samples be cleaned.

Reporting Increment

Five commentors expressed an opinion on the increments used to report soybean oil and protein results. Three individuals were in favor of reporting oil and protein results to the nearest tenth of a percent as long as the NIRS equipment is that accurate or market participants understand the inherent variability of soybean oil and protein testing. One commentor stated that, "The reporting increment used should be no tighter than the repeatability that the equipment and techniques will support." Another commentor suggested that results be reported to the nearest half of a percent.

Reporting results to the nearest half of a percent would introduce a larger rounding bias into the inspection system. Therefore, such a procedure could hamper the inspection system's ability to provide buyer and seller with precise information concerning protein and oil content in soybeans.

The soybean oil and protein results should be reported to the nearest tenth of a percent along with the standard error of performance (SEP). Existing data indicate that the SEP between NIRS measurements and the standard reference methods for soybean oil and protein is 0.5 and 0.6 percentage points, respectively. For example, an NIRS protein value of 40 percent will agree within 0.6 percentage points of the Kjeldahl value, two thirds of the time. The expected difference between NIRS measurements is approximately the same. When one NIRS oil or protein result is compared with another NIRS result, the values will agree within 0.6 percentage points, two thirds of the time. Therefore, an appeal inspection of a 40 percent original inspection result would theoretically test between 39.4 and 40.6 percent, two thirds of the time and between 38.8 and 41.2 percent, 95 percent of the time.

The industry has expressed concern in the past with reporting the SEP and average result due to the potential confusion caused by more than one result appearing on the certificate. Therefore, FGIS has determined that reporting oil and protein results to the nearest tenth of a percent is in the best interest of the inspection system.

FGIS will certify soybean oil and protein results to the nearest tenth of a percent. Further, FGIS will publish in its instructions that the SEP between NIRS measurements is 0.5 percentage points for oil and 0.6 percentage points for protein. The variation in results relates directly to inherent sampling variability, testing variability, and the distribution of the oil and protein within the soybean sample.

Shiplot Inspection Plan

Two commentors offered their views on whether soybean oil and protein should be included under the shiplot inspection plan. Both commentors suggests that FGIS collect soybean oil and protein data when the program begins before further action is taken. After data analysis, one commentor suggested that FGIS would then be able to establish soybean oil and protein parameters for inclusion within the shiplot inspection plan. The other commentor, however, was not in favor of including soybean oil and protein tolerances in the shiplot inspection plan and suggested that FIGS simply review the entire soybean oil and protein program in 1991.

FGIS will not establish inspection tolerances for soybean oil and protein

under the shiplot inspection plan at this time because of the need to develop standard deviations upon which are based breakpoints. Field test results are needed over a period of time to develop information concerning the formulation of standard deviations and breakpoints. Upon development of this information, FGIS will then consider including inspection tolerances for soybean oil and protein under the shiplot inspection plan. However, upon request, inspection personnel will test each sublot for the percentage of oil and protein and certificate the average of the sublot results for the shiplot. Limits on individual sublots will not be applied unless the contract specifies that no sublot shall fall below or exceed a given oil and/or protein value. In such cases, each sublot must meet the contract specification. Any sublot not meeting the specification would be considered a material portion under the plan.

Proposal Withdrawn

1991 Reporting Requirements

In the February 23, 1989, issue of the **Federal Register** (54 FR 7778), FGIS also proposed to amend § 800.162(a) of the regulations to require the reporting of soybean oil and protein on official soybean inspection certificates for grade effective September 2, 1991. Public comments were solicited on the proposal.

Nine commenters representing producer and trade associations, processing firms, and oilseed/grain handlers opposed the proposal. Those opposed to the proposal suggested that FGIS wait until further data was available on the actual field application of soybean oil and protein testing before deciding whether to require the reporting of soybean oil and protein results. In addition, another oilseed/grain handler suggested that mandatory oil and protein testing be deferred until that time when a thorough review indicates that such testing would be needed. Two additional commenters representing processing firms and oilseed/grain handlers did not address this specific issue. However, they did oppose all soybean oil and protein testing by FGIS.

A total of eight commenters were in favor of the proposal. The eight comments were from two producer associations, a foreign buyer, two State farm bureaus, and three individuals involved with soybean research at universities. Another foreign buyer was in favor of mandatory nongrade determining testing as long as FGIS gives a 1 year advance notice of when such testing would begin. Three additional commenters representing two foreign buyers and one domestic oilseed/grain handler merely referenced the issue without expressing an opinion.

The overall consensus of those in favor of the proposal was that the inspection system should use oil and protein content as a factor for assessing soybean quality. This would be accomplished by reporting the percentage of soybean oil and protein content on official inspection certificates for grade.

FGIS recognizes the importance of including tests for intrinsic properties in the official U.S. Grain Standards and/or as part of the national inspection system. However, the comments received reflect a disagreement within the industry as to whether and when to require oil and protecin content as factors on official certificates for grade. FGIS believes that providing soybean oil and protein content as official criteria under the USGSA will provide the industry, on a request basis, with information concerning intrinsic properties as would be required on official certificates for grade. Such information also will provide FGIS with additional data concerning soybean oil and protein testing for future evaluation.

Based upon all information including the comments received, FGIS has determined that the proposed amendment to require the reporting of soybean oil and protein on official inspection certificates for grade effective September 2, 1991, should be withdrawn. The withdrawal of this proposal, however, does not preclude FGIS from reproposing this action at a later date. Throughout the duration of the program that begins September 4, 1989, FGIS will monitor the number of requests for soybean oil and protein testing. At a later date, FGIS may resolicit public comments on the need for and feasibility of mandatory soybean oil and protein testing.

Accordingly, the proposal to amend § 800.162(a) of the regulations to require the reporting of soybean oil and protein on official soybean inspection certificates for grade effective September 2, 1991, is hereby withdrawn.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 4, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–19245 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 910

[FV-89-085]

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1989–90 marketing policy for lemons grown in California and Arizona. The marketing policy was discussed and approved on July 11, 1989, by the Lemon Administrative Committee, which locally administers the marketing order regulating the handling of California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1989–90 season.

DATES: Written suggestions, views, or pertinent information relative to the marketing of the 1989–90 California-Arizona lemon crop will be considered if received by September 15, 1989.

ADDRESSES: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861. Growers and handlers of lemons may obtain a copy of the marketing policy directly from the Lemon Administrative Committee. Their office is located at 117 West Ninth Street, Room 905, Los Angeles, California 90015. Copies of the marketing policy are also available from Ms. Rodriguez.

SUPPLEMENTARY INFORMATION: The marketing order regulating the handling of lemons grown in California and Arizona (7 CFR part 910) is effective under the Agricultural Marketing Agreement Act of 1937 (the "Act," 7 U.S.C. 601–674), as amended. The order authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Regulation of export shipments of lemons and lemons utilized in the

production of processed lemon products is not authorized under the order.

Pursuant to § 910.50 of the marketing order, the Committee is required to hold a marketing policy meeting each year, no later than August 15 of the fiscal year (or such later date as the Committee may establish with the approval of the Secretary). After the marketing policy meeting, the Committee must submit to the Secretary its marketing policy for the fiscal year, and the marketing policy will continue in force until revised or superseded by the adoption of a new marketing policy. The marketing policy must contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) the level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy, the Committee is required to submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

Marketing policies for California-Arizona lemons are intended to apply to a 12-month period beginning on August 1 and ending on the following July 31. This 12-month period contains a full production cycle in all of the districts established under the order and serves to define an annual marketing season.

The Committee adopted its marketing policy for the 1989–90 fiscal year at its July 11, 1989, meeting. Industry representative were present at these meetings. The marketing policy is intended to inform the Secretary and persons in the industry of the Committee's evaluation of supply and demand factors expected during the upcoming marketing season. This information is essential to the review and evaluation of any Committee recommendations for the issuance of volume regulations. The Committee evaluates prospective market conditions and may make recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season without disrupting markets. However, during the season, each weekly recommendation may vary from the schedule depending on prevailing market conditions. Under certain conditions, the Committee may also recommend modification or suspension of size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all districts and provides a view of the anticipated economic environment in which the total crop will be marketed.

The Committee identified several general considerations in forming its 1989–90 marketing policy. It indicated that a satisfactory supply-demand relationship is necessary for a satisfactory price structure for any product. However, the California-Arizona lemon industry, which produces more than 90 percent of the U.S. supply, is faced with unique problems and challenges that distinguish it from other perishable food industries. The Committee pointed out that, unlike other fruits, lemons are generally not consumed independently but are used for flavoring or decorative purposes. These characteristics contribute to a highly inelastic demand for fresh lemons.

The Committee also called attention to the seasonality of demand for fresh lemons which peaks when supplies are traditionally lowest. According to the Committee, the California-Arizona lemon industry expanded into different geographic areas with different climatic production patterns in order to offset this marketing paradox but has experienced a surplus production capacity in part as a result of this expansion. The Committee pointed out that the California-Arizona lemon industry has dealt with the overproduction problem by reducing acreage from a maximum or more than 90,000 acres 13 years ago to approximately 64,000 acres currently, and that such adjustments are an ongoing process. However, it is the Committee's contention that further acreage reduction is not a complete solution to the industry's supply problem. The Committee cites sharp weather-related variations in output in the past several years and states that use of the marketing order to stabilize supplies is vital to the survival of the current California-Arizona lemon industry.

In its 1989–90 marketing policy, the Committee projects the California-Arizona lemon crop at 39,324 cars (1,000 cartons per car with a net weight of 38 pounds per carton). This compares with an estimated total production of 41,759 cars in 1988–89 and 43,465 cars reported by the Committee for 1987–88.

The production area is divided into three districts. The Committee estimates that the production in District 1, Central California, will be 3,800 cars compared to the 4,989 cars produced last year. In District 2, Southern California, production is expected to be 25,455 cars compared to the 23,672 cars produced last year. In District 3, Arizona and the Desert area of California, the production estimate is 10,069 cars compared to the 13,098 cars produced in 1988–89.

The Committee estimates that 1989–90 shipments to domestic fresh market outlets, including Canada, may total 16,500 cars. This would be the same level of shipments that occurred during the 1988–89 season. The Committee estimates that 8,500 cars will be exported in 1989–90 compared to 8,200 cars in 1988–89. Processing and other disposition is forecast at 14,324 cars in 1989–90 compared to 16,000 cars in 1988–89.

In terms of total corp utilization, the Committee expects 42 percent of the 1989–90 crop to be accounted for in domestic fresh markets compared with 41 percent in 1988–89. Fresh exports are projected at 22 percent of total 1989–90 crop utilization compared with 19 percent in 1988–89. Processed and other uses would account for the residual 36 percent compared with 39 percent of the 1988–89 crop.

The Committee projects that the fruit sizes in the 1989–90 fiscal year will fall within normal ranges and that approximately 80 to 85 percent of the 1989–90 crop will average size 165 (2.13 inches in diameter) or larger. Current regulations limit domestic fresh market shipments of lemons to size 235 (1.82 inches in diameter) and larger in all three districts. The Committee estimates that less than 3 percent of the projected 1989–90 production will be smaller than this size and that the most efficient utilization of such small sized fruit is in product outlets.

The market for California-Arizona fresh lemons is influenced by the availability of substitute commodities. Fresh lemons face competition from lemon juice, lemonade, and a number of soft drink products in domestic markets. Moreover, the California-Arizona lemon crop is also in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 600 to 700 cars for 1989–90. These shipments are expected to be confined

to late July through October 1989. The potential for import competition is much greater both in quantity and seasonal availability. However, imports during the last five years have accounted for less than 4 percent of total domestic consumption.

Based on the most data available, the 1988–89 season-to-date average fresh equivalent on-tree parity price for California-Arizona lemons through June 1989 is $7.14 per carton, about 104 percent of the fresh equivalent on-tree parity price for the season through June. The projected season average parity price for the 1989–90 season is $7.73 per carton. The 1989–90 season average on-tree price for fresh lemons is not expected to exceed the estimated 1989–90 season average parity equivalent price.

In discussing the possible need for proprate regulation early in the season, the Committee indicated in its marketing policy that it intends to utilize the tentative shipping schedule only as a guideline in Committee deliberations and determinations. If actual volume recommendations are submitted to the Secretary during the upcoming season, these recommendations shall be based on current supply and demand conditions in order to achieve an orderly market.

Section 910.51(b) of the marketing order identifies factors which the Committee shall consider in recommending volume regulations. These factors are: (1) Quantity of lemons in storage; (2) lemons on hand in, and en route to, the principal markets; (3) trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertient to the marketing policy and the need for, or level of, regulation for the 1989–90 season. Comments are invited on the appropriate levels of fresh lemons which can be made available to the fresh domestic market for the 1989–90 season and the intraseasonal dispersion of shipments. Interested persons are also invited to comment on the possible regulatory and informational impact on small businesses of this marketing policy and any subsequent Committee recommendation for volume regulations.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 10, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–19147 Filed 8–15–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 931 and 932

[Docket No. FV–89–086 PR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington; Increase in Expenses for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 931 for the 1989–90 fiscal period which began July 1. The proposal is needed for the Northwest Fresh Bartlett Pear Marketing Committee established under M.O. 931 to incur operating expenses during the 1989–90 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. The proposed rule would also authorize an increase in expenditures for the California Olive Committee established under Marketing Order No. 932 for the 1989 fiscal year. This increase is needed to cover increased production research costs. Funds to administer these programs are derived from assessments on handlers.

DATES: Comments must be received by August 28, 1989.

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

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 931 [7 CFR Part 931] regulating the handling of fresh Bartlett pears grown in Oregon and Washington and Marketing Agreement and Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximatley 72 handlers of fresh Bartlett pears and seven handlers of California olives regulated under their respective marketing orders, and approximately 1,390 olive producers in California and 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of Bartlett pears may be classified as small entities. Most, but not all, of the olive producers and none of the olive handlers may be classifed as small entities.

Each marketing order administered by the Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and

with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing the anticipated expenses by the expected shipments of the commodity (i.e., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Northwest Fresh Bartlett Pear Marketing Committee met July 10, 1989, and unanimously recommeded 1989–90 fiscal period expenditures of $81,386 and an assessment rate of $0.015 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1988–89 fiscal period budgeted expenditures were $53,800 and the assessment rate was the same as recommended for the 1989–90 fiscal period. These expenditures are primarily for program administration. The increase in the budget from 1988–89 is due to a $7,980 increase in salaries and a $15,451 increase in contingencies for unexpected expenditures. Other budget categories were increased or decreased slightly.

Assessment income for the 1989–90 fiscal period is expected to total $38,758 based on the shipment of 2,583,855 packed boxes of pears at $0.015 per standard box or equivalent. Other available funds include a reserve of $40,628 carried into this fiscal period, and $2,000 in miscellaneous income, primarily from interest bearing accounts. The reserve is within the limits authorized under the marketing order.

A final rule establishing expenses in the amount of $1,883,290 for the California Olive Committee for the fiscal year ending December 31, 1989, was published in the **Federal Register** on February 6, 1989 [54 FR 5585]. That action also fixed an assessment rate of $25.39 per ton of assessable olives received by handlers under M.O. 932 during the 1989 fiscal year.

At a meeting held on July 11, 1989, the California Olive Committee voted unanimously to increase its budget of expenses from $1,883,290 to $1,902,322. The proposed $19,032 increase is needed to cover increased production research costs and the cost of printing and disseminating the results of a completed research project.

No change in the assessment rate was recommended by the olive committee. Adequate funds are available to cover the increase in expenses proposed by this action. While the expenses and assessment rate authorized under M.O. 931 and the increase in expenses authorized under M.O. 932 would impose some additional costs on Bartlett pear and olive handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operatioin of the marketing orders. Therefore, the Administrator of the AMS has determined that these actions would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because approval of the budget and assessment rate for the pear program and the budget increase for the olive program need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects

7 CFR Part 931

Marketing agreements and orders, Bartlett pears, Oregon, and Washington.

7 CFR Part 932

Marketing agreements and orders, olives, California.

For the reasons set forth in the preamble, it is proposed that a new § 931.224 be added and that § 931.223 be amended as follows:

1. The authority citation for 7 CFR Parts 931 and 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

2. New § 931.224 is added to read as follows:

§ 931.224 Expenses and assessment rate.

Expenses of $81,386 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.015 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1990. Unexpended funds from the 1989–90 fiscal period may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 931.223 [Amended]

3. Section 932.223 is amended by changing "$1,883,290" to "$1,902,322".

Dated: August 11, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–19237 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 945

[Docket No. FV-89-066]

Irish Potatoes Grown in Idaho and Eastern Oregon; Proposed Rule to Require Positive Lot Stamping on Containers of Lot-Inspected Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require positive lot stamping on containers of lot-inspected potatoes. After inspection, if an entire lot is not immediately loaded on a truck or rail car but instead placed in a warehouse, it later becomes difficult to associate that lot, or a portion of it, with an inspection certificate. Lot stamping would positively identify the containers in each lot as having been inspected and certified, thus eliminating unnecessary reinspection and its cost.

DATES: Comments must be received by September 5, 1989.

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

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone 202–447–2431.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Agreement No. 98 and Marketing Order No. 945 [7 CFR Part 945], both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes subject to regulation under the marketing order, and approximately 3,100 producers in the production area. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of the handlers and producers of Idaho and Eastern Oregon potatoes may be classified as small entities.

Fresh market shipments of potatotes grown in Idaho and Eastern Oregon are currently required to meet minimum quality and size standards, as well as pack specifications. They are also required to be inspected and certified as meeting those quality, size and pack standards by the Idaho or Oregon Federal-State Inspection Service.

This proposal would require that containers of lot-inspected potatoes be stamped with a Federal or Federal-State approved positive lot number. This action was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (committee), which is responsible for local administration of the marketing order program, at its May 25, 1989, annual meeting.

Potatoes for shipment to fresh market outlets are inspected in one of two ways. One method, in-line inspection, calls for the inspector to be present while the potatoes are being graded, sorted and packed in the packinghouse. The inspector follows the flow of the product from the beginning, when the potatoes are dumped, to the end, when the bagged or boxed potatoes are palletized and loaded on trucks or rail cars. During this process, the inspector periodically removes samples to test for compliance with grade, size, and other handling requirements. Since the inspector is present when the potatoes are loaded for shipment, the inspection certificate issued reflects the specific rail car number of truck license number, thus providing a positive identification for each load.

The second method, lot inspection, is used for about 10 percent of fresh shipments. The lot inspection procedure was originally set up for weekends and periods of relatively low shipping volume. Under this procedure, the inspector may not be present at the time of packing or loading. He or she generally arrives at the packing shed after a lot has been packed; inspects and certifies that lot; and leaves prior to loading and shipment.

According to the committee, one problem with this system is that the certificates issued for lot-inspected potatoes are not associated with a trailer license or rail car number, since the inspector may not be present during loading. In the event of a rejection or other problem at receiving point, it is difficult to determine when or if the lot was inspected and the number of the applicable inspection certificates. Moreover, there is some movement of lot-inspected potatoes between shippers, who buy from each other when their own stocks are insufficient to complete an order.

Under the lot inspection procedure, once a lot or specified number of containers has been inspected, the lot typically remains in the packing facility or a nearby warehouse until shipment. Inspectors generally are not present to observe the loading process. Therefore, except for any identifying marks that may be written on the containers by the shipper's personnel, there is no way to identify the lot or associate it with a particular inspection certificate. As a result, when the potatoes are later shipped, with no evidence of inspection, they may be reinspected by the receiver. This results in unnecessary handling costs.

In addition to these problems, the lack of identifying marks on the containers in a lot occasionally results in more potatoes being shipped than were inspected. This is the result of loading personnel confusing one group of containers from an inspected lot with another from an uninspected lot.

The committee believes that these problems would be eliminated by the use of positive lot stamping. Under this procedure, the inspector would stamp the containers in the inspected lot with a number that positively identifies the lot and associates it with a particular inspection certificate. When lots or partial lots are shipped between handlers, the stamped or tagged sacks or cartons would serve as proof of inspection, removing any question about the necessity for reinspection.

Most of the shippers and growers at the committee meeting were small business representatives, and they unanimously agreed that this proposal would be of benefit to them by helping to prevent the previously described problems and reducing costs. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The shipping season begins in early August. To be of maximum benefit to the industry, this regulation, if adopted, should cover as many shipments as possible during the season. Therefore, it is determined that a comment period of 20 days is appropriate.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is amended by adding a new paragraph (d)(5) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(d) * * *

(5) Containers shall be marked with a Federal or Federal-State lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being loaded directly onto a carrier under the

supervision of the Federal or Federal-State Inspection Service.

* * * * *

Dated: August 11, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-19239 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, 1139

[Docket Nos. AO-160-A65-R01, etc.; DA-89-028]

Milk in the Middle Atlantic and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A65-RO1
1001	New England	AO-14-A62-RO1
1002	New York-New Jersey.	AO-71-A77-RO1
1005	Carolina	AO-388-A1-RO1
1006	Upper Florida	AO-356-A27
1007	Georgia	AO-366-A30
1011	Tennessee Valley	AO-251-A33
1012	Tampa Bay	AO-347-A30
1013	Southeastern Florida.	AO-286-A37
1030	Chicago Regional	AO-361-A26
1032	Southern Illinois-Eastern Missouri.	AO-313-A37
1033	Ohio Valley	AO-166-A58
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A53
1040	Southern Michigan	AO-225-A40
1046	Louisville-Lexington-Evansville.	AO-123-A59
1049	Indiana	AO-319-A36
1050	Central Illinois	AO-355-A25
1064	Greater Kansas City.	AO-23-A58
1065	Nebraska-Western Iowa.	AO-86-A45
1068	Upper Midwest	AO-178-A42
1076	Eastern South Dakota.	AO-260-A28
1079	Iowa	AO-295-A39
1093	Alabama-West Florida.	AO-386-A8
1094	New Orleans-Mississippi.	AO-103-A50
1096	Greater Louisiana	AO-257-A37
1097	Memphis, Tennessee.	AO-219-A44
1098	Nashville, Tennessee.	AO-184-A53
1099	Paducah, Kentucky	AO-183-A43
1106	Southwest Plains	AO-210-A49
1108	Central Arkansas	AO-243-A40
1120	Lubbock-Plainview, Texas.	AO-328-A27
1124	Pacific Northwest	AO-368-A17
1126	Texas	AO-231-A57
1131	Central Arizona	AO-271-A27
1132	Texas Panhandle	AO-262-A37
1134	Western Colorado	AO-301-A20
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A7
1137	Eastern Colorado	AO-326-A28
1138	Rio Grande Valley	AO-335-A24
1139	Great Basin	AO-309-A33

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals that would change the manner in which the Class II milk price is determined and announced in most Federal milk marketing orders. The hearing was requested by the Milk Industry Foundation and the International Ice Cream Association, which represent fluid milk processors and ice cream makers throughout the United States.

Currently, tentative Class II milk prices are established based on a formula provided in the orders. These prices are announced on the 15th day of each month as a tentative Class II price for the following month. Final Class II prices are determined and announced for the preceding month on the fifth day of the following month. For example, the tentative Class II prices for June were announced on May 15. The final Class II prices for June were announced on July 5. The final Class II price may not be less than the Minnesota-Wisconsin manufacturing grade milk price (M-W price) for the month (June in the example). Thus, the final Class II price may be higher than the tentative price.

The proposals included in this notice would provide a different procedure for determining the Class II prices such that once announced they would not change. However, the Class II prices would continue to be announced in advance. Under one proposal, the current formula for computing the tentative Class II prices would continue to be used. Under another proposal, an entirely new method of computing the Class II prices is proposed.

The proponents consider these proposed amendments to be necessary to eliminate uncertainty in the raw product cost and thus in pricing Class II products to their customers.

DATES: The hearing will convene at 9:30 a.m. local time on August 22, 1989.

ADDRESSES: The hearing will be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia, 22314, (703) 683-6000.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Hotel-Old Town, 901 N. Fairfax Street, Alexandria, Virginia, 22314, beginning at 9:30 a.m., on August 22, 1989, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

This hearing represents a reopening for the limited purposes stated herein of the public hearings previously held with respect to the orders regulating the handling of milk in the New England (Docket No. AO-14-A62), New York-New Jersey (Docket No. AO-71-A77) and Middle Atlantic (Docket No. AO-160-A65; DA-88-105) marketing areas. It also represents reopening for the limited purposes stated herein of a public hearing previously held with respect to a proposal to adopt a new order for the Carolina marketing area (Docket No. AO-388-A1; DA-88-123).

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Public Law 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a

milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 21 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, 1139

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR Parts 1004, 1001, 1002, 1005 through 1040, 1046 through 1068, 1076 through 1099, and 1106 through 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Milk Industry Foundation/International Ice Cream Association:

Proposal No. 1

For The Federal Milk Marketing Orders listed below, delete the first paragraph of § —.50(b) and all of § —.53, and substitute the following:

§ —.50(b) Class II price.

An advance Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The advance Class II price shall be the basic Class II formula computed pursuant to § —.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section. The advance Class II price shall be the final Class II price except that: If the advance Class II price for the month is less than the Class III price, the difference in increments of 25 cents per hundredweight or less shall be added to the advance Class II price in subsequent months until the difference is made up. Any difference of 25 cents per hundredweight or less in one month shall be added to the next month's advance Class II price. These differences may be cumulative from month to month.

§ —.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month calculated pursuant to § —.50(b).

For ease of presentation, the marketing orders affected by this proposal have been grouped as follows:

Group A

1005 Carolina
1007 Georgia
1011 Tennessee Valley
1030 Chicago Regional
1032 Southern Illinois—Eastern Missouri
1033 Ohio Valley
1036 Eastern Ohio—Western Pennsylvania
1040 Southern Michigan
1046 Louisville—Lexington—Evansville
1049 Indiana
1050 Central Illinois
1064 Greater Kansas City
1065 Nebraska—Western Iowa
1068 Upper Midwest
1076 Eastern South Dakota
1079 Iowa
1093 Alabama—West Florida
1094 New Orelans—Mississippi
1096 Greater Louisiana
1097 Memphis, Tennessee
1098 Nashville, Tennessee
1099 Paducah, Kentucky
1106 Southwest Plains
1108 Central Arkansas
1120 Lubbock—Plainview, Texas
1126 Texas
1131 Central Arizona
1132 Texas Panhandle
1134 Western Colorado
1135 Southwestern Idaho—Eastern Oregon
1137 Eastern Colorado
1138 Rio Grande Valley
1139 Great Basin

Group B

1006 Upper Florida
1012 Tampa Bay
1013 Southeastern Florida

Group C

1124 Pacific Northwest

Group D [1]

1001 New England
1002 New York-New Jersey
1004 Middle Atlantic

With respect to the New England, New York-New Jersey and Middle Atlantic orders, the section numbers and paragraph numbers may be different than as indicated above. With respect to these three orders and a proposed new order for North Carolina and South Carolina, the evidence received with respect to proposals No. 1 and No. 2 will be limited to the question of whether any action that results from this hearing should also be applicable to the pricing provisions for an intermediate classification in each order, if an intermediate Class II ultimately is adopted based on evidence at the earlier hearings.

Proposed by The Milk Foundation of Indiana:

Proposal No. 2

For all the orders included in this notice, the Class II price for any month shall be the Minnesota-Wisconsin Series price for the second preceding month plus 10 cents (or 15 cents or 25 cents as the orders now provide), adjusted by the average of the difference in the previous three years between the Minnesota-Wisconsin Series price for the second preceding month and the current month. Such price would be announced on or before the fifth of the month for the following month.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Offices of all the Market Administrators

[1] Inclusion of this group or orders was requested by Eastern Milk Producers Cooperatives Association.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: August 10, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89.19238 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 7

[Docket No. 89-11]

Rules, Policies, and Procedures for Corporate Activities; Payment of Dividends

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend two of its interpretive rulings in 12 CFR Part 7, and transform them into regulations as part of 12 CFR Part 5. The amendments are needed to revise and clarify certain OCC interpretations of statutes that principally govern the payment of dividends by national banks (12 U.S.C. 56 & 60). The intended effect is to make the calculation of national banks' dividend-paying capacity consistent with generally accepted accounting principles (GAAP). In this regard, the allowance for loan and lease losses will not be considered an element of either "undivided profits then on hand" or "net profits". Further, a national bank may be able to use a portion of its capital surplus account as "undivided profits then on hand," depending on the composition of that account. In addition, the proposed amendments would clarify that dividends on preferred stock are not subject to the limitations of 12 U.S.C. 56, while explicitly making such dividends subject to the constraints of 12 U.S.C. 60. The amendments do not diminish or impair a well-capitalized bank's ability to make cash payments to its shareholders in the form of a return of capital. Moreover, some banks may be able to take remedial measures to restore their ability to pay a dividend either by consummating a quasi-reorganization or issuing preferred stock not subject to the dividend limitation of 12 U.S.C. 56.

DATE: Comments must be received by October 16, 1989.

ADDRESS: Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attention: Jacqueline England; Docket No. 89-11. Components will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Larry Senter, National Bank Examiner, Supervision Policy/Research Division, (202) 447-1164; Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202) 447-1880; or Doug Burr, Accounting Fellow, Bank Accounting Division, (202) 447-0471, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC believes capital adequacy is critically important to the safety and soundness of national banks. A major contributor to a bank's capital is the quality of its earnings, and the amount of earnings that are retained and added to capital. Earnings that are paid out to stockholders in the form of cash dividends reduce the level of a bank's capital support. There are two sections of the National Bank Act that must be satisfied before a national bank can declare a dividend—12 U.S.C. 56 & 60.

While both place a limit on a bank's ability to pay a cash dividend, these two sections serve different functions. Section 56 is a capital impairment limitation and provides, in pertinent part, as follows:

> No association * * * shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association * * * to an amount greater than its net profits then on hand * * *.

In addition to the capital limitation, the National Bank Act contains an earnings limitation by providing, in § 60(b):

> The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus * * *.

Thus, sections 56 and 60 set up a two-part test for determining the extent to which national banks may pay dividends. If a proposed dividend would violate the provisions of section 56, the constraints imposed by section 60 are irrelevant, because section 56 is an absolute bar to the payment of dividends that would exceed the bank's "net profits then on hand." If a bank has the requisite unimpaired capital under section 56, only then must it be concerned with the recent-earnings test of section 60. Furthermore, if a proposed dividend is payable under Section 56, but fails the test of section 60, the bank may still be allowed to pay the dividend, but only with "the approval of the Comptroller of the Currency."

The OCC has issued interpretive rulings dealing with both sections 56 and 60. Interpretative Ruling 7.6125 (12 CFR 7.6125) interprets the provisions of 12 U.S.C. 56, and focuses exclusively on so-called "statutory bad debt." (section 56 requires that a bank deduct "its lossess and bad debts" from its "net profits then on hand.") The statute gives some guidance as to what assets are to be considered bad debts, but I.R. 7.6125 provides much more explanation as to what constitutes, for example, a debt that is "well secured and in the process of collection." Interpretive Ruling 7.6100 (12 CFR 7.6100) is primarily a recitation of 12 U.S.C. 60; however, it also deals with portions of 12 U.S.C. 51b and 1828(b).

Both sections 56 and 60 were passed as part of the National Bank Act of 1864. In the time since it was enacted, section 56 has never been amended. Section 60 was amended in 1935 and again in 1959.[1] In addition to Interpretive Rulings 7.6100 and 7.6125, the OCC has issued a number of interpretations of sections 56 and 60 in the 125 years since they became law. These interpretations have been both formal and informal. Furthermore, not all of these interpretations have been consistent in their opinions.

Purpose

The purpose of this notice of proposed rulemaking ("NPRM") is to formalize the OCC's opinions in the area of the payment of dividends by national banks and to communicate these views to the national banking community. In addition to the need for consistent interpretation of the relevant statutory provisions, the OCC is amending Interpretive Rulings 7.6100 and 7.6125 to conform to GAAP. Furthermore, the OCC is transforming these interpretive rulings into regulations, the violation of which would be the basis for an enforcement action. Thus, these dividend regulations will be legally binding on both the agency and the industry. The new

[1] *See* Act of August 23, 1935, c. 614, 315, 49 Stat. 712; and Pub. L. 96-230, 21(a), 73 Stat. 465.

regulations will be contained in the corporate activities provisions of the OCC's exsiting regulations—12 CFR Part 5.

Issues

The issue of when a bank can legally pay a dividend, and the amount of that dividend, is complicated by an antiquated statutory scheme. Sections 56 and 60 were enacted long before the creation of today's accrual accounting system, with its allowance for loan and lease losses (ALLL). The terminology used in these statutes is not precise in the context of today's accounting principles. As a result, there is ambiguity and uncertainty concerning several accounting issues when applying these statutes to specific fact situations. Accordingly, the NPRM deals with the following issues:

1. What portion of a bank's "capital surplus" account should be available for the payment of dividends?
2. How should the ALLL be treated for purposes of calculating a national bank's dividend-paying capacity?
3. Should dividends on a bank's preferred stock be subject to the same limitations as dividends on its common stock?

With respect to payments of dividends to holders of common stock, these issues can be summarized in two questions: (a) For pruposes of section 56, what is included in "undivided profits then on hand"; and (b) for purposes of section 60, are provisions made to the ALLL part of "net profits"? For preferred stock dividends, one must initially determine whether section 56 and/or section 60 are applicable. To the extent either section is applicable, the issues outlined above must also be considered with respect to dividends on preferred stock.

I. Capital Surplus

A bank that sustains losses in excess of its undivided profits then on hand, and then returns to profitability, often begins to look for ways to legally pay dividends out of current earnings, notwithstanding a negative balance in its historical retained earnings account. If a bank's surplus fund were considered part of "undivided profits then on hand," [2] many of these banks could legally pay a dividend since their surplus funds would, in most cases, more than offset their negative retained earnings.[3]

Pursuant to 60(a), a national bank's "surplus fund (must) equal its common capital." Most banks have surplus in excess of the amount required by 60(a), because there was a time in the OCC's history when retained earnings (or undivided profits) did not qualify as capital for such things as computing the total amount a bank could lend to one borrower. A national bank, in order to increase its lending limit, had to transfer retained earnings to the surplus fund. The portion of the surplus fund in excess of what is required by 60(a) has become known as "surplus surplus."

The OCC has a number of options for dealing with the question of what part of the surplus fund qualifies as undivided profits. The two extremes are to interpret section 56 to say either none or all of the surplus fund is included in undivided profits. Because of section 60(a)'s required transfers to surplus, it is reasonable to conclude that, for purposes of section 56, "capital" includes not only common and preferred stock but also the portion of the surplus fund that is equal to common capital. Thus, it would seem an appropriate interpretation is somewhere between the two extremes. In this middle ground, there are at least two possibilities: (a) All surplus surplus is included in undivided profits; or (b) only the portion of surplus surplus that came from the earnings of prior periods qualifies as undivided profits.

The *Digest of Opinions of the OCC*, No. 6305 (1960 ed.) states, "[T]he following capital-structure accounts constitute a bank's profits which are legally available for the payment of dividends:

1. That portion, if any, of the surplus account which is in excess of the amount of the common capital account (; and)
2. The undivided-profits account."

This Opinion was not carried forward into the Comproller's Manual for National Banks and has never been adopted as an interpretive ruling. Furthermore, Opinion No. 6305 has not been cited by the OCC in a public document for over 25 years. Nonetheless, it provides authority for saying that at least a portion of the surplus fund should be included in undivided profits when calculating dividend-paying capacity.[4]

Rather than following Opinion No. 6305 and saying that all of a bank's surplus surplus (even the portion that was paid in by shareholders or created through other means, *e.g.*, a stock dividend) is legally available for the payment of dividends, this NPRM adopts an approach whereby only earned surplus surplus qualifies as "undivided profits than on hand." This would prevent a bank from paying dividends out of its paid-in capital—something that would be a return of capital requiring OCC and shareholder approval under 12 U.S.C. 59. In addition, this NPRM proivdes that OCC approval must be obtained before a bank can "unbundle" its surplus surplus by transferring any portion back to undivided profits. Thus, before a bank can move a portion of its earned surplus to undivided profits through the process described in this NPRM, the bank must seek and obtain OCC approval of the transaction.

Accordingly, some banks may be able to eliminate their deficit or negative undivided profits by an approved transfer of earned "suprlus surplus" and, as a result, be repositioned to resume the payment of dividends out of current earnings. Moreover, a national bank that is profitable and well-capitalized, but is precluded from paying a dividend under section 56, may be able to pay cash to its common shareholders through a return of capital under 12 U.S.C. 59. However, this can only be done with the approval of both the OCC and two-thirds of the bank's shareholders. It should be noted that the OCC's approval is not likely to be forthcoming unless the bank has: adequate capital, high-quality earnings and future prospects that ensure its continued profitability. Other methods by which the bank's shareholders may be able to receive a return on their investment are through a quasi-reorganization or the use of preferred stock. OCC approval must be obtained before a bank can transfer unearned surplus to undivided profits—*e.g.*, through the process of a quasi-reorganization or other corporate restructuring.

II. The Allowance for Loan and Lease Losses

Determining the appropriate treatment for provisions made to the ALLL is

[2] Although 12 U.S.C. 56 uses the terms "undivided profits then on hand" and "net profits then on hand" in the same sentence, the OCC has, for a number of years, considered them to be interchangeable. *See Digest of Opinions of the OCC*, No. 6306 (1960 ed.). There is no case law that defines or distinguishes these terms, and the legislative history to the National Bank Act provides no instruction as to their meaning. Furthermore, "net profits" as used in Section 60 has a different meaning from "net profits then on hand" as used in Section 56. Thus, in this NPRM, when discussing Section 56, the OCC will use the term "undivided profits then on hand."

[3] *See, e.g.*, OCC No Objection Letter No. 88-10, December 8, 1988, reprinted in *Fed. Banking L. Rep.* ¶ _____ (CCH 1989).

[4] *See also* Letter from Justin Watson to Robert Ellyson, January 26, 1967 (OCC does not actively encourage banks to retransfer excess surplus, but it is within the prudent judgment of the board of directors to do so).

pertinent to calculating dividend-paying capacity under both sections 56 and 60. For purposes of section 56, the question is: Should a bank be allowed to include its ALLL when calculating its undivided profits then on hand? Pursuant to section 60, a similar question exists: Wheat is the appropriate treatment for provisions to the ALLL when determining the amount of a bank's net profits?

A. 12 U.S.C. 56

As stated previously, Section 56 is a capital impairment test and is based on a bank's capital and retained earnings)—*i.e.*, a bank cannot pay a dividend if its capital is impaired or if the payment of the dividend would impair its capital. Under GAAP, provisions to the ALLL are charged against earnings and are not part of undivided profits; therefore, pursuant to GAAP, the ALLL is not available for the payment of dividends. Furthermore, including the ALL in undivided profits then on hand can produce some undesirable results—*e.g.*, a bank with a negative balance in undivided profits then on hand could legally pay a dividend.[5]

In addition, the ALLL is a contra-asset account reflecting the losses inherent (but unidentified) in the loan and lease portfolio. The OCC believes that provisions to the ALLL should be available when the losses are identified or actually realized and, therefore, should not be considered available for distribution to the bank's shareholders in the form of cash dividends. This NPRM prohibits national banks from adding the ALLL to its undivided profits then on hand when calculating the amount of dividends it can pay under 12 U.S.C. 56.

One potential concern with this interpretation arises from the requirement in section 56 that a bank deduct its "losses and bad debts" from its undivided profits then on hand. It is arguable that this "statutory bad debt" provision was Congress' proxy for the ALLL. At the time section 56 was enacted, the ALLL used under today's accounting principles did not exist. Further, banks did not always charge off losses which had been identified.

To ameliorate the effects of requiring banks to deduct their statutory bad debt from their undivided profits then on hand, without first allowing them to add their ALLL to undivided profits then on hand, the OCC is proposing to permit banks to net statutory bad debts against the ALLL. To the extent a bank has statutory bad debts in excess of its ALLL, the excess will be deducted from undivided profits then on hand. However, a bank with an ALLL greater than its statutory bad debts may not include this excess ALLL in its undivided profits then on hand.

B. 12 U.S.C. 60

The issue of whether the ALLL should be considered part of "net profits" is more complicated in the earnings test of section 60, since that section provides:

> For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after decucting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.
>
> 12 U.S.C. 60(c).

Upon initial review, this definition would not seem to leave room for much interpretation. However, because it was written at a time when a majority of banks were on a cash basis of accounting, rather than an accrual basis, there was no mention of the ALLL.[6] The question then becomes: How should provisions, charge offs and recoveries recorded in a bank's ALLL be treated in determining its dividend-paying capacity under the earnings test of 12 U.S.C. 60? According to GAAP, provisions to the ALLL are charged against current earnings, as a current operating expense, and do not represent net income available to shareholders. Further, actual losses and recoveries do not directly affect the earnings of a bank, only its ALLL—*i.e.*, the ALLL is decreased when actual loan losses are incurred and increased when actual recoveries are made.

This NPRM interprets section 60 in a manner consistent with GAAP. Accordingly, loan loss provisions charged to earnings by a bank are not added back to earnings when computing "net profits". In addition, net charge offs—*i.e.*, actual losses minus actual recoveries—are not deducted from "net profits".

By adding provisions made to its ALLL back to net profits, a bank can significantly increse the amount of cash dividends it can legally pay to its shareholders without regulatory approval, something which may be considered an unsafe and unsound banking practice. The ALLL represents losses inherent in the loan and lease portfolio and, as such, the OCC believes provisions to it should not be considered as available to shareholders for cash dividends. This is not to say that a national bank is legally barred from paying dividends in excess of its retained net income for the year to date plus the prior two years. However, before a bank can pay such a dividend, the OCC should have the opportunity to review carefully the bank's financial condition and future prospects, and determine whether such a dividend is appropriate.

III. Preferred Stock

Since section 56 and 60 are not limited by their terms to common stock dividends, it is arguable that the limitations of those sections are also applicable to preferred stock dividends. However, 12 U.S.C. 51b provides, in relevant part:

> (a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends * * * as may be provided in the articles of association with the approval of the Comptroller of the Currency * * *.
>
> (b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full * * *.

Thus, the plain words of section 51b(a) indicate that cumulative dividends on preferred stock are not restricted by the terms of sections 56 and 60. Nonetheless, when the provisions of section 51b are read in the context of the overall statutory scheme they become ambiguous. Furthermore, it is the opinion of the OCC that the policies behind sections 51b, 56, and 60 dictate a result that is contrary to what might be suggested by a literal reading of 12 U.S.C. 51b(a).

Section 51b was contained in the Emergency Banking Act of 1933, which was intended to rehabilitate banks with impaired capital by authorizing them to issue preferred stock to the public or the Reconstruction Finance Corporation (RFC). (Before the passage of this Act, national banks could not issue preferred stock.) This provision was immediately amended in June of 1933, and the legislative history to this amendment provides some insight as to the intent of the drafters.

As originally enacted, section 51b read, in pertinent part, as follows:

[5] In such a situation, GAAP would not preclude a bank from paying out cash to its shareholders; however, the payment would be return of capital, not a dividend. For national banks, such a return of capital would require shareholder and OCC approval. *See* 12 U.S.C. 59.

[6] Section 60(c) was added in 1959 by Pub. L. 86-230; however, because most banks did not use the accrual method of accounting at that time, the legislative history does not shed any light on how the ALLL is to be treated. *See* 1959 U.S. Code Cong. and Adm. News, p. 2232.

The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum * * *. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to such retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

Emergency Banking Act, March 9, 1933, ch. 1, Title III Section 302, 48 Stat. 5.

According to the RFC, this provision put it "in the position of either having to refuse assistance (to banks whose common stock was impaired), or having to take preferred stock * * * with no possibility of receiving." [7] Thus, at the behest of the RFC, the provisions of the Emergency Banking Act that dealt with preferred stock and its dividends were rearranged so that the payment of cumulative dividends was authorized "[n]otwithstanding any other provision of law."

A. 12 U.S.C. 56

In spite of the language of section 51b and its legislative history, some prior OCC opinions have argued that dividends on preferred stock cannot be made if the bank has sustained losses in excess of "its undivided profits then on hand." While some of these arguments are persuasive, the OCC now believes that the better interpretation is that preferred stock dividends are not subject to the limitations of 12 U.S.C. 56. According to the legislative history, the RFC was concerned that section 56 would prevent it from getting a return on its investment (of Government funds) in a bank that had current earnings, unless section 51b was amended specifically to override the limitations of section 56. In other words, the RFC had injected new funds into an otherwise insolvent institution and wanted to receive dividends out of the earnings that had been generated from its investment—something that may have been prohibited by section 56 prior to the June 1933 amendments to section 51b. Thus, the OCC does not believe that it would be correct to interpret section 56 as being applicable to cash dividends on preferred stock.

B. 12 U.S.C. 60

As mentioned previously, section 60 has been amended twice since it was enacted as part of the National Bank Act of 1864. It is the legislative history of these amendments, when read in conjunction with the legislative history of the June 1933 amendments to section 51b, that supports the OCC's conclusion that the recent-earnings limitation of 12 U.S.C. 60(b) applies to preferred stock dividends.

The legislative history of the 1959 amendments to section 60 is particularly important. Although preferred stock is not mentioned as being expressly covered by the provisions of the section, the amendments added the recent-earnings limitation for "(t)he purpose of * * * prevent(ing) excessive dividends to shareholders where such payments would result in the dissipation of needed capital funds * * *." [8] The clear Congressional intent of the 1959 amendments to section 60 is served by applying the recent-earnings test to preferred stock dividends.

Furthermore, this interpretation of section 60 is consistent with the policy and legislative history of section 51b. When section 51b was enacted, section 60 did not limit dividends based on a bank's recent earnings; thus, it is not surprising that the legislative history of section 51b does not mention the provision's effect on section 60. Additionally, it is reasonable to conclude that the RFC was seeking dividends only from current earnings, because it made statements to the effect that the March 1933 version of section 51b prevented the payment of dividends "even though current earnings are sufficient for such payment." S. Rep. No. 43 at 2.

The OCC invites public comment on all aspects of this NPRM, but specifically seeks responses to the following questions:

1. What portion of a bank's "capital surplus" account should be available for the payment of dividends?
2. How should the allowance for loan and lease losses be treated for purposes of calculating a national bank's dividend-paying capacity?
3. Should dividends on a bank's preferred stock be subject to the same limitations as dividends on its common stock?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, a preliminary Regulatory Flexibility Analysis is not required.

Executive Order 12291

It is certified that this proposed rule does not constitute a "major rule" and, therefore, does not require the preparation of a preliminary regulatory impact analysis.

Paperwork Reduction Act

The collections of information contained in §§ 5.61 and 5.62 of this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

Comments concerning these collections of information should be directed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer, with a copy to the Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219.

This information is required by the OCC to ensure the continued safety and soundness of national banks. This information will be used by the OCC to evaluate specific applications by national banks and to prevent potentially unsafe and unsound practices. The likely respondents are national banks, possibly including some small national banks.

Section 5.61(c)(4)(ii) Burden Information

This is a usual and customary recordkeeping practice affirmed by the regulation. The OCC has assigned one recordkeeping burden hour to this requirement only to show that it was reviewed by OMB.

Section 5.61(d)(3)(iii) Burden Information

(This is a new collection of information and is being added to existing OMB control number 1557-0155.)

The estimated number of respondents is 100 for the first year and 20 per year thereafter, with each respondent submitting one response per year.

The estimated annual burden per response will vary, based on the length of time the bank has been in operation and the number of transactions in its surplus account over those years. However, most of the material needed to prepare the request for approval will be available through usual and customary records. The OCC estimates that the average time required for a typical response will be 10 burden hours.

100 (year one)+20 (year two)+20 (year three) divided by 3 years=an estimated average of 47 respondents per year.

[7] S. Rep. No. 43, 73rd Cong., 1st Sess. 1-3 (1933).

[8] 105 Cong. Rec. 15398, August 24, 1959 (statements of Representative Brown of Georgia).

47 respondents×1 response=47 annual responses.

47 responses×10 burdens hours=470 estimated annual burden hours.

Section 5.62(e) Burden Information

(This collection of information was formerly contained in § 7.6100, approved by OMB under control number 1557-0155.)

The inclusion of preferred stock dividends has increased the original estimated 115 responses and 115 burden hours by an estimated 30 responses and 30 burden hours.

The total estimated number of respondents is 145 with one response per year.

The estimated annual burden per response may vary, depending on individual circumstances, however, since all of the material needed to prepare the request for approval of the Deputy Comptroller will be available through usual and customary records, the OCC estimates the average burden to prepare the letter request is approximately one hour.

145 responses×1 burden hour=145 estimated annual burden hours.

Total Burden

192(47+145) respondents×1 response=192 annual responses.

192 annual responses×3.2 burden hours per response=615 estimated annual reporting burden hours.

1 recordkeeper at 1 hour=1 annual recordkeeping burden hour attributable to § 5.61(d)(4)(iii).

List of Subjects in 12 CFR Parts 5 and 7

National banks, reporting and requirements, securities.

Authority and Issuance

For the reasons set forth in the preamble, parts 5 and 7 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5— RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93(a).

2. Section 5.61 is added to read as follows:

§ 5.61 Payment of dividends; capital limitation.

(a) *Law.* 12 U.S.C. 56 provides:

No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made; and no dividend shall ever be made by an association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in the process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section 59 of this title.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Statutory bad debt.* Pursuant to 12 U.S.C. 56, bad debts must be deducted from net profits then on hand in computing funds available for the payment of dividends on common stocks. Bad debts, as that term is used in the statute, means matured obligations due a national bank on which interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Every type of overdue indebtedness owing to the bank must be considered, including loans and investment securities. The six month period of default of interest may begin at any time, regardless of when the debt matures.

(1) *Matured debt.* Whether a debt has matured for purposes of the statute usually will be determined by applicable contract law. Generally, a debt is matured when all or part of the principal is due and payable as the result of demand, arrival of the stated maturity date, acceleration by contract or by operation of law. Nevertheless, any demand debt on which the payment of interest is six months past due will be considered matured even though payment of the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred.

(2) *Well secured debt.* A debt is well secured within the meaning of the statute if it is secured by collateral in the form of liens on, or pledges of, real or personal property, including securities, having realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. In the event that the loan is partially secured, only that portion not properly secured will be considered a statutory bad debt.

(3) *Debt in the process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reasons for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

(4) *Miscellaneous.*—(i) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation will be considered well secured if it meets the criteria set forth in paragraph (b)(2) of this section; or the claim of the bank against the estate has been duly filed, the statutory period for filing has expired and the assets of the estate are adequate to discharge all obligations in full.

(ii) *Documentation.* The bank must maintain in its files documentation to support its evaluation of the security. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

(d) *Undivided profits.* For purposes of 12 U.S.C. 56, the terms "undivided profits then on hand" and "net profits then on hand" shall be considered to have the same meaning, and shall be referred to herein as undivided profits then on hand.

(1) *Allowance for loan and lease losses.* When calculating the amount of dividends a bank can legally pay under 12 U.S.C. 56, the bank is not permitted to add the balance in its allowance for loan and lease losses account to its undivided profits then on hand.

(2) *Statutory bad debt.* When deducting its statutory bad debt from its undivided profits then on hand, a bank is allowed first to net the sum of its statutory bad debts against the balance in its allowance for loan and lease losses account. If the sum of a bank's statutory bad debts is greater than its allowance for loan and lease losses, the excess statutory bad debt is then to be deducted from the bank's undivided profits then on hand.

(3) *Surplus surplus.* Pursuant to the provisions of 12 U.S.C. 60(a), a national bank's surplus fund must equal its common capital. To the extent a bank has capital surplus in excess of what is required by section 60(a), this amount, commonly known as "surplus surplus", shall be considered undivided profits then on hand and available for the payment of dividends, provided the following conditions are met:

(i) The bank can demonstrate that the surplus surplus came from the earnings of prior periods, excluding the effect of any stock dividend;

(ii) The bank's board of directors must approve the transfer of the funds from capital surplus to undivided profits then on hand; and

(iii) The bank must request and receive the approval of the OCC before transferring funds from capital surplus to undivided profits then on hand. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking.

(e) *Preferred stock.* The provisions of 12 U.S.C. 56 are not applicable to dividends on preferred stock.

(Approved by the Office of Management and Budget under control number 1557-0155)

3. Section 5.62 is added to read as follows:

§ 5.62 Payment of dividends; earnings limitation.

(a) *Law.* 12 U.S.C. 60 provides:

(A) The directors of any national banking association may, quarterly, semiannually or annually, declare a dividend of so much of the net profits of the association as they shall judge expedient, except that until the surplus fund of such association shall equal its common capital, no dividends shall be declared unless there has been carried to the surplus fund not less than one-tenth part of the association's net profits of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net profits of the preceding two consecutive half-year periods in the case of annual dividends: *Provided,* That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such association out of its net profits for such period or periods shall be deemed to be additions to its surplus if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then be properly carried to surplus. In any such case the association shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired.

(b) The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock.

(c) For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Allowance for loan and lease losses.* When computing its "net profits" for purposes of 12 U.S.C. 60, a national bank must use generally accepted accounting principles, and may not add back provisions made to its allowance for loan and lease losses. Furthermore, a national bank should not deduct net charge offs from its earnings for purposes of computing net profits.

(d) *Preferred stock.* The recent-earnings limitations set forth in 12 U.S.C. 60 are applicable to dividends on preferred stock.

(e) *Approval of dividends.* A bank must request and receive the approval of the OCC before declaring a dividend if the amount of all dividends (common and preferred), including the proposed dividend, declared by the bank in any calendar year exceeds the total of the bank's net profits of that year to date combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking.

(Approved by the Office of Management and Budget under control number 1557-0155)

PART 7—INTERPRETIVE RULINGS

4. The authority citation for Part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 7.6100 [Removed]

5. Section 7.6100 is removed.

§ 7.6125 [Removed]

6. Section 7.6125 is removed.

Dated: August 11, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-19208 Filed 8-15-89; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 328

RIN 3064-AA95

Advertisement of Membership

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FDIC has issued a final rule amending its regulation regarding advertisement of membership in order to comply with the requirements of section 221 of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRRE") of 1989. The final rule is published elsewhere in this issue. The final rule was issued to satisfy the mandate of section 221 which requires the FDIC to prescribe initial regulations under that section of the date of enactment of FIRRE. Because the FDIC acted under a statutory deadline, the final rule established only those requirements that were considered to be the minimum necessary to comply with FIRRE.

The FDIC is considering additional amendments to its regulation regarding advertisement of membership. More specifically, the FDIC is considering requiring each insured savings association to display a statement in its advertisements to the effect that its deposits are federally insured. In the alternative, the FDIC is considering eliminating its current regulation which requires an insured bank to display an official advertising statement in its advertisement. Comment is invited on the extension or the elimination of this requirement. In addition, comment is invited on the need for regulations implementing section 222 of FIRRE. Section 222 of FIRRE provides that any savings association, the deposits of which are not insured by the FDIC, shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured.

DATES: Comments must be submitted on or before October 16, 1989.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on busines days. (Fax number: (202) 347-2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Attorney, Legal Division, (202) 898-3812, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 221 of FIRRE amends section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)). Section 221 requires each insured savings association to display at each place of business maintained by the association a prescribed sign notifying the public of deposit insurance coverage ("savings association sign"). FIRRE provides that, not later than 30 days after the date of enactment of FIRRE, each insured bank shall display at each place of business maintained by such bank a sign notifying the public of deposit insurance coverage. Insured banks have the option of displaying the official sign ("bank sign") required by FDIC regulation in effect on January 1, 1989, or the savings association.

The FDIC is required to prescribe regulations to carry out the purposes of section 221 of FIRRE, including regulations governing the manner of display or use of such signs. Accordingly, the FDIC has issued a final rule published elsewhere in this issue prescribing the sign insured savings associations must display and the locations where the sign must be displayed. The final rule provides that insured banks must display the official bank sign or the official savings association sign prescribed for savings associations. Insured savings associations are not permitted to display the bank sign.

Official Advertising Statement

Prior to the enactment of FIRRE, section 18 of the Federal Deposit Insurance Act specifically required an insured bank to include in advertisements a statement to the effect that its deposits were insured by the FDIC. FIRRE does not retain this specific requirement. It appears the FDIC has the authority to retain its regulation requiring insured banks to include the currently prescribed statement in advertisements and to extend similar requirements to insured saving associations. Since section 18 of the Federal Deposit Insurance Act as amended by FIRRE no longer mandates a statement of insurance coverage in advertisements, however, the FDIC believes it is appropriate at this time to review the benefits and costs of such a requirement. The FDIC therefore invites comments on the benefits of requiring insured savings associations to display a notice of deposit insurance coverage in advertisements as insured banks are currently required to do by regulation or, in the alternative, eliminating the current requirement for insured banks.

Advertisement of Uninsured Savings Associations

Section 222 of FIRRE adds a new section 28 to the Federal Deposit Insurance Act. Subsection (h) of section 28 provides that any savings association the deposits of which are not insured under the Federal Deposit Insurance Act shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are not federally insured. Since the FDIC is considering the merits of an official advertising statement of deposit insurance for insured depository institutions, it is appropriate to consider the need for regulations implementing subsection 28(h). Comment is therefore solicited on the need for, and the proper scope of, regulations implementing subsection 28(h).

(12 U.S.C. 1819; 12 U.S.C. 1828(a); sec. 222 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989)

By order of the Board of Directors.

Dated at Washington, DC, this ninth day of August, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-19221 Filed 8-15-89; 8:45 am]

BILLING CODE 6714-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3629-6]

Approval and Promulgation of Implementation Plans; Wisconsin

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

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to approve a submission by the State of Wisconsin as a revision to the Wisconsin State Implementation Plan (SIP) for ozone. The existing rule applies reasonably available control technology (RACT) requirements to both conveyorized vapor degreasers and conveyorized non-vapor degreasers. This submission would redefine the RACT requirements for conveyorized non-vapor degreasers.

USEPA today is proposing to approve this SIP revision because the State has demonstrated that the existing requirements impose emission control requirements for conveyorized non-vapor degreasers which are unreasonable and the revised requirements assure a RACT level of control.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 15, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1988, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to redefine the RACT requirements for Wisconsin Sections Natural Resources (NR) 423.02(04); 423.03 (1), (2)(a), (2)(a)2., (2)(e), (5), and (5)(e). These have been revised to distinguish between vapor and non-vapor conveyorized degreasers. The State created new Sections NR 423.02(3m), 423.03 (2)(f) and (6) to define conveyorized non-vapor degreasers, to specify the applicability of the control requirements, and to establish control requirements and a compliance schedule for conveyorized non-vapor degreasers.

Description of the Rules and USEPA's Evaluation

Sections NR 423.02(4), 423.03(1), 423.03(2)(a), 423.03(2)(a)2., 423.03(2)(e), 423.03(5), 423.03(5)(e), and 423.02(3m)

These sections do not constitute substantive changes to Wisconsin's ozone SIP. The purpose of these sections is to distinguish between non-vapor and

vapor conveyorized degreasers and to establish appropriate requirements for these two types of degreasers. Therefore, USEPA is proposing these sections for approval.

Section NR 423.03(2)(f)

This section states that the requirements of subparagraph (6)(a)2., do not apply to: (1) conveyorized non-vapor degreasers with a horizontal solvent-air interface smaller than 2.0 square meters (21.6 square feet), where such an interface exists, or (2) conveyorized non-vapor degreasers which are located outside the Counties of Brown, Calumet, Dane, Dodge, Fond du Lac, Jefferson, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, and Winnebago. Subparagraph (6)(a)2. otherwise requires 95 percent control of volatile organic compounds (VOC) emissions for these sources.

The exemption for degreasers with a solvent-air interface less than 2.0 square meters (21.6 square feet) is consistent with the control techniques guidelines (CTG) for this source category and represents RACT. Therefore, the first basis for exemption is proposed for approval.

In addition, USEPA currently does not require RACT controls in attainment areas. All the counties exempted from the rule under the second basis are designated attainment for ozone. 40 CFR 81.350. As part of an accommodative ozone SIP,[1] Wisconsin has adopted RACT regulations for major sources in its ozone attainment areas. Presently, two conveyorized non-vapor degreasers are located in the exempt counties.[2] Both of these sources are minor VOC sources, i.e., sources which emit less than 100 tons of VOC per year. Therefore, the second exemption is proposed for approval because it applies only to attainment counties that do not include any major sources of conveyorized non-vapor degreasers.

Sections NR 423.03(6)(a)1. and 37

These sections contain the control requirements that are consistent with those previously approved for conveyorized vapor degreasers. USEPA is proposing these sections for approval.

Section NR 423.03(6)(a)2

This section states that the owner or operator of a conveyorized non-vapor degreaser shall install and operate a carbon adsorption system demonstrated to have at least a 95 percent control efficiency, or a system demonstrated to have an equivalent control efficiency that is approved by the WDNR.

The 95 percent control efficiency requirement is sufficiently high to be considered RACT. USEPA is proposing this section for approval.

Section NR 423.03(6)(b)

This section contains a compliance schedule that requires final compliance with the requirements of Section NR 423.30(6)(a)2. by May 1, 1988. The final compliance date is 3 months from the effective date of the rule and is expeditious. Therefore, USEPA is proposing this section for approval.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Authority: 42 U.S.C. 7401–7642.

Date: August 23, 1988.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 89–19223 Filed 8–15–89; 8:45 am]

BILLING CODE 6560–50–M

[1] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOCs to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this trade off is that the "extra" emission reductions obtained from these additional RACT controls would accommodate new source growth in these attainment/unclassifiable areas.

[2] The two sources are Northern Engraving Corporation located in Monroe County and Metallics, Inc., located in LaCrosse County. Both Monroe and LaCrosse Counties are designated attainment for ozone. 40 CFR 81.350.

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40 CFR Parts 180 and 185

[PP 9E3747 and FAP 9H5580/P486; FRL-3630-3]

Pesticide Tolerances for Cyfluthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide cyfluthrin in or on the raw agricultural commodity fresh hops and the food commodity dried hops. The proposed regulations to establish a maximum permissible level for residues of the insecticide was requested pursuant to petitions by Mobay Corp., Agricultural Chemicals Division.

DATE: Comments, identified by the document control number [PP 9E3747 and FAP 9H5580/P486], must be received on or before September 15, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs.

In person, bring comments to: Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of May 19, 1989 (54 FR 21663), which announced that Mobay Corp., Agricultural Chemicals Division, P.O. Box 9413, Kansas City, MO 64120–0013, had submitted pesticide petition (PP) 9E3747 proposing to establish a tolerance for the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on the raw agricultural commodity (RAC) fresh hops imported from Germany at 4.0 parts per million (ppm) and food additive petition (FAP) 9H5580 proposing to amend 40 CFR 185.1250 by establishing a tolerance for cyfluthrin in or on dried hops at 20.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include a 12-month oral toxicity study on dogs with a no-observed-effect level (NOEL) of 4.0 mg/kg/day; 24-month rat and mouse chronic feeding studies with systemic NOEL's of 2.5 mg/kg/day in the rat and 7.5 mg/kg/day in the mouse with no oncogenic effects observed under the conditions of the studies at dose levels up to and including 22.5 and 120 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day, or in rabbits at levels up to and including 45 mg/kg/day (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (CHO/HGPRT), a sister chromatic exchange assay, and an unscheduled DNA synthesis assay.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat feeding study and a safety factor of 100, is 0.025 mg/kg body weight/day.

Establishment of these tolerances based on the Tolerance Assessment System analysis, which estimated the average U.S. population dietary exposure, will result in a theoretical maximum residue contribution (TMRC) from the proposed tolerances of 0.000075 mg/kg body weight/day; this is equivalent to about 0.3 percent of the ADI. The total TMRC for published tolerances plus this on hops would be 0.001095 mg/kg/day, or 4.4% of the ADI.

Meat and milk tolerances are currently established at 0.05 ppm and 0.10 ppm, respectively. Although spent hops are a cattle feed, no increases in the current tolerances are necessary. Thus, the established meat and milk tolerances for cyfluthrin are adequate for this use. Hops are not a poultry feed item; therefore, secondary residues in eggs and poultry are not likely to occur from this use.

There are no regulatory actions pending against registration of the insecticide, nor are there any other relevant considerations involved in establishing the proposed tolerances. The metabolism of cyfluthrin in plants and animals is adequately understood for this use, and an adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes.

Prior to publication in the *Pesticide Analytical Manual*, Vol. II, the enforcement methodology is being made available in the interim; to anyone who is interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch (H-7506C), Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

Based on the above information and data considered, the Agency concludes that the tolerances are useful for the purposes for which they are sought and they will protect the public health. Therefore, the tolerances are established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3747 and FAP 9H5580/P486]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In Part ;180:

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

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

b. In § 180.436 in the table therein by adding and alphabetically inserting the commodity hops, fresh, to read as follows:

§ 180.435 Cyfluthrin, tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Hops, fresh	4.0
* * * * *	

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1250, by adding new paragraph (d), to read as follows:

§ 185.1250 Cyfluthrin.

* * * * *

(d) A tolerance of 20.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on dried hops resulting from application of the insecticide to hops.

[FR Doc. 89-19225 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-345, RM-6849]

Radio Broadcasting Services; Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Hub Broadcasting, Inc., permittee of Station KXXZ(FM), Channel 240A, Barstow, Calfiornia, seeking the substitution of FM Channel 240B1 for channel 204A and modification of its permit accordingly, to provide that community with its first wide coverage area FM service. Coordinates for this proposal are 34-58-15 and 117-02-21.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann K. Ford and Scott R. Flick, Esqs., Fisher, Wayland, Cooper and Leader, 1255–23d St., NW., Suite 800, Wash., DC 20037–1125.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–345, adopted July 18, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19130 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–347, RM–6721]

Radio Broadcasting Services; Illinois City, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Martin F. Beckey, proposing the allotment of Chanel 223A to Illinois City, Illinois, as that community's first local FM service. The coordinates for the proposed allotment are North Latitude 41–21–49 and West Longitude 90–51–39.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In additional to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Martin F. Beckey, P.O. Box 269, Muscatine, IA 52761 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–347, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The comnplete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19131 Filed 8–15–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–346, RM–6742]

Radio Broadcasting Services; Gold Beach, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by St. Marie Communications, Inc. seeking the substitution of Channel 224C1 for Channel 224A at Gold Beach, Oregon, and the modification of its license for Station KGBR(FM) to specify the higher powered channel. Channel 224C1 can be allotted to Gold Beach in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 42–23–50 and West Longitude 124–21–50. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Gold Beach or require the petitioner to demonstrate the availability of an additional equivalent class channel prior to modifying petitioner's license, should Channel 224C1 ultimately be allotted to Gold Beach.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lester W. Spillane, Esq., 1040 Main Street, P.O. Box 670, Napa, California 94559 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–346, adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19132 Filed 8-15-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 89-348, RM-6717]

Radio Broadcasting Services; Mirando City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Alderete Communications, permittee of Station KZZQ(FM), Channel 265A, Mirando City, Texas, proposing the substitution of Channel 263C2 for Channel 265A at Mirando City, and modification of its construction permit to specify operation on the higher class channel. The proposal could provide the community with its first wide coverage area FM service. A site restriction 21.2 kilometers (13.2 miles) southwest of the city has been specified by the permittee. The coordinates are 27-21-35 and 99-11-46. The proposal also requires concurrence of the Mexican government since the community is located within 320 kilometers of the U.S.-Mexican border.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James M. Weitzman, Esquire, Kaye Scholer, Fierman, Hays & Handler, The McPherson Building, 901 Fifteenth Street, NW., Suite 1100, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-348 adopted July 20, 1989, and released August 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which invoilve channel allotments. See 27 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19133 Filed 8-15-89; 8:45 am]

BILLING CODE 6712-02-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1989-90 late-season hunting regulations for certain migratory game birds. The Service prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for late-season proposals will close on August 28, 1989.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: On March 27, 1989, the Service published for public comment in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR part 20, with comment periods ending July 23, 1989, for early-season proposals; and August 28, 1989, for the late-season proposals. The March 27 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under § 20.101 through 20.107, 20.109 and 20.110 of subpart K. On June 6, 1989, the Service published in the **Federal Register** (54 FR 24290) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 13, 1989, the Service published for public comment in the **Federal Register** (54 FR 29640) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 11, 1989, the Service published a fourth document (54 FR 32975) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico and the Virgin Islands selected early-season hunting dates, hours, areas and limits for 1989-90. This document is the fifth in the series and deals specifically with proposed frameworks for the 1989-90 late-season migratory bird hunting regulations. Before September 1, 1989, the Service intends to publish in the

Federal Register a sixth document consisting of a final rule amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas and limits for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sea ducks in certain defined areas of the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. This fifth document specifically deals with late-season regulations. Late seasons generally commence about or after October 1 and include most waterfowl seasons.

Review of the Duck Situation

The decade of the 1980's has been hard on ducks and their habitat across large areas of North America. During this decade, 4 of the 6 lowest May pond counts were recorded in Prairie Canada. Continued widespread drought and agricultural impacts on wetland in Canada and the north-central United States led to record low duck breeding populations. These agricultural impacts on marshes and surrounding habitats accelerated because of the drought and seriously reduced the capability of traditional prairie habitats to produce ducks. Many areas once important to breeding ducks have been permanently affected.

During 1988, the drought intensified and habitat destruction continued. The problem is not one of a single year of severe drought. Some important breeding areas have been extremely dry since 1980. Though some areas received above or near normal precipitation in 1989, much of the additional precipitation only replenished soil-moisture so there was little runoff and no improvement in pond numbers. However, increased soil-moisture did promote a significant improvement in vegetative growth. Several years of good climatic conditions will be required before many drought stricken areas recover.

Breeding population estimates were 8 percent below the 1988 level and 24 percent below the long-term average. Nine of the 10 indicator species decreased during the last year; pintails, bluewings, and scaup are at record lows; and mallards are 25 percent below their long-term average. However, the decline in the breeding population appears to have been somewhat offset by increases in late nesting indices and, in some areas, improvements in production. The result is a fall flight index of ducks slightly lower than last year.

Although hunting is not the cause of the decline in duck numbers, it is one influence that we can regulate. Restrictive hunting regulations during 1985–87, in combination with low number of ducks, reduced the harvest by 25 percent, in comparison to that of the 1980–84 period, with nearly equal reduction in each of the four flyways. Harvest rates on mallards were reduced significantly for all sex and age classes. Regulations were further restricted during the 1988–89 hunting season and reduced the harvest by an additional 50 percent. Restrictive regulations have been in effect since 1985. Survival rates have increased in recent years for all sex and age cohorts of mallards. Sacrificing some hunting opportunity may protect duck populations at low levels.

In consideration of multiple years of drought conditions and the slow recovery expected for habitat and duck populations, maintenance of basic breeding populations is a primary objective. High harvest rates on populations with poor recruitment are not in the interest of the resource or the future of waterfowl hunting. Further, the Service believes that the drought impacts will persist for some time and that recovery will require several years of good climatic conditions. For these reasons, the Service is proposing hunting season frameworks similar to those of 1988–89 to maintain duck breeding stocks.

Review of Comments Received at Public Hearing

Sixteen statements were offered at the August 3, 1989, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and was considered in the development of these proposed late-seasons frameworks. Responses to the public hearing comments are deferred and will be incorporated into responses to written comments received in reply to this document and published with the final frameworks for late seasons.

Doug Inkley, representing the National Wildlife Federation, described the importance of wetlands to waterfowl as well as to numerous other wildlife species and to social needs. He urged the Service to redouble its efforts to protect wetlands. He believed it would be appropriate to continue the conservative regulations implemented in 1988–89 and made the following specific regulatory recommendations: (1) Continue the nationwide closure on canvasbacks that was in place last year, noting the canvasback population rose only slightly since last year; (2) maintain restricted framework dates, with a closing date of January 7 for ducks in all flyways to minimize the harvest on adult ducks and those with a high probability of breeding; (3) implement a nationwide closure on pintails in view of the new record low level of breeding pintails and the very low age ratio observed last year in the harvest, noting that the pintail regulations allowed last year, which were more liberal in the Pacific Flyway, cannot be justified; (4) cautiously supported a return to shooting hours of one-half hour before sunrise to sunset, suggesting there is no evidence that opening hours have a significant impact on total harvest; (5) continue the closed season on cackling Canada geese and Pacific brant in the Pacific Flyway until these populations have recovered to population objectives; and (6) continuation of a conservative expansion of tundra swan hunting in the Atlantic Flyway, noting the expansion of tundra swan hunts to several additional States in that flyway in 1988 was successful and swan populations remain stable.

Mr. Gary Myers, representing The Wildlife Society, reviewed the 1988 waterfowl status, regulations and harvests. He supported conservative duck regulations again in 1989 to protect breeding stocks, liberalized regulations for goose populations whose status is improved in 1989, and continuation of hunting opportunity on swans. He stated that a combination of regulations, enforcement, and habitat improvement will be necessary to achieve the population objectives of the North American Waterfowl Management Plan.

Mr. Charles Potter, representing the North American Wildlife Foundation, expressed concern that the stated harvest objectives cannot be achieved with the regulations being considered, and he does not believe that reopening of a canvasback season can be justified. He suggested that hunting pressure should be reduced if at all possible, and quoted former noted waterfowl biologist Al Hochbaum as saying the management agencies should be the protector of the resource and not the provider. Mr. Potter noted that, despite a significant increase in the number of ponds in southern Alberta this spring, the number of breeding ducks were significantly lower, indicating that a return of better water conditions will not, alone, restore duck populations. He

predicted that a return to shooting hours of one-half hour before sunrise to sunset would insure an increased duck kill, increased identification problems, a greater kill of hens and more crippled ducks, and would confuse hunters. He noted that the Manitoba Farmers Union, traditionally opposed to having more ducks, voted this year to close the duck season out of concern about low populations. He indicated that the voluntary restrain program would be in full force this year and that he would encourage hunters to buy State and Federal licenses and duck stamps to help habitat programs. He believed we should not allow duck breeding populations to fall any lower.

Mr. Frank Anderson, representing the Concerned Coastal Sportsmen's Association, Mr. John Sawyer, representing the Western Massachusetts Duck Hunters Association, Mr. Jerry Woodmansee, representing the Andover Sportsman's Club, Inc., and Mr. Jim Yoos, representing the New Jersey Waterfowl Association, expressed support for restoring one-half hour before sunrise shooting hours, an increase in season length to 40 days, continuation of the zone concept, and a bonus bag of 2 green-winged teal for 9-consecutive days during the regular duck season. In general, they argued that the Atlantic Flyway has not received proper consideration since populations breeding in the northeastern States and in eastern Canada have not declined and are more productive than western populations which have been severely affected by drought. They maintain that more liberal harvest regulations are justified by reports and by common knowledge about the derivation of duck harvests. Messrs. Anderson, Sawyer, and Woodmansee requested additional hunting days in compensation for days lost due to State prohibitions against Sunday hunting, asked that special consideration be given to the growing numbers of nuisance Canada geese in Massachusetts by offering a 90-day goose season statewide. They suggested that the Service consider a special, experimental 50-day season on red-breasted and common mergansers to reduce impacts on fisheries programs in the northeast United States. Mr. Yoos cited improved winter populations indices and better age ratios in the harvest of Atlantic Flyway ducks as evidence that these ducks did not warrant similar protection being directed towards those from more western areas and expressed concern for loss of duck stamp revenues to support habitat programs.

Mr. Bert Jones, representing the Louisiana Wildlife and Fisheries Commission, urged the reinstatement of one-half hour before sunrise to sunset shooting hours, stating that much of the 1988 decline in duck stamp sales in Louisiana was attributed to the sunrise opening of shooting hours. He requested that a 3-day September teal season be offered in 1990, citing the benefits of incentives for habitat preservation and stating that low band recovery rates indicate that hunting is not the cause of the decline in blue-winged teal. He applauded the Service for not further reducing hunting opportunity, in 1989.

Mr. Randy Wheeler, representing the Wetlands Habitat Alliance of Texas, asserted that maintaining the same restrictive regulations as those of 1988 would be deterimental to duck populations. He encouraged reinstatement of the point system with changes that would provide an incentive to hunters to direct their harvest toward more abundant species. He noted that teal are active during the pre-sunrise period and that teal populations are less stressed than other species. He described an outbreak of avian chlorea in the upper coast of Texas in December of 1988 that he believed would not have occurred if there had been a September teal season last year. Such a season would have provided an incentive to landowners and others to flood habitat early in the fall, thus providing more habitat for waterfowl. He recommended reinstatement of (1) the point system, (2) shooting hours to one-half hour before sunrise, and (3) the September teal season.

Mr. Mike Berger, representing Ducks Unlimited, Inc., presented comment on this spring's habitat conditions, lower duck breeding populations and expected low production, and concluded that several years of good water and good recruitment are needed to bring about a full recovery in duck populations. He urged private organizations and public agencies to coordinate management efforts through the North American Waterfowl Management Plan. He stated that duck hunters are willing to take a conservative approach to harvest but that harvest regulations should be based on sound biology and may differ in each flyway. He felt decisions should not be based on politics as they were last year.

Mr. George Reiger, an editor for Field & Stream magazine, expressed strong concern about the status of ducks and the relatively poor data base on which regulations are set. He suggested that we should err on the side of caution in setting regulations. He made a specific recommendation for a bag limit of 2 ducks daily, a 20-day season (except 25 days in States that prohibit Sunday hunting), and that shooting hours of one-half hour before sunrise to sunset be restored if the season and bag limit recommended above are implemented. He believed that, with this set of regulations, hunter satisfaction would increase and total duck harvest would be reduced. He expressed strong dissatisfaction with restoration of the point system, describing his experiences in many States during which provisions of the point system were never honored, even by enforcement agents and other public servants. He believed that reordering under the point system is a prelude to an extra duck in the bag, noting that he was once an avid supporter of the point system until he observed most hunters disregarding the rules. He recommended against reopening of a canvasback season due to ambiguities in the population data and he urged the Service to encourage Mexico and Canada to close their seasons on canvasbacks as well. He noted a need to liberalize the season on mergansers along the east coast to reduce problems of predation on fish. He urged caution about using more liberalized goose regulations to offset restrictions on ducks, citing the lower breeding potential of geese. He believed that high limits on birds degrade the birds and suggested that geese should be promoted as trophy birds with lower bag limits.

Mr. Leon Kirkland, representing the Atlantic Flyway Council, argued that the majority of ducks harvested in the Atlantic Flyway originate from areas where populations are stable and have better age-ratios. Also, he stated that many ducks species were above the most recent 10-year average in the mid-winter survey. Based on this information he maintained that eastern ducks are in better shape than western populations and that regulations are more restrictive than necessary in the Atlantic Flyway. He asked to restore shooting hours to one-half hour before sunrise, increase seasons to 40 days, continue liberal October bag limits on wood ducks, add a bonus of 2 green-winged teal for 9 days and strongly urged the Service to gather more data on eastern waterfowl.

Mr. John M. Anderson, speaking on behalf of the National Audubon Society, urged maintaining all of the restrictions that were in effect during 1988. He said that the one-half hour before sunrise should not be reinstated until it can be shown to have no adverse impact on the harvest of hen mallards and black ducks. He opposed the use of the point system option because the prohibition

against reordering was impossible to enforce. He supported continuation of those regulations for swans and geese that had been used in 1988. He said that consideration should be given to controlling feral mute swans which detrimentally compete with native swans and with ducks.

Mr. John Grandy, representing the Humane Society of the United States, supported the closed season on harlequin duck throughout the Atlantic Flyway, commended the Service on the mangitude of harvest reductions in the 1988 season, but was opposed to maintaining the same regulations as last year because they would not be sufficiently restrictive to meet either the needs of waterfowl or the Service's legislated responsibilities. He proposed that shooting time begin one-half hour after sunrise because of regulations requiring hunters to identify certain ducks before shooting and that mergansers and coots be included in the duck limits in all flyways. He endorsed continuation of a nationwide closed season on canvasbacks and supported a nationwide closed season on pintails. Observing that black duck populations continue to be low, he said it was the Service's duty to not maintain regulations that keep these populations at such low levels. He recommended that duck seasons should be closed in the lower 48 States this season. He was distressed by requests for liberalized seasons but pleased by attitudes of those supporting further restrictions. He rhetorically asked were regulations driven by restoration of populations or the opening of hunting seasons.

Mr. Jim Phillips, writer and duck hunter, described declines in certain duck populations and believed that current waterfowl management would not allow recovery of those populations. He proposed: A 21-day season; one-half hour before sunrise to sunset shooting hours; and a "3, 2, 1" limit, where only 3 ducks could be taken, but no more than 2 of any species, except only 1 hen mallard, or 1 black duck or 1 redhead, and the season would be closed on canvasbacks and pintails.

Mr. John H. Vizer, III, representing the Berry B. Brooks Foundation, stated that in a survey of hunters in Tennessee, Arkansas, and Louisiana, most respondents favored a complete closure of duck hunting. He indicated such a closure may not be generally accepted and he urged that the 1988 restrictive regulations be maintained in 1989. He stated that if we err, it should be done on the side of conservation.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 27, 1989, (54 FR 12534), opened the public comment period for late-season migratory game bird hunting regulations. As of August 3, 1989, the Service had received 186 comments, 163 of these specifically addressed late-season related issues. Several of these were previously addressed in the supplemental proposed rulemaking which appeared in the **Federal Register** dated June 6, 1989, (54 FR 24290). These late-season comments are summarized below and numbered in the order used in the March 27, 1989, **Federal Register.** Only the numbered items pertaining to late-season written comments are included.

1. Shooting Hours

The Service received 145 comments, of which 139 were judged to relate to late-season shooting hours. Of this group of 139,134 were opposed to restrictive shootings and include: The Atlantic, Central and Pacific Flyway Councils; the Lower Region Regulations Committee of the Mississippi Flyway Council; the State wildlife agencies of Arizona, Arkansas, California, Colorado, Louisiana, Missouri, Montana, New York, Oklahoma, and South Carolina; the California Fish and Game Commission; the North Dakota Tourism Promotion; the Texas Agricultural Extension Service; Ducks Unlimited; the Louisiana Wildlife Federation; the Alaska, California, and South Carolina Waterfowl Associations; the Sportsmen Conservationists of Texas; 5 local organizations; 1 member of Congress from Texas; and 108 individuals. In addition, 4 of the comments from individuals contained a total of 195 signatures opposing restrictive shooting hours. Some of the arguments against the proposed regulations included:

a. Shooting hours are basic regulations which dictate the time to hunt and should not be used to regulate harvest.

b. The change to sunrise shooting complicates regulations and will likely increase violations.

c. Sunrise shooting will shift the harvest away from species such as wood ducks to other species of concern, i.e., mallards and pintails.

d. The pre-sunrise period is an aesthetic and traditional part of waterfowling.

e. Sunrise shooting will erode hunter participation and decrease funds for habitat acquisition.

f. Shooting hours were unnecessary to achieve desired reductions in harvest.

The State of Wisconsin and 3 individuals supported restrictive shooting hours. A hunting club from Texas supported restrictive shooting hours but expressed mixed emotion since they believe it reduces teal harvest. They recommend, as an alternative, shooting hours beginning at 15 minutes before sunrise. Several commenters recommended alternatives involving shooting hours that end earlier than sunset. The Service is proposing shooting hours that begin at one-half hour before sunrise and end at sunset for all migratory game birds unless other restricted.

2. Frameworks for Ducks in the Conterminous United States—Outside Dates, Season Length, and Bag Limits

a. Harvest strategy—Many of the comment received that oppose restrictive shooting hours stated that other restrictions, such as season length and bag limits, would be preferable. These comments are considered to be related to shooting hours and not related to a desire to restrict other frameworks, and are, therefore, summarized under item 1. *Shooting Hours.*

b. Framework dates—The States of Missouri and Wisconsin supported the restrictive framework dates set in 1988–89. An individual from Texas and one from Virginia suggested delaying the opening and closing framework dates. The Central Flyway Council and the State of Colorado recommended floating framework dates opening on the Saturday nearest October 1 and closing on the Sunday nearest January 20. The Service is proposing to set the annual framework dates for 1989–90 to open on October 7 and close on January 7.

c. Season length—The State of New York, the New York State Conservation Council, the California Waterfowl Association, and local organization, and 3 individuals were opposed to the restrictive season length. The States of Missouri and Wisconsin supported this restriction. One individual from Idaho suggested a further restriction in season length. The Service is proposing to continue with the same season lengths as were in effect in 1988–89.

d. Closed seasons—Four individuals suggested a temporary closed season if it were needed to protect breeding stocks of ducks in 1989–90. The Service took this view into consideration, but is proposing to allow duck hunting, with restrictive regulations, in 1989–90.

e. Bag limits—(i) The State of Wisconsin supported restrictive bag limits and, if

needed, further restrictions in the bag limit. Two individuals suggested further decreasing the bag limit. The States of Colorado, Minnesota and Missouri, and 3 individuals also supported restrictive bag limits. The State of California and 8 individuals from Texas suggested increased bag limits for certain species only; while the State of New York, the California Waterfowl Association, 3 local organizations, and 3 individuals suggested increasing the bag limit for all ducks. The Service is proposing similar bag limits to those in effect during the 1988–89 season.

ii. One member of Congress from Texas, 3 flyway councils, 5 State agencies, 3 local organizations, and 60 individuals commented on the point system of bag limits. The Congressman from Texas, on behalf of his constituents, favored a return to the point system to redirect hunting pressure away from species of greatest concern. The Central and Pacific Flyway Councils recommended that the point system option be reinstated as a way of directing harvest toward more abundant species and away from those needing more protection. The Atlantic Flyway Council made no specific recommendation but indicated it is reviewing information on the point system. The State wildlife agencies of Colorado, Missouri and Oklahoma, and the Texas Agricultural Extension Service all recommended that the point system option be reinstated. They cited the greater ability of that system over the conventional bag limit in reducing harvest on species of greatest concern, such as mallards and pintails, while redirecting harvest toward species such as green-winged teal which exhibit better status. The Wisconsin Bureau of Wildlife Management recommended that, with continuing low populations of ducks, the strongly conservative frameworks initiated in 1988 be maintained. Three local organizations from Texas commented on the point system, with one recommending against its reinstatement due to the "reordering" problem and the other two recommending that it be reinstated, indicating that the conventional bag limit places more pressure on species of greatest concern. Fifty-eight individuals, all from Texas, recommended that the point system be reinstated, generally citing the reasons as did agencies noted above. One individual recommended against reinstatement of the point system and one described how the system is more conservative but did not make a specific recommendation. The Service is proposing to allow the point system option in the Mississippi and Central Flyways for 1989–90. Point values that are no more liberal than the conventional bag limit have been proposed.

3. American Black Ducks

A representative from the New York State Conservation Council supported continuation of the one black duck bag limit.

4. Wood Ducks

Nine individuals from Texas recommended that the bag limit on wood ducks in that State be liberalized, with some specifying a change to allow 3 instead of 2 wood ducks in the bag. The rationale for making the request was that wood ducks in east Texas appear to be very abundant. The Service is proposing to suspend the liberal October wood duck option.

7. Extra Teal Option

Both the Central and Pacific Flyway Councils reviewed the issue of bonus teal and other bonus ducks in the bag limit and both recommended that options for bonus ducks, including teal, be offered when the status of the species involved warrant additional harvests. The New York Division of Fish and Wildlife supported bonus teal options, indicating that the State was unfairly restricted in 1988 when bonus ducks were suspended. The South Carolina Wildlife and Freshwater Fisheries Division recommended that bonus green-winged teal be reinstated in the bag limit, citing the relatively healthy status of this species and the need to take advantage of these species by providing additional hunting opportunity on those species when the status of other species is poor. The Wisconsin Bureau of Wildlife Management recommended against allowing bonus teal, citing the poor status of duck populations in general. Two conservation organizations recommended that bonus teal options be reinstated in the Atlantic Flyway. Eight individuals, all but one from Texas, made general recommendations for more liberal limits on teal.

9. Special Scaup Season

The State of Wisconsin supported the suspension of the special scaup season. An organization from New York requested reinstatement of the special scaup season for New York.

10. Extra Scaup Option

The New York Division of Fish and Wildlife, the New York State Conservation Council, one local organization and one individual from New York requested reinstatement of the bonus bag limit on scaup. The Wisconsin Bureau of Wildlife Management supported the suspension for bonus scaup.

11. Mergansers

The Wisconsin Bureau of Wildlife Management recommended that regulations for mergansers be the same as last year. The Minnesota Department of Natural Resources supported separate bag limits for mergansers in the conventional option for the regular duck season.

12. Canvasback and Redhead Ducks

The Wisconsin Bureau of Wildlife Management supported continuation of seasons and limits on redheads and the closed season on canvasback as occurred last year. A regional representative for the New York State Conservation Council proposed a daily bag limit that would include one canvasback because that species was numerous in his region.

13. Duck Zones

The Pacific Flyway Council provided an elevation of the effects of zoning and split seasons on harvest and recommended on April 4, 1989, to continue using existing zones and to continue a moratorium on new zones; however, on July 28, 1989, the Council rescinded its earlier recommendation for a moratorium and proposed as an option for States to establish one new zone. The Central Flyway Council recommended that zoning be an option available to all States as long as certain evaluation criteria were met. The Wisconsin Bureau of Wildlife Management concurred that the use of zones and splits should be reviewed and their continued use be reconsidered if populations do not show significant improvements. Either unqualified support for continued use of existing zones or opposition to any suspensions of their use was given by the New York Division of Fish and Wildlife, three local organizations, and a regional representative for the New York State Conservation Council. Idaho Fish and Game requested that the State be zoned into two large zones because of markedly different altitudinal and climatic conditions affecting availability of birds and opportunities for hunters. Support for the Idaho zones was given by the Pacific Flyway Council, and an Idaho hunter (allegedly representing 5,000 waterfowlers in Idaho). A Texas hunter recommended that Texas be allowed to create a third, new zone for that State.

The Pacific Flyway Council provided an evaluation of the effects of zoning and split seasons on harvest and recommended retention of the option to split seasons into two segments. The Central Flyway Council and the Southern Region Regulations Committee of the Mississippi Flyway Council recommended that States be allowed to split their regular season into three segments in lieu of zoning. The Wisconsin Bureau of Wildlife Management concurred that the use of zones and splits should be reviewed and their continued use be reconsidered if populations do not show significant improvements. Either unqualified support for continued use of split seasons or opposition to any suspension of its usage was given by the New York Division of Fish and Wildlife, one local organization, and a regional representative for the New York State Conservation Council. One hunter recommended a multiple season of Saturday, Sunday, and Wednesday hunting but with fewer overall days of potential hunting.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

Atlantic Flyway

One individual from New York supported the 90-day Canada goose season, one individual from Virginia supported the 2 Canada geese per day limit, and one local organization from Massachusetts suggested increasing the Canada goose season length from 70 to 90 days statewide. The Pennsylvania Game Commission recommended a bag increase from 2 to 3 Canada geese in 4 Pennsylvania counties. The Atlantic Flyway Council did not approve Pennsylvania's recommendation.

The Atlantic Flyway Council rescinded its recommendation for an increase in the Atlantic brant bag limit but continued to recommend an increase in the greater snow goose bag limit, an expansion of the special Delaware area, and establishment of a special late-season in Georgia.

Mississippi Flyway

The Upper Region Regulations Committee of the Mississippi Flyway Council and the Wisconsin Department of Natural Resources endorsed a change in the boundary of Iowa's Southwest Goose Zone. The Upper Region Regulations Committee also endorsed a request from the Indiana Department of Natural Resources to split its goose season within existing zones into 3 segments. The Arkansas Game and Fish Commission requested that the State be permitted to have a Canada goose season again in 1989–90. The Wisconsin Department of Natural Resources supported recommendations from the Mississippi Flyway Council for increased harvest of Mississippi Valley Population Canada geese in 1989. One individual supported more liberal bag limits for geese.

Pacific Flyway

One individual from California requested a 21-day season with a bag limit increase from 1 to 2 white-fronted geese for the Kamath Basin. The Pacific Flyway Council and the California Fish and Game Department recommended lifting restrictions on hunting large Canada geese in the Sacramento and San Joaquin goose closure zones. Another individual from California questioned the need for these restrictive areas.

15. Tundra Swans

The States of Montana and Nevada offered a correction to the preliminary proposals presented in the **Federal Register** of March 27, 1989 (54 FR 12534). The June 6, 1989, **Federal Register** (54 FR 24290) presented the corrected proposals (a) that permits in the Pacific Flyway portion of Montana would be valid in Teton, Cascade, Toole, Liberty, Hill, and Pondera counties; and (b) that tundra swan hunts in the Central Flyway portion of Montana would run concurrent with the goose season. The Atlantic and Pacific Flyway Councils supported the proposal for tundra swan hunts. The Wildlife Information Center, Inc., recommended a ban on the hunting of tundra swans. They believe there are negative impacts to behavior and ecology of swans as a result of hunting and that alternative methods should be developed to reduce crop damage. The Service is proposing swan frameworks as they existed in 1988–89.

17. Coots

The Wisconsin Bureau of Wildlife Management supported the proposed frameworks for coots. The California Department of Fish and Game proposed that frameworks for seasons on coots be separated from those for ducks in the Pacific Flyway.

20. Common Snipe

The Wisconsin Bureau of Wildlife Management supported the proposed frameworks for common snipe. The California Department of Fish and Game proposed that frameworks for seasons on common snipe be separate from those for ducks in the Pacific Flyway.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments on these late-season proposals received no later than August 28, 1989, will be considered. The Service will attempt to acknowledge received comments, but substantive

response to individual comments may not be provided.

Nontoxic Shot Regulations

In the April 13, 1989, **Federal Register** (54 FR 14814), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1989–90 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, **Federal Register** (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On June 22, 1989, the Division of Endangered Species and Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 North Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 11, 1989 (54 FR 32975).

Authorship

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1989–90 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1989–90 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 7, 1989, and January 7, 1990.

Hunting Season: Not more than 30 days.

Canvasbacks: The season on canvasbacks is closed.

Harlequin Ducks: The season on harlequin ducks is closed.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Zoning

New York: New York may, for the *Long Island Zone,* select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. A 2-segment split season may be selected in each zone.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

New Hampshire—Coastal Zone—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virgina may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State route 28 south to Minnehaha Springs; then follows State route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I-64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I-79, and follows I-79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments

Vermont may continue a Lake Champlain Zone. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply.

Zone Definitions

Massachusetts—Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I-93, south on I-93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I-195, west to the Rhode Island line. *Except* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey—Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania—Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I-80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I-80, then west on I-80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I-80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont—Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York

Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keesville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 20, 1990, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, and West Virginia may select 70-day seasons for Canada geese with a daily bag and possession limit of 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford, where the daily bag and and posession limits are 2 and 4, respectively. In Maryland, Delaware and Virginia (except Back Bay) the Canada goose season may be 60 days with an opening date of October 31, 1989, and a closing date of January 20, 1990, with 2 geese daily and 4 in possession. In New York (including Long Island), New Jersey, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I-81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I-80 to the New Jersey line, the Canada goose season length may be 90 days with the opening framework date of October 1, 1989, and the closing framework date extended to January 31, 1990. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag and possession limits within this area will be 1 and 2, respectively through October 15, 1989, and 3 and 6, respectively thereafter. In Rhode Island, and Connecticut (North Zone) season length will be 90 days between October 1, 1989, and January 31, 1990, with a daily bag and possession limit of 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95), the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1990. The daily bag limit and possession limit will be 3 and 6, respectively, through January 14, and 5 and 10, respectively from January 15 to February 5, 1990. This season in the South Zone of Connecticut is experimental. The Back Bay of Virignia, North Carolina (that portion south of Interstate Highway 95), and South Carolina may select an 11-day season for Canada geese within a January 20-31, 1990, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coastal Zone of Massachusetts, a special resident Canada goose season may be held during January 21, 1990, to February 5, 1990; the daily bag and possession limits are 5 and 10, respectively. In Georgia, on specific areas (as described in State regulations), a special resident Canada goose season may be held between January 13 and January 20, 1990, with a limit of 1 per hunter per season.

Closures on Canada geese: The season for Canada geese is closed in Florida.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 31, 1990, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 5 and 10, respectively. Between October 16, 1989, and October 28, 1989, a special snow goose season may be held in Delaware on Bombay Hook National Wildlife Refuge, Little Creek GMA, and immediate area (as described in State regulations) at the discretion of the Refuge Manager. Daily bag and possession limits are 5 and 10, respectively. This season is in addition to the 90-day regular season.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1989, and January 20, 1990, States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In New Jersey, Virginia and North Carolina an experimental season for tundra swans may be selected with 200, 600 and 6,000 permits, respectively, subject to the following conditions: (a) The season may be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue permits and obtain harvest and hunter participation data; and (c) each permittee is authorized to take one tundra swan per season.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates; Between October 7, 1989, and January 7, 1990, in all States.

Hunting Season: Not more than 30 days.

Canvasbacks: The season on canvasbacks is closed.

Limits: The daily bag limit of ducks is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is twice the daily bag limit.

Coot Limits. The daily bag and possession limits are 15 and 30, respectively.

Point-System Option: As an alternative to conventional big limits for ducks, a 30-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: The female mallard, pintail, black duck, redhead, and hooded merganser count 100 points each; the male mallard and wood duck count 50 points each; all other species of ducks and mergansers count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by

Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabma, Illinois, Indiana, Iowa, Louisiana, Michigan, Missouri, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split into two segments.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I-280, east along I-280 to I-80, then east along I-80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundaries. South Zone—That portion of the State south of a line running east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I-70, then east along I-70 to the Indiana border.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segements.

Iowa: North Zone—That portion of Iowa north of a line running west from the Illinois border along I-80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

Louisiana: West Zone—That portion of the State west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3, then south along Louisiana Highway 3 to Bossier City, east along Interstate 20 to Minden, south along Louisiana Highway 7 to Ringgold, east along Louisiana Highway 4 to Jonesboro, south along U.S. Highway 167 to Layfatte, southeast along U.S. Highway 90 to Houma, south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass. East Zone—The remainder of Louisiana. The season in each zone may be split into two segments.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M-20, east on M-20 to U.S.-10B.R. in the city of Midland, east on U.S.-10B.R. to U.S.-10, east on U.S.-10 and M-25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I-55, north along I-55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: North Zone—The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the City of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Note: The various zones and areas indentified in this section are described in the respective States' regulations.

Outside Dates, Season Lengths and Limits: Between September 30, 1989, and January 21, 1990 [January 31 in Kentucky, Arkansas, Tennessee, Mississippi, and Alabama], States may select seasons for geese not to exceed 70 days for Canada and white-fronted geese and 80 days for snow (including blue) geese. The daily bag limit is 7 geese, to include no more than 3 Canada and 2 white-fronted geese. The possession limit is 14 geese, to include no more than 6 Canada and 4 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Louisiana: Between September 30, 1989, and February 14, 1990, Louisiana may hold 80-day seasons on snow (including blue) geese and 70-day seasons on white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the:

(a) West Central Goose Zone—The season for Canada geese may extend for 30 days. In the Lac Qui Parle Goose Zone the season will close after 30 days or when 4,000 birds have been harvested, whichever occurs first.

Throughout the 5-county area, limits are 1 Canada goose daily and 2 in possession.

(b) Southeast Goose Zone—The season for Canada geese may extend for 70 consecutive days. Limits are 2 Canada geese daily and 4 in possession. In selected areas of the Metro Goose Management Block and in Olmsted County, experimental 10-day late seasons may be held during December to harvest Giant Canada geese. During these seasons, limits are 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 40 days. Limits are 1 Canada goose daily and 2 in possession.

Iowa: The season may extend for 45 consecutive days. Limits are 2 Canada geese daily and 4 in possession. The season for geese in the Southwest Goose Zone may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone—The season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(b) Southeast Zone—A 50-day season on Canada geese may be selected, with limits of 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 40 days in the respective duck hunting zones. Limits are 1 Canada goose daily and 4 in possession.

Wisconsin: The framework opening date for all geese is September 23. The total harvest of Canada geese in the State will be limited to 93,700 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 62,000 birds. The season may not exceed 76 days. All Canada geese harvested must be tagged and the total number of tags issued will be limited so that the quota of 62,000 birds is not exceeded. Limits are 2 Canada geese daily and 4 in possession.

(b) Theresa Zone—The harvest of Canada geese is limited to 5,000 birds. The season may not exceed 70 days. Limits are 1 Canada goose per permittee per 7-day period and 4 for the entire season.

(c) Pine Island Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 4 for the entire season.

(d) Collins Zone—The harvest of Canada geese is limited to 2,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. Limits are 2 Canada geese daily and 4 for the entire season.

(e) Exterior Zone—The harvest of Canada geese is limited to 22,300 birds. The season may not exceed 70 days, except as noted below. Limits are 1 Canada goose daily and 2 in possession through October 31, and 2 daily and 4 in possession thereafter, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through October 31, and 2 daily and 4 in possession thereafter. In the Brown County Subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 3 and 6 birds, respectively. In the Rock Prairie Subzone, a special late season to harvest giant Canada geese may be held between November 5 and December 10. During this late season, limits are 1 Canada goose daily and 2 in possession.

In Wisconsin, the progress of the Canada goose harvest must be monitored in the exterior zone, and that zone's season closed, if necessary, to insure that the harvest does not exceed the quota stated above.

Illinois: The total harvest of Canada geese in the State will be limited to 103,500 birds. In the:

(a) Southern Illinois Quota Zone—The season for Canada geese will close after 56 days or when 51,750 birds have been harvested, which ever occurs first. Limits are 2 Canada geese daily and 10 in possession through December 31, and 3 daily and 10 in possession thereafter.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 56 days or when 15,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession through December 31, and 3 daily and 10 in possession thereafter.

(c) Tri-County Zone—The season for Canada geese may not exceed 50 days. Limits are 2 Canada geese daily and 10 in possession.

(d) Remainder of State—Seasons for Canada geese up to 60 days may be selected by zones established for duck hunting seasons. Limits are 2 Canada geese daily and 10 in possession.

Michigan: The total harvest of Canada geese in the State will be limited to 89,400 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—the framework opening date for all geese is September 23 and the season for Canada geese may extend for 53 days, except in the Superior Counties Goose Management Area (GMA), where the season will close after 53 days or when 11,000 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession.

(2) Remainder of North Zone—the framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(b) Middle Zone—The season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession through November 22, and 3 daily and 6 in possession thereafter.

(c) South Zone:

(1) Allegan County GMA—the season for Canada geese will close after 55 days or when 5,500 birds have been harvested, whichever occurs first. Limits are 1 Canada goose daily and 2 in possession.

(2) Muskegon Wastewater GMA—the season for Canada geese will close after 50 days or when 700 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(3) Saginaw County GMA—the season for Canada geese will close after 50 days or when 4,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(4) Fish Point GMA—the season for Canada geese will close after 50 days or when 2,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 4 in possession.

(5) Remainder of South Zone.

(i) West of U.S. Highway 27/127—the season for Canada geese may extend for 50 days. Limits are 2 Canada geese daily and 4 in possession.

(ii) East of U.S. Highway 27/127—the season for Canada geese may extend for 40 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Southern Michigan GMA—a late Canada goose season of up to 30 days may be held between January 6 and February 4, 1990. Limits are 2 Canada geese daily and 4 in possession.

Ohio: Canada goose limits are 2 daily and 4 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 39,700 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 11,500 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 6 in possession. The season may extend to January 31, 1990.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Kentucky: In the:

(a) Western Zone—The season for Canada geese may extend for 70 days, and the harvest will be limited to 31,000 birds. Of the 31,000-bird quota, 20,000 birds will be allocated to the Ballard Reporting Area and 6,000 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 70-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 70 days. The season in Fulton County may extend to February 15, 1990. Limits are 3 Canada geese daily and 6 in possession.

(b) Remainder of the State—The season may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Tennessee: In the:

(a) Northwest Tennessee Zone—The season for Canada geese may extend for 70 days, and the harvest will be limited to 12,400 birds. Of the 12,400 bird quota, 8,600 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 70-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 70 days. The season may extend to February 15, 1990. Limits are 3 Canada geese daily and 6 in possession.

(b) Southwest Tennessee Zone—The season for Canada geese may extend for 30 days, and the harvest will be limited to 700 birds. Limits are 2 Canada geese daily and 4 in possession.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. Limits are 2 Canada geese daily and 4 in possession.

Arkansas: The season for Canada geese may extend for 70 days. Limits are 3 Canada geese daily and 6 in possession.

Louisiana: The season for Canada geese is closed.

Mississippi: The season for Canada geese may extend for 70 days. Limits are 3 Canada geese daily and 6 in possession.

Alabama: Canada goose limits are 2 daily and 4 in possession.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (Including Mergansers) and Coots

Outside Dates: October 7, 1989, through January 7, 1990.

Canvasbacks: The season on canvasbacks is closed.

Hunting Season: Seasons in the Low Plains Unit may include no more than 39 days. Seasons in the High Plains Mallard Management Unit may include no more than 51 days, provided that the last 12 days may start no earlier than December 9, 1989. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: The daily bag limit is 3 ducks, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, 1 hooded merganser, and 2 wood ducks. The possession limit is twice the daily bag limit. Daily bag and possession limits for coots are 15 and 30, respectively.

States in the Central Flyway may, as an alternative to the conventional bag limit for ducks, select a point system of bag and possession limits. Point categories will be as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck

50 points—male mallard, wood duck

35 points—All other ducks and mergansers

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other ducks already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of ducks that legally could have been taken in 2 days.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N-67; north through Nemaha to U.S. 73-75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N-63; north and west to U.S. 77; north to N-92; west to U.S. 81; south to N-66; west to N-14; south to I-80; west to U.S. 34; west to N-10; south to the State Line; west to U.S. 283; north to N-23; west to N-47; north to U.S. 30; east to N-14; north to N-52; northwesterly to N-91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N-51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico: Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma: Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas State line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme, Yankton and Clay Counties south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 6516 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Union County south and west of S.D. Highway 50 and Interstate Highway 29.

North Zone. The remainder of the Low Plains.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: September 30, 1989, through January 21, 1990, for dark geese and September 30, 1989, through February 18, 1990 (February 28, 1990, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits.

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 95 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 26 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I-70), no more than 100 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 100 days with a daily limit of 5.

Montana: No more than 95 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder of the Central Flyway portion of the State.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 17 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 19 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 19 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 100 days with a daily limit of 5.

New Mexico: For dark geese, no more than 95 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico in Socorro and Valencia Counties), no more than 107 days with a daily limit of 5 and a possession limit of 10.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 95 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 4 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 100 days with a daily limit of 5.

Oklahoma: For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and East of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 183, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 17 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 95 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 100 days with a daily limit of 5.

Wyoming: No more than 95 days with a daily limit of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in the current, approved Hunt Plan for the Eastern Population of Tundra Swans, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking light geese.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking light geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Outside Dates: Between October 7, 1989, and January 7, 1990.

Hunting Seasons: Seasons may be split into two segments. Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens (gallinules) may be selected as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, 1 canvasback, and 2 redheads but no more than 1 canvasback and 1 redhead in combination. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggreate.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates slected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Waterfowl Zones: Duck and goose season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between September 20, 1989, and January 21, 1990, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure: There wil be no open season on cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: two areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows. In this area, the season on white-fronted geese must end on or before November 30, 1989, and Canada geese may not be taken west of the Sacramento River.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 7, 1989, to Januray 7, 1990, except that white-fronted geese may be taken only during October 7 to October 31, 1989. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from October 28, 1989, through Januray 14, 1990, except that white-fronted geese may be taken only during October 28, 1989, to December 31, 1989. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon west and north of a line starting at Oregon-Washington State line on the Columbia River; south on Interstate Highway 5 to its junction with State Highway 22 at Salem; east on State Highway 22 to the Stayton cutoff; south on the Stayton cutoff through Stayton and straight south the Santiam River; west (downstream) on the Santiam River to Interstate Highway 5; south on Interstate Highway 5 to State Highway 126 at Eugene; west on State Highway 126 to State Highway 36; north on State Highway 36 to Forest Road 5070 at Brickerville; west and south on Forest Road 5070 to State Highway 126; west on State Highway 126 and ending at the Oregon coast, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open before November 1.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be

by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Higwhay 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 7, 1990.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 14, 1990. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 88 days and may not extend beyond January 14, 1990.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 88 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected under the following conditions: (a) between September 30, 1989, and January 21, 1990, a 93-day season may be selected, and seasons may be split into two segments; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton, Cascade, Hill, Liberty, Toole or Pondera Counties.

Common Snipe

Outside dates: Between September 1, 1989, and February 28, 1990.

Hunting Seasons and Daily Bag and Possession Limits: Seasons may not exceed 107 days. Bag and possession limits are 8 and 16, respectively.

Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length for the extended season, regular season, and any special seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1989 and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regulations Publication: Each State selecting the special season must inform the Service of the dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons and hunting hours apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period September 1, 1989–March 10, 1990, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative and will be evaluated in cooperation with States offering such extensions after a period of several years.

Dated: August 4, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-19173 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Ch. VI

[Docket No. 90650-9150]

RIN 0648-AB25

Atlantic Coast Striped Bass Regulations in the Exclusive Economic Zone

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA issues this advance notice of proposed rulemaking (ANPR) to make the public aware of a proposal to implement regulations on fishing for Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 miles (4.8–321.9 km) offshore. The ANPR is in response to the Atlantic Striped Bass Conservation Act (Pub. L. 100–589) which requires the Secretary of Commerce, after making certain determinations, to promulgate regulations on fishing for striped bass in the Atlantic EEZ. By this action, NOAA Fisheries is soliciting public comment on options presented to regulate fishing for striped bass in the EEZ on the Atlantic Coast. In addition, comments on any other options are welcomed and encouraged.

DATE: Written comments must be received on or before September 15, 1989.

ADDRESSES: Send comments on this ANPR to Richard H. Schaefer, Director,

Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301-427-2347.

SUPPLEMENTARY INFORMATION:

Background

Section 6 of the Atlantic Striped Bass Conservation Act (Act), reauthorized in November 1988 (Pub. L. 100-589) requires that "the Secretary of Commerce shall promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265 as amended) and necessary and appropriate to (1) ensure the effectiveness of state regulations or a federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal state and (2) to achieve conservation and management goals for the Atlantic striped bass resource." Indeveloping the regulations, the Secretary shall consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils, and each affected Federal, state and local government entity. Section 6 also states that the appropriate Regional Fishery Management Councils may prepare a Fishery Management Plan for striped bass in the EEZ, which if approved and implemented, would supersede any regulations promulgated by the Secretary.

The Atlantic striped bass occurs predominately in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (4.8 km) from the coastline. Management responsibility for striped bass resides primarily with the coastal states, and management occurs through the Atlantic State Marine Fisheries Commission's Interstate Fisheries Management Plan for the Striped Bass (ASMFC Plan). This Plan was adopted in 1981 by the coastal states from Maine through North Carolina in responsee to a severe decline in commercial landings and in juvenile production in Maryland. Increasingly strict state regulations have been imposed by amendments to the Plan since 1981 to restrict further the harvest of striped bass by recreational and commercial fisheries and allow rebuilding of the stocks. A draft Fishery Management Plan was prepared by the Mid-Atlantic Regional Fishery Management Council in 1984 for the EEZ to complete the ASMFC Plan but was not adopted.

Limited commercial catches of striped bass were made in the EEZ off Maryland in 1987 (24,000 pounds or 10.9 mt) and 1988 (27,000 pounds or 12.2 mt). Maryland's regulations, incuding a moratorium on the harvest of striped bass in certain internal Maryland waters, did not prevent the landing of these fish in Maryland for trans-shipment to other states. These landings and the absence of regulations in the EEZ prompted concern for a potential increase in harvest from the EEZ and resulted in section 6 of the Act.

Relevant Activities Pursuant to Section 6

In response to Section 6 of the Act, NOAA Fisheries has considered several regulatory options for the EEZ, and consulted with the ASMFC Striped Bass Management Board and the New England and Mid-Atlantic Fishery Management Councils. Four options for regulating striped bass fishing in the EEZ were identified and discussed with the above groups. A brief discussion of these options is presented below. Since these meetings, Option 1 has been split into Option 1A and 1B.

Option 1A—Prohibition on the Harvest and the Possession of Striped Bass in the EEZ

This approach, prohibiting the harvest (catch and retention) and possession of striped bass from the EEZ, represents a strong conservation position, is easy to understand and easy to enforce. This option eliminates the excuse "I caught it in the EEZ" for fishermen in state waters. This option would be consistent with the national standards of Magnuson Act and supportive of the objectives of the ASMFC Plan.

Option 1B—Prohibition on the Harvest of Striped Bass in the EEZ

This option, while prohibiting the harvest (catch and retention) of striped bass in the EEZ, allows possession, while in the EEZ, of striped bass caught legally in state waters. Similar to Option 1A, this option represents a strong conservation position and would be consistent with the national standards of the Magnuson Act. This option also eliminates the excuse "I caught it in the EEZ" for fishermen in state waters. Additionally, a no-harvest provision is similar to many of the state regulations and supportive of the ASMFC Plan. It would be harder to enforce than Option 1A, because it would allow a fisherman to claim he had caught the fish legally in state waters and that he was merely in transit across the EEZ.

Option 2—Application of State Regulations to Fish Caught in the EEZ

Under this option, regulations of the state where the fish are landed would apply to fish caught in the EEZ. This essentially imposes a Federal landing law that reinforces ASMFC-approved regulatory schemes, or extends a state's management regime into the EEZ, based on dockside enforcement. This approach would require that regulations in each state be reviewed and found consistent with the national standards set forth in section 301 of the Magnuson Act. Becaue the states' management regimes differ, issues of discrimination between residents of different states (National Standard 4) and use of best scientific information (National Standard 2) are encountered. Each time a state regulation changes, consistency with the Magnuson Act would have to be reexamined. Option 2 would allow for the taking of striped bass in the EEZ in quantities and sizes consistent with the regulations in the state of landing. However, this approach does not address the issue of fishermen harvesting from the EEZ and landing in a non-participatory state, where laws might be less restrictive or non-existent. Enforcement is linked to entry into a state's waters, and this approach allows fishermen legally to possess striped bass in the EEZ, because the applicable enforcement regime is only identified upon a fishermen's entry into coastal state waters and/or landing there. Thus, this option would not prohibit retention of striped bass of any size or number taken while in the EEZ. Such fish might be illegal in all participatory states, e.g., smaller than the lowest minimum size limit.

Option 3—Imposition of Specific Federal Regulations on Striped Bass Fishing in the EEZ

Numerous regulations could be implemented under this Option, including provisions for daily limits, possession limits, gear restriction, seasons and size limits. For example, one fish possession limit with a minimum size equal to the ASMFC recommended minimum size could be implemented in the EEZ. Any such Federal regulation, however, would supersede existing state regulations governing Atlantic striped bass caught in the EEZ. Pursuant to this regulation, a fisherman could legally land in Maryland one fish at or above the minimum size taken from the EEZ even though Maryland has a moratorium on striped bass fishing and a prohibition on possession of fish taken in Maryland

waters. This option would likely increase the total harvest of striped bass, because the allowed catch under Federal regulations would be in addition to the catch allowed by State regulations.

Option 4—Status Quo or Take no Action

Option 4 would be to take no action at this time. Section 6 of the Act requires the Secretary of Commerce to promulgate regulations that are "necessary and appropriate". Effective January 9, 1989, Maryland enacted legislation that prohibits the landing in Maryland of striped bass taken in the EEZ. The primary reason for Section 6 of the Act was the "loophole" that allowed fish taken in the EEZ to be landed in Maryland and trans-shipped to other states. The action by Maryland appears to eliminate the need for any action by the Secretary of Commerce at this time, because there are no other known landings of striped bass of any magnitude from the EEZ.

Discussion

Recent contacts with representatives of each coastal state from Maine through North Carolina did not identify any significant regulatory problem related to the harvest of striped bass from the EEZ that would be solved by imposing Federal regulations based on section 6 of the Act. The landings laws and other state regulations in place appear adequate to regulate the landing of striped bass harvested from the EEZ.

The option initially preferred by NOAA Fisheries was Option 1A. The ASMFC Striped Bass Management Board did not vote on this proposed action, but deferred a decision to the two involved Fishery Management Councils. However, concern was expressed that a no-take provision (Option 1B) would be more acceptable than Option 1A, based on the example of the need to traverse the EEZ to reach the mainland with fish legally caught at Block Island, Rhode Island. Support was also expressed for Option 2, but the impracticability of determining the consistency of each state's regulations and the issue of discrimination were identified as nearly insurmountable constraints.

In the absence of a fishery management plan for striped bass in the EEZ, NOAA Fisheries determined that implementation of either a no harvest and no possession or a no harvest provision would require about 10 months, based on the need for required documents and public comment periods under the Administrative Procedure Act, the National Environment Policy Act, and Executive Order 12291. This, coupled with the lack of regulatory problems in the coastal states, prompted NOAA Fisheries to then support Option 4, i.e., take no action. Presentations were made to the New England and Mid-Atlantic Fishery Management Councils with this as the preferred option. The New England Council voted unanimously to support Option 4, while the Mid-Atlantic Council voted to support Option 1A. Based on these divergent views, NOAA Fisheries is now proposing, as its preferred option, Option 1B, a prohibition on the harvest of striped bass from the EEZ on the Atlantic Coast, as a compromise position.

Option 1B does not prohibit possession of striped bass in the EEZ. Fish legally taken from state waters may be transported through the EEZ. The no-harvest option would prevent development of a significant fishery in the EEZ. This option is consistent with the National Standards of the Magnuson Act and, while more restrictive than regulations in some states, is supportive of the restoration objectives of the ASMFC Plan. If Option 1B is implemented, the regulations would be effective through September 30, 1991, the expiration date of the Atlantic Striped Bass Conservation Act.

NOAA Fisheries has determined that a full record of comment is necessary before determining whether to proceed with the proposed rule. Therefore, through this ANPR, NOAA Fisheries invites comments from all interested parties on the options presented to regulate fishing for striped bass in the Atlantic EEZ. In addition, comments on any other options are welcomed and encouraged.

Dated: August 10, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-19163 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Parts 672 and 675

[Docket No. 90640-9140]

RIN 0648-AC81

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) proposes a rule which (1) authorizes the Secretary to regulate directed fishing in the Gulf of Alaska (GOA) to accommodate incidental harvest requirements; (2) authorizes the Secretary to reopen a prematurely closed fishery; (3) requires fishermen to mark buoys used in the pot and hook-and-line fisheries; and (4) specifies 12:00 noon Alaska local time as the starting and ending time for groundfish fishing seasons. The Secretary also proposes other changes to clarify or update existing regulations. These changes are necessary to optimize groundfish yields from the GOA groundfish fishery, facilitate enforcement in the GOA and BSAI groundfish fisheries, and clarify existing regulations they are intended to futher the goals and objectives contained in fishery management plans that govern these fisheries.

DATES: Comments are invited until September 14, 1989.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska and Bering Sea and Aleutian Islands areas are managed by the Secretary under the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675.

At its January 16-19, 1989, meeting, the Council reviewed more than forty recommendations submitted by various interested parties for possible amendments to the FMPs or to implementing regulations. Four of the suggestions for regulatory changes were

adopted by the Council. The first was to establish authority in the GOA to close directed fisheries prior to the total allowable catches (TACs) for such fisheries being reached to accommodate incidental catch needs. This authority has already been established in the BSAI. The second, third, and fourth suggestions are relevant to both the GOA and BSAI. The second measure would amend regulatory text at § 672.22(a) and (b) and § 675.20(e) to provide for reopening fisheries that have been closed prematurely if available catch data show that allowable harvest levels have not been reached. The third measure would amend regulatory text at § 672.23 and establish a new § 675.23 to specify 12:00 noon Alaska local time as the starting and ending time for all fishing seasons. The fourth measure would amend regulatory text at § 672.24 and establish a new § 675.24 to require fishermen to mark their gear used in the pot and hook-and-line fisheries. Minor changes to regulations are described below under "Other regulatory changes." Descriptions of, and reasons for, the proposed measures are described below.

Authority to Halt Directed Fishing Before a Species' TAC Is Reached

Nine target species including the "other species" category, are managed under regulations implementing the GOA FMP. For each of these target species, TACs are specified by the Secretary by means detailed in the regulations. When the TAC for any target species in any regulatory area or district had been reached, the Secretary prohibits the retention of that species therein, and requires that such species be treated as a prohibited species under § 672.20(e). Except for sable fish under § 672.24(b)(3), no authority exists under 50 CFR part 672 allowing the Secretary to close a fishery for a target species or "other species" prior to the TAC being reached to preserve a portion of the TAC to support incidental catches in other target fisheries.

To date, reaching TACs prematurely has only been a problem in the "other rockfish" and sablefish fisheries. However, the Gulf of Alaska groundfish industry is expanding rapidly with new catching and processing capacity. The sum of TACs available for harvest in 1989 is 231,966 metric tons (mt), which represents an increase of 34 percent over the total 1988 harvest of 153,882 mt. The likelihood that TACs for other species will be reached early in the fishing year is increasing.

Setting aside certain amounts of TACs as bycatch to support other target fisheries may be necessary to avoid waste. Authority is needed to allow the secretary to close target fisheries early to avoid reaching TACs for those species/species groups that are caught incidentally in other directed fisheries. Otherwise, the Secretary must allow the TACs to be reached and declare additional catches as prohibited species to be discarded at sea as waste. The Secretary proposes, therefore, to allow closure of a fishery for a target species or the "other species" category prior to its TAC being reached if deemed appropriate to accommodate bycatch requirements. The amount of TAC left uncaught by the target fishery would then be available to support bycatch needs in directed fisheries for other groundfish species. The Secretary expects the amount set aside to be sufficient to allow further bycatches during the remainder of the fishing year without actually causing the TAC for the bycatch species/species group to be reached. The Secretary's decision shall be based upon the following considerations.

(1) The risk of biological harm to the groundfish species being retained.

The purpose of this factor is to consider effects on the well-being of a groundfish species if amounts were to be set aside for bycatch. If a fisherey is allowed to harvest the entire TAC for a species prior to the end of the fishing year, additional catches are treated as prohibited species and discarded at sea. In allowing this, the Secretary must conclude that mortality in excess of TAC is consistent with the goals and objectives of the GOA FMP and will not exceed ABC for that species.

(2) Whether a bycatch set aside is required.

The purpose of this factor is to consider the level of natural catch rates. In some cases, natural bycatch rates are sufficiently low, resulting in insignificant amounts of bycatch and thus minimal discard. Setting aside bycatch would be unnecessary. In other cases, where natural bycatch rates are high, significant amounts of bycatch may be taken thus compelling another conclusion.

(3) The socioeconomic impact of allocation to bycatch needs.

This factor considers the allocative effects of setting aside bycatch. Except for sablefish, GOA groundfish are currently available to all users without regard to need. Setting aside bycatch redistributes fishery rights. amounts of bycatch that could have been targeted on by some users might be denied to them as a result of a bycatch only declaration. All determinations about setting aside bycatch will be consistent with the goals and objectives of the GOA FMP and reasonably calculated to promote conservation.

Authority to Reopen Fisheries to Allow Full Utilization of TACs or Gear Shares

Regulations for the GOA and BSAI FMPs provide that a fishery will be closed when the TAC or gear share of a TAC for that fishery is reached. Current regulations do not specifically provide authority for the Secretary to reopen a fishery if subsequent catch data show the closure was premature. Premature closures would preclude attainment of optimum yield and thwart efforts to maximize economic returns from the fishery. The Secretary has determined that if fisheries have been closed based on projected catch data not substantiated by actual catch data, then the fisheries should be reopened. The Secretary, therefore, proposes regulations to specifically provide authority to reopen a fishery that had been closed prematurely.

New Requirement for Making Hook-and-Line and Pot Gear

Enforcement officers must be able to identify the owners of setline or skate gear, including hook-and-line and pot gear, to effectively enforce various fishery regulations and locate and return lost or stolen gear. The Secretary, therefore, proposes to require fishermen who are using setline or skate gear to mark the buoys for such gear to aid in its identification.

Openings and Closures of Fishing Seasons at 12:00 Noon Alaska Local Time

Except for the GOA sablefish hook-and-line fishery, which starts at 12:00 noon, Alaska local time, the GOA and BSAI groundfish fisheries start at 1 minute after midnight on January 1 and are allowed to proceed, subject to time/area closures until midnight, December 31 of any fishing year. Night time openings are not desirable for two reasons. Competition within the fishing fleet, especially in fisheries that might be prosecuted in a short time frame, causes safety problems for fishermen who initiate fishing operations concurrent with a midnight opening and are burdened by darkness. Bad weather during darkness will worsen the safety conditions. Also, agency enforcement of the starting and ending times is not practical during darkness, because such enforcement is usually conducted with aircraft to cover as much of the fishing area as possible. The Secretary, therefore, proposes to make 12:00 noon,

Alaska local time as the starting and ending time for all fishing seasons.

Other Regulatory Changes

Certain other regulatory changes are proposed to clarify regulations or to bring regulatory sections up to date with other regulatory changes. These changes are as follows:

(1) In § 672.2, the terms "setline" and "skate" are defined.

(2) In paragraph (a)(1) of §§ 672.5 and 675.5, the phrase, "to which a permit has been issued under this part" is deleted to remove the link between permit requirements and reporting requirements. As written, a vessel operator who did not have a permit and who also had not complied with requirements to submit fish tickets would only be in violation of not having a permit. By removing the phrase, he would also be in violation of the fish ticket requirement.

(3) Paragraph (b) of § 672.23 is revised to delete reference to sablefish pots, since sablefish pots are no longer a legal gear in the GOA and this regulation serves no purpose.

(4) In § 672.24, paragraph (a), *Biodegradable escape panels required for all sablefish pots,* is deleted for the same reason.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule that discusses the impact on the human environment that will occur as a result of this rule. You may obtain a copy of the EA/RIR/IRFA from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The effects that have been identified, would in general, be positive. Authority to close a fishery before a TAC is reached to provide for subsequent incidental catch amounts in other target fisheries is superior to the status quo because it would reduce unnecessary waste of valuable resources by allowing the retention of species that would otherwise have to be discarded; and would minimize total fishing mortality and promote fishery conservation of groundfish resources by accounting for incidental catch amounts within established TACs. Authority to allow reopening of fisheries that had been closed prematurely is superior to the status quo, since Secretarial direction would be clearly specified and provision for fully utilizing available TACs would be fostered. A requirement that fishermen mark their setline and skate gear is superior to the status quo, because owners could be informed about lost gear and enforcement of closed fishing areas could be facilitated. A 12:00 noon opening and closing time for all groundfish fisheries is superior to the status quo, because fishermen would be working under safer conditions during daylight and enforcement of openings and closures would be facilitated.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

Dated: August 11, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.2, the terms *setline* and *skate* are added to read as follows:

§ 672.2 Definitions.

* * * * *

Setline means one or more stationary, buoyed, and anchored lines with hooks attached.

Skate means all or part of a longline or setline.

* * * * *

3. In § 672.5, the first sentence of the introductory text of paragraph (a)(1) is revised to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) that catches groundfish in any of the Gulf of Alaska regulatory areas, the territorial sea adjacent to any regulatory area, or internal waters of the State of Alaska, shall be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaskan fish ticket. * * *

* * * * *

4. In § 672.20, paragraph (c)(2) is redesignated as (c)(3) and a new paragraph (c)(2) is added to read as follows:

§ 672.20 General limitations.

(c) * * *

(2) *Notices of bycatch.* (i) When the Regional Director determines that the amount of the any target species or of the "other species" category that has not been caught during the fishing year is necessary for bycatch in fisheries for other groundfish species during the remainder of the fishing year, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species on the "other species" category for the remainder of the fishing year.

(ii) *Data.* All information relevent to one or more of the following factors may be considered in making the determinations under paragraph (c)(2) of this section:

(A) The risk of biological harm to the groundfish species being retained;

(B) Whether a bycatch set-aside is required; and

(C) Socioeconomic impact of allocation to bycatch needs.

(iii) *Procedure.* (A) No notice issued under this paragraph will take effect until:

(1) The Secretary has failed the proposed notice for public inspection with the Office of the Federal Register, and

(2) The Secretary has published the proposed notice in the **Federal Register** for public comment for a period of 30

days before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(B) If the Secretary decides, for good cause, that setting aside bycatch is necessary without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the bycatch declaration will be received by the Regional Director for a period for 15 days after the effective date of the notice.

(C) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(D) If written comments are received during any such 15-day period which oppose or protest a notice of bycatch issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(1) Publish in the **Federal Register** a notice of continued effectiveness of the notice of bycatch responding to comments received; or

(2) Modify or rescind the notice.

(E) Notices issued by the Secretary under paragraph (c)(2)(i) of this section will include the following information:

(1) A description of the notice;

(2) The reasons for and the determinations required under paragraph (c)(2) of this section; and

(3) The effective date and any termination date of such notice. If no termination date is specified, the notice will terminate on the last day of the fishing year.

* * * * *

5. In § 672.22, add "; or " after paragraphs (a)(2)(i)(B) and (a)(2)(ii)(C).

6. In § 672.22, paragraphs (a)(2)(i)(C) and (a)(2)(ii)(D) are added as follows:

§ 672.22 Inseason adjustments.

(a) * * *

(2) * * *

(i) * * *

(C) The underharvest of a TAC or gear share of a TAC for any ground fish species when catch information indicates that the TAC or gear share has not been reached.

(ii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

7. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from January 1 to December 31, subject to other provisions of this part, except as provided in paragraph (c) of this section.

(b) The time of all openings and closures of fishing seasons is 12:00 noon Alaska local time.

(c) Directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1 through December 31, subject to the other provisions of this part.

8. In § 672.24, paragraph (a) is revised to read as follows:

§ 672.24 Gear limitations.

(a) *Marking of gear.* (1) All setline or skate marker buoys carried aboard or used by any vessel regulated under this part shall be marked with one of the following:

(i) The vessel's name; and

(ii) The vessel's Federal permit number; or

(iii) The vessel's registration number.

(2) Markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND THE ALEUTIAN ISLANDS AREA

9. In § 675.5, the first sentence of the introductory text of paragraph (a)(1) is revised to read as follows:

§ 675.5 Recordkeeping and reporting.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) that catches groundfish in the Bering Sea and Aleutian Islands Management Area or either subarea, the territorial sea adjacent to either subarea, or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. * * *

* * * * *

10. In § 675.20, add "; or" after paragraph (e)(2)(ii) and (e)(3)(iii).

11. In § 675.20, paragraphs (e)(2)(iii) and (e)(3)(iv) are added to read as follows:

§ 675.20 General limitations.

(e) * * *

(2) * * *

(iii) The underharvest of a TAC or gear share of a TAC for any groundfish species when catch information indicates that the TAC has not been reached.

(3) * * *

(iv) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the "other species" category.

* * * * *

12. A new § 675.23 is added to read as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutian Islands is authorized from January 1 to December 31, subject to other provisions of this part.

(b) The time of all openings and closures of fishing seasons is 12:00 noon Alaska local time.

13. A new § 675.24 is added to read as follows:

§ 675.24 Gear limitations.

(a) *Marking of gear.* All setline or skate marker buoys carried aboard or used by vessels regulated under this part shall be marked with one of the following:

(1) The vessel's name; and

(2) The vessel's Federal permit number; or

(3) The vessel's registration number.

(b) Markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water line and shall be maintained in good condition.

[FR Doc. 89-19253 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-22

Notices

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[CN-89-003]

Advisory Committee on Cotton Marketing Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Cotton Marketing will meet on Wednesday, August 30, 1989, beginning at 8:00 a.m. at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee. The purpose of the meeting, the third held by the committee, will be to continue a review of prominent marketing system issues.

Tentative agenda items include recommendations from the subcommittee of the Advisory Committee on Cotton Marketing, which met on January 17 and April 25, 1989, in Memphis, Tennessee, regarding the use of additional quality factors in classifying cotton and their incorporation into the price support loan schedule. This meeting is open to the public, and written comments may be submitted in advance or following the meeting to Jesse F. Moore, Director, Cotton Division. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3193.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cotton Marketing was established by the U.S. Department of Agriculture to review the cotton marketing system and to recommend ways of improving its efficiency. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. 92-463).

Dated: August 14, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-19424 Filed 8-15-89; 9:12 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89-136]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Northrup King Company, to allow the field testing in the State of Minnesota of alfalfa plants genetically engineered to express a gene from *Streptomyces viridochromogenes*, which provides resistance to the glufosinate-class of herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered alfalfa plants will not present a risk of introduction of dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6774. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-038-01.

SUPPLEMENTARY INFORMATION: .

The regulations in 7 CFR part 340 regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Northrup King Company, of Stanton, Minnesota, has submitted an application for a permit for release into the environment, to field test alfalfa plants genetically engineered to express a gene from *Streptomyces viridochromogenes*, which provides resistance to the glufosinate-class of herbicides. The field trial will take place in Stanton, Minnesota.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the alfalfa plant under the conditions described in the Northrup King Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Northrup King Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Streptomyces viridochromogenes* has been inserted into an alfalfa chromosome. The expression of this gene provides resistance to the glufosinate-class of herbicides. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduction gener can spread to another plant by cross-pollination, because the genetically engineered alfalfa plants will be mowed to prevent flower formation. Thus, no pollen will be produced by any alfalfa plant in this experiment.

2. Neither the glufosinate acetyl transferase gene itself nor its gene product confers on alfalfa any plant pest characteristic.

3. The bacterium *Streptomyces viridochromogenes*, from which the glufosinate acetyl transferase gene was isolated, is not a plant pest.

4. The vector used to transfer the glufosinate acetyl transferase gene to alfalfa plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the glufosinate acetyl transferase gene into alfalfa plant cells. The vector agent has been chemotherapeutically eliminated and shown to be no longer associated with any regenerated alfalfa plant.

6. Horizontal movement or gene transfer of the glufosinate acetyl transferase gene is not possible. The vector acts by delivering and inserting the gene into an alfalfa chromosome (i.e., chromosomal DNA). The vector does not survive in or on any transformed alfalfa plant. No mechanism for horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The size of the field test plot is small and will be located on a private research farm in a rural area, which will provide good security.

The environmental assessment and finding of no signicant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19242 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-125]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Bacterium; Clavibacter xyli: subsp. cynodontis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Crop Genetics International, to allow the field testing in the State of Maryland of *Clavibacter xyli* subsp. *cynodontis*, a bacterium genetically engineered to express the delta-endotoxin gene of *Bacillus thuringiensis* var. *kurstaki*, another bacterium, in rice. The assessment provides a basis for the conclusion that the field testing of genetically engineered *Clavibacter xyli* subsp. *cynodontis* will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8761. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–053–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Crop Genetics International, of Hanover, Maryland, has submitted an application for a permit for release into the environment, to field test the bacterium *Clavibacter xyli* subsp. *cynodontis*, genetically engineered to express the delta-endotoxin gene of *Bacillus thuringiensis* var. *kurstaki* in rice. The field trial will take place in Queen Annes County, Maryland.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the *Clavibacter xyli* subsp. *cynodontis* bacterium under the conditions described in the Crop Genetics International application. APHIS concluded that the field test will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Crop Genetics International, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The delta-endotoxin gene from *Bacillus thuringiensis* was inserted into the *Clavibacter xyli* subsp. *cynodontis* genome. The gene is lost from the bacterium at the rate of once in every 12,500 bacterial cells per generation *in vitro*. Both the revertant (which has lost the delta-endotoxin gene) and the naturally occurring bacterial strains grow faster (14 percent growth rate differential in laboratory medium) than the recombinant bacterium. In the field, using corn, revertant bacteria can make up to 6 percent of the population of the bacterium, depending on the plant part, by the end of the growing season. Thus, the delta-endotoxin gene will eventually be lost from the recombinant bacterium.

2. The genetic alterations are not expected to enhance any plant pathogenic property of the recombinant bacterium as compared to the parental strain of *Clavibacter xyli* subsp. *cynodontis* that is already present in the State of Maryland where the test plot is located.

3. Although *Clavibacter xyli* subsp. *cynodontis* is transferred by mechanical means; e.g., cutting tools, to other plants, it is not transferred easily by other mechanisms in the field. Transfer to other plants by mechanical transfer will be minimized in the field plot designs and field plot protocols, which include buffer zones and tool disinfestation. The bacterium does not appear to proliferate outside the host plant. In addition, regular monitoring for the recombinant bacterium will ensure that if it spreads to plants at the edge of the test plots, it will be detected.

4. Dissimination of *Clavibacter xyli* subsp. *cynodontis* does not occur in rice seed, although it has been shown to occur in corn. However, all seed not used for research purposes (in containment) will be destroyed, preventing transfer by this mechanism.

5. Data have been provided by the company to demonstrate that the probability of transfer of the delta-endotoxin gene from the recombinant bacterium to other micro-organisms is extremely remote.

6. The recombinant bacterium has a relatively low order of toxicity to susceptible insects. The field test plot is very small. Therefore, the introduction of the recombinant bacterium poses no significant impact on susceptible insect populations.

7. There were no listed (January 1, 1989, 50 CFR 17.11 and 17.12) threatened or endangered insect species present in the test site in Maryland, so the introduction of the recombinant bacterium poses no risk to these threatened insects.

8. The inherent properties of *Clavibacter xyli* subsp. *cynodontis* and the recombinant bacterium indicate that there are no human health risks. The bacterium does nt grow at human body temperature. The bacterium has been shown not to be pathogenic or toxic in mammalian tests. In addition, all crops will be used for research purposes or destroyed so that there will be no dietary exposure to humans.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Inspection Service.

[FR Doc. 89–19243 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-138]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to BioTechnica Agriculture, Inc., to allow the field testing in the State of Wisconsin of genetically engineered tobacco plants modified to express a dihydropicolinic acid synthase gene (DHDPS) which provides increased nutrient value to the plant. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6774. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–116–20.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 control and direct the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

BioTechnica Agriculture, Inc., Cambridge, Massachusetts, has submitted an application for a permit for release into the environment to field test genetically engineered tobacco plants modified to express a dihydropicolinic

acid synthase gene (DHDPS), which provides increased nutrient value to the plant. The field trial is to take place in Dane County, Wisconsin.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the BioTechnica Agriculture, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by BioTechnica Agriculture, Inc. as well as a review of other relevant literature, provide the public with documentation of APHIS's review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A DHDPS gene from *E. Coli* has been inserted into a tobacco chromosome. In this field trial none of the introduced genes can spread to any other plant, because the test plants will not be allowed to flower. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the DHDPS gene nor its gene product, confers on tobacco any plant pest characteristics.

3. The DHDPS gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the DHDPS gene to tobacco plants has been evaluated for its use in this specific experiment, and does not pose a plant pest risk. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector also has been tested and shown to be not pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the DHDPS gene into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

6. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7. The field test plot will be 9,000 square feet in size, and the test plants will be located approximately 1 mile from any other tobacco plants.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–19244 Filed 8–15–89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1990 crop of upland cotton: (a) Whether Plan A or Plan B should be implemented and the loan repayment level to be in effect under the chosen Plan; (b) whether first handler certificates should be issued and, if so, what restrictions should be placed on the use of such certificates; (c) whether loan deficiency payments should be made available, and, if so, whether such payments should be made available in cash only or in cash and commodity certificates; (d) the percentage reduction under the acreage reduction program (ARP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion required under such a program; (f) whether to implement the inventory reduction or "half-ARP" provision; (g) whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level and the method of adjustment to a lint basis; and (h) other related determinations.

These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before October 16, 1989 in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires 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).

On April 5, 1989 (FR Vol. 54, No. 64), a notice of proposed determinations was published which set forth provisions common to the 1990 feed grains, wheat, upland cotton, extra long staple (ELS) cotton, and rice price support and production adjustment programs.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1990 crop of upland cotton:

a. *Plan A/Plan B and Loan Repayment Level.* Section 103A(a)(5) of the 1949 Act provides that if the Secretary determines that the prevailing world market price for upland cotton (adjusted to United States quality and location) is below the loan level determined under Section 103A(a)(1) and (2), then, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B.

If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made for the 1990 crop at a level determined and announced by the Secretary at the same time the Secretary announces the 1990 loan level. Such payment level for the 1990 crop shall not be less than 80 percent of the 1990 loan level. Such repayment level, once announced for the crop, shall not thereafter be changed.

Section 103A(a)(5) further provides that if the Secretary elects to implement Plan B, the Secretary shall permit a producer to repay a loan made for the 1990 crop at the lesser of (1) the 1990 loan level; or (2) the prevailing world market price for upland cotton (adjusted to United States quality and location), as determined by the Secretary. Section 103A(a)(5) further provides that for the 1990 crop of upland Cotton, if the prevailing world market price for cotton (adjusted to United States quality and location) as determined by the Secretary, is less than 80 percent of the 1990 loan level, the Secretary may permit a producer to repay the 1990 loan at such a level (not in excess of 80 percent of the 1990 loan level) as the Secretary determines will (1) minimize potential loan forfeitures; (2) minimize the accumulation of cotton stocks by the Federal Government: (3) minimize the cost incurred by the Federal Government in storing cotton; and (4) allow cotton produced in the United States to be marketed freely and competitively, both domestically and internationally.

Comments are requested on whether Plan A or Plan B should be implemented and the level of the loan repayment rate.

b. *First Handler Certificates.* Section 103A(a)(5)(D) of the 1949 Act provides for the Secretary to make payments to first handlers in the form of negotiable marketing certificates if the Secretary determines that a loan program carried out in accordance with Plan A or Plan B fails to make upland cotton fully competitive in world markets and that the prevailing world market price of upland cotton (adjusted to United States quality and location) is below the current loan repayment rate. CCC may assist any person receiving such negotiable marketing certificates in the redemption of such certificates for cash, or marketing or exchange of such certificates for upland cotton owned by CCC or, if CCC and the person agree other agricultural commodities or the products therof owned by the CCC at such times, in such manner, and at such price levels as CCC determines will best effectuate the purposes of the first handler program.

Comments are requested with respect to (1) whether first handler certificates should be issued, (2) what restrictions should be placed on the use of such certificates.

c. *Loan Deficiency Payments.* Section 103A (b)(1)–(5) of the 1949 Act provides that, for the 1990 crop of upland cotton, the Secretary may make payments available to producers who, although eligible to obtain a loan, agree to forgo obtaining such loan in return for such payments. Pursuant to that section, payments shall be computed by multiplying (1) the loan payment rate, by (2) the quantity of upland cotton the producer is eligible to place under loan. The section provides that the loan payment rate shall be the amount by which the loan level exceeds the loan repayment rate and that the quantity of upland cotton eligible to be placed under loan may not exceed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. Section 103A(b) further provides that the Secretary may make up to one-half the amount of such payment in the form of negotiable marketing certificates.

Comments are requested on whether loan deficiency payments should be made available and, if so, the percentage of each loan deficiency payment to be made available in the form of negotiable marketing certificates.

d. *Acreage Reduction Program.* Section 103A(f) of the 1949 Act provides that, with respect to the 1990 crop of upland cotton, if the Secretary determines the total supply of upland cotton, in the absence of an acreage reduction program (ARP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for an acreage reduction program.

If the Secretary elects to put an ARP into effect for 1990, the Secretary shall announce the program not later than November 1, 1989. The Secretary shall, to the maximum extent practicable, carry out an ARP for the 1990 crop of upland cotton in a manner that will result in a carryover of 4 million bales of upland cotton.

If an upland cotton ARP is announced, such reduction shall be achieved by applying a uniform percentage reduction not to exceed 25 percent to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm shall be ineligible for loans and payments with respect to that farm. Acreage on the farm to be devoted to conservation uses shall be determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres planted to upland cotton by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage."

Comments are requested on whether an ARP should be implemented and, if so, the appropriate percentage level of such limitation.

e. *Land Diversion Program.* Section 103A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an ARP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into with the Secretary.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may

prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction, beyond the ARP, under a land diversion program would be at a producer's option.

Comments are requested with respect to the need for an optional land diversion program as well as the provisions of such program.

f. *Inventory Reduction Program.* Section 103A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan; (2) agree to forgo receiving deficiency payments; and (3) do not plant upland cotton for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage reduction program. Such payments shall be made in the form of upland cotton which is owned by CCC and shall be subject to the availability of such upland cotton. Payments under this program shall be determined by multiplying (a) the loan payment rate (loan rate minus loan repayment rate) by (b) the quantity of upland cotton the producer is eligible to place under loan.

Comments are requested on whether the inventory reduction program would be implemented for the 1990 crop of upland cotton.

g. *Loan Level for Seed Cotton.* Consideration is being given as to whether recourse loans should be made available to producers of seed cotton for the 1990 crop pursuant to the authority of the Charter Act and, if so, the level at which such loans should be made available for seed cotton under the 1990 program.

Comments are requested on whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining the seed cotton loan value.

h. *Other Related Provisions.* A number of other determinations must be made in order to carry out the upland cotton loan program such as: (1) Premiums and discounts for grades, staples, and other qualities; (2) establishment of base loan rates by warehouse location; and (3) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: 7 U.S.C. 1444-1, and 1445b-4; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on August 7, 1989.

John Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-19120 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Spring Creek Timber Harvest Lewis and Clark National Forest, Meagher County, MT

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts associated with implementation of actions scheduled in the Lewis & Clark National Forest Land and Resource Management Plan of June, 1986, for the Spring Creek Geographic Unit (LB-11). Included in these actions are timber harvesting and road construction and reconstruction.

Preliminary scoping has been done for this analysis by an interdisciplinary team from the Lewis and Clark National Forest. The following issues have been identified in relation to the proposed actions:

1. What are the effects on wildlife and fisheries resources, with emphasis on elk habitat effectiveness, and on old growth dependent and snag dependent species?

2. What are the opportunities for converting stagnant stands to healthy growing stands, reducing impact of insect and disease, creating vegetation diversity, and providing commercial timber sales?

3. What is the relative cost efficiency of alternatives including the proposed action?

4. What are the effects on the existing Forest road and trail system and how will the existing and new system need to be managed?

5. What are the effects on water quality and quantity, and the effects on the riparian areas?

6. What are the effects on recreation and land uses in the area, especially on visual quality, recreation setting, cultural resources, roadless values, snowmobiling, outfitter and guide operations, existing elk hunter opportunity, and mining activity?

7. What are the effects on the range vegetation resource and existing grazing allotments in regards to forage availability, livestock use/distribution, noxious weeds, and sensitive plants?

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. This information will be used in preparing the draft environmental impact statement (DEIS). This proceeds includes:

1. Identification of potential issues related to the proposed action.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Identification of alternatives to the proposed action.

5. Identification of potential environmental effects of the alternatives.

6. Determination of potential cooperating agencies and task assignments.

DATES: Comments concerning the scope of the analysis should be received on or before September 15, 1989, to receive timely consideration in the preparation of the DEIS.

ADDRESSES: Send written comments to Carl Fager, District Ranger, Musselshell Ranger District, 809 2 NW., P.O. Box F. Harlowton, MT 59036.

FOR FURTHER INFORMATION CONTACT: David Wanderaas, Spring Creek Interdisciplinary Team Leader, Musselshell Ranger District, (406) 632-4391.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives. The primary purpose and need for the proposed action is to begin harvesting of timber that is mature and overmature and/or in a state of high risk from insect and/or disease, and to help supply commercial demands for timber on a long term sustained yield basis. These stands of timber are proposed for

harvest at this time because of the poor condition and mortality occurring in them. Timber sales were projected in the Forest Plan in the Spring Creek and Whitetail Creek areas.

The proposed projects are within the Spring Creek Geographic Unit (LB-11) as defined by the Forest Plan, and the Spring Creek Roadless Area (identified in the RARE II process). The analysis will consider timber stands within an area that is bounded on the north by the District Boundary, on the east by Daisy Dean Creek and Forest Trail 619, on the south and southwest by the Forest boundary, and on the west by the westerly drainage divide of Whitetail Creek and on the southwest by a line from Elephant Rock to the Forest Boundary.

The areas of proposed harvest for the Spring Creek project are within Management Areas B and C of the Lewis and Clark Forest Plan (p. 4-75). Management Area B emphasizes timber management and provides for moderate levels of livestock production while minimizing impacts to other resources. Management Area C emphasizes maintenance or enhancement of existing elk habitat by maximizing habitat effectiveness. Emphasis is also directed toward management for habitat diversity to support a variety of native wildlife species. Commodity resource management is practiced in Management Area C where it is compatible with wildlife habitat management objectives.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all harvest and regeneration activities are deferred. Other alternatives will examine various levels and locations of treatment and regeneration to emphasize differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site specific mitigation measures and the effectiveness of each proposed mitigation measure.

The public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision. However, two periods of time are identified for the receipt of formal comments on the analysis. The two public comment periods are during the scoping process (through one month following publication date for this notice) and during the formal review period of the draft EIS (estimated February-April, 1990).

The DEIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in February, 1990. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be for 45 days from that date of publication.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by June, 1990. The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: August 9, 1989.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 89-19248 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-11-M

Exemption From Appeal of Tepee Butte Recovery Project, Wallowa-Whitman National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: Between August 25, 1988 and September 9, 1988, the Tepee Butte Fire burned approximately 54,100 acres of the Hells Canyon National Recreation Area (NRA) on the Wallowa-Whitman National Forest. This proposed recovery project consists of rehabiliation of National Forest System (NFS) lands damaged by the wildfire and the recovery of dead and dying timber which is still merchantable. Due to the length of time its has taken to develop an acceptable recovery program and to properly evaluate its effects, the time remaining for implementation has become critical. Any additional delay will result in significant loss of the salvable resources; therefore, the decision to rehabilitate the Wallowa-Whitman National Forest lands and offer salvage timber for sale in the Tepee Butte project area will not be subject to administrative appeal pursuant to 36 CFR 217.4(a)(11).

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be directed to Bruce McMillan, Environmental Coordinator, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814, Phone (503) 523-6391.

SUPPLEMENTARY INFORMATION: On August 25, 1988 a lightning storm moved through the region and ignited a fire. Due to favorable burning conditions and strong winds, the fire moved rapidly, consuming over 14,000 acres in the first eight hours. During this time, it moved onto the Hells Canyon NRA of the Wallowa-Whitman National Forest. The

fire was finally declared controlled on September 8, 1988, after burning approximately 54,100 acres. In the aftermath of the Tepee Butte Fire the Forest Service had to decide if it should leave the burned area to recover naturally, rehabilitate the burned area, and/or provide the opportunity to salvage some of the fire-killed or severely damaged trees.

Determining whether to rehabilitate the burned area involved decisions on how to do so, which part of the burned area should be rehabilitated, and determination of whether to provide the opportunity to salvage, what type of logging to use, and whether roads should be built.

In order to assist the Forest Service in making these difficult decisions, a site-specific, project environmental impact statement (EIS) was prepared. On October 7, 1988, the Wallowa-Whitman National Forest published in the **Federal Register** a Notice of Intent to prepare an EIS for this recovery project (53 FR 39492). Concurrent with the decision to initiate an EIS, was the Forest Service's commitment to fully involve the public in the decision making process. In order to facilitate public involvement, the Forest Supervisor solicited public comment with a general mailer, in newpaper ads, and in four public scoping meetings. Over 2,700 letters inviting public participation on the recovery project were mailed in October. Meetings with environmental groups, timber industry, local, state, and Federal agencies and representatives were also held.

Written comments were solicited through November 18, 1988. From the hundreds of opinions voiced and from written comments received, major issues emerged.

Because of the area's unique character and sensitive ecosystems, some special-interest groups have opposed developments such as roads, trails, and timber harvest sites. Some of the groups have maintained that either additional areas be designated as wilderness or the area be redesignated as a National Park. In contrast, other groups believe part of the NRA should be managed to produce high level of commodities, especially wood products.

Development of the draft EIS resulted in considerable public and media interest. The Notice of Availability of the draft EIS was published in the May 5, 1989, **Federal Register** (54 FR 19425) and made available to the public.

During the 45-day review period, which ended June 19, 1989, several public meetings were held in which Forest Service personnel were available to answer questions and gather public input. News releases were issued to increase public awareness of the project and to encourage participation by all interested parties. Open houses were held to allow the public to view planning alternatives and ask questions of the planning staff and interdisciplinary team. Meetings took place between Forest Service personnel and industry coalitions, environmental groups, chambers of commerce, and elected officials.

The draft EIS has been reviewed and modified as a result of additional analysis and public comment received on the draft during the 45-day comment period. A timeline has been set and closely adhered to for the completion of the final EIS.

An important factor in this project planning is the deterioration of fire-killed timber. The project area contains large amounts of fire-killed and severely damaged softwood timber. Affected timber begins to deteriorate as soon as it is dead. Weathering, insects, and decay of fire-killed or severely damaged timber causes a rapid depreciation in soundness and selling value. The desire to minimize this loss was one of the primary reasons the Tepee Butte Recovery Project was undertaken and why the final EIS was completed under a relatively short timeline. The importance of this factor has been further emphasized by recent court orders restraining federal timber sales, thus substantially reducting the normal flow of timber from Forest Service and Bureau of Land Management Lands in Oregon and Washington. Prompt availability of Tepee Butte Fire damaged timber can help alleviate the economic situation brought about by the constricted timber supply.

The Tepee Butte Recovery final EIS is scheduled to be released September, 1989. This final EIS discloses the environmental effects of all the alternatives considered. Some environmental effects are probable with the implementation of any of the alternatives. These effects relate to recreation resources, visual resources, water quality/fisheries, wildlife habitat, long-term site productivity, vegetation management, the transportation system, rapid timber recovery, and social and economic factors.

The earliest possible implementation of the Tepee Butte Recovery Project decision will minimize losses in value of the timber resource on the site, allow for the most timely rehabilitation and reforestation of the site, and maximize the return to the Treasury for timber affected by the fire. Processing administrative appeals can cause significant delays in implementing the decision. For example, it could take 45 days to file an appeal, and additional 100 days or more to complete the administrative review and possibly another 15 to 45 to complete a discretionary review. If a Stay were granted during the pendency of the appeal, project implementation could be delayed approximately six months. A six-month delay would essentially mean that no activities would commence during the current logging season. Since the timber sales being proposed in the final EIS will have two year contracts, it is possible that a large portion of the timber volume will not be removed until the third logging season following the decision. Studies indicate that significant deterioration will occur by then and the value of the recovered timber will greatly diminish.

Pursuant to 36 CFR 217.4(a)(11), I have exempted this fire recovery project from administrative appeal. The decision to rehabilitate lands and resources of the Wallowa-Whitman National Forest and to offer salvage timber for sale in the Tepee Butte project area will hereby not be subject to administrative appeal.

Results of the environmental analysis for this fire recovery project are documented in the Tepee Butte Recovery Project final EIS available at the Supervisor's Office, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814, Phone (503) 523-6391.

Dated: August 9, 1989.

John E. Lowe,

Acting Regional Forester.

[FR Doc. 89-19137 Filed 8-15-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-087]

Portable Electric Typewriters From Japan; Amendment to Final Results of Administrative Review of Antidumping Duty Order

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

ACTION: Notice of amendment of final results of administrative review of antidumping duty order.

SUMMARY: As result of a remand from the United States Court of International Trade the Department of Commerce is amending its final results of administrative review published in the *Federal Register* on September 9, 1983.

We will direct the U.S. Customs Service to appraise and liquidate all entries of portable electric typewriters produced by Silver Seiko, Ltd. and sold during the period April 1, 1980 through March 31, 1981.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/5253.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 40761) the final results of its administrative review of the antidumping duty order on portable electric typewriters from Japan (45 FR 30618, May 9, 1980). The review covered three exporters and various periods through May 20, 1981. The results of that review were challenged in the United Sates Court of International Trade ("the Court") by Silver Seiko Ltd. and Silver Reed America ("Silver") in *Silver Reed America, Inc. and Silver Seiko, Ltd.* v. *United States* (Court No. 83-10-01522).

On January 12, 1988 and March 18, 1988, the Court remanded the final results of administrative review to the Department to correct errors regarding its deduction of imputed exchange rate losses from exporter's sales price and possible "double counting" of certain expenses. The Court also directed the department to reconsider Silver's claim for a level of trade adjustment. On June 16, 1988 the Department issued remand results that amended the final results of review on portable electric typewriters from Japan. On October 7, 1988, the remand results were affirmed in all respects, with the exception of the denial of a level of trade adjustment. On April 4, 1989, theCourt agreed that the Department properly exercised its discretion in rejecting Silver's claim for a level of trade adjustment.

Results of Remand

In accordance with the Court's order, we are directing the Customs Service, effective the date of publication of this notice in the **Federal Register**, to appraise and liquidate all entries of this merchandise produced by Silver Seiko, Ltd. and sold during the period April 1, 1980 through March 31, 1981.

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19121 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearing Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: In response to requests by the petitioner and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings four inches or less in outside diameter and certain components thereof from Japan. The review covers six manufacturers/exporters of this merchandise to the United States and the period August 1, 1986 through July 31, 1987. The review indicates the existence of dumping margins for certain firms.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8976) the final results of its last administrative review of the antidumping finding on tapered roller bearings (41 FR 34974, August 18, 1976). The Timken Company, the petitioner, Koyo Seiko, Isuzu Motors, Nissan Motor Company, and Toyota Motor Company, respondents, requested in accordance with 19 CFR 353.53a that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on September 21, 1987 (52 FR 35467). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act")

Scope of the Review

Imports covered by the review are shipments of tampered roller bearings ("TRBs") four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period such merchandise was classifiable under items 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") HTS items 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers six manufacturers/exporters of TRBs and the period August 1, 1986 through July 31, 1987.

United States Price

In calculating United States price the Department used purchase price and exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight and insurance, brokerage and handling, U.S. inland freight, and U.S. duty. For ESP transactions we also made adjustments, were applicable, for packing of merchandise after importation, inventory carrying cost, warehouse transfer freight expense, rebates and discounts, export inspection fees, credit expense, U.S. commissions, and indirect selling expenses.

Foreign Market Value

In calculating foreign market value ("FMV") the Department used home market price, as defined in section 773(a) of the Tariff Act, or constructed value, as defined in section 773(e).

Petitioner alleged that home market sales by Nippon Seiko K.K. ("NSK") and Koyo Seiko were made at less than the cost of production. When we found that below cost sales had been made over an extended period of time and in substantial quantities, and were not at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade, we excluded them and used the remaining sales to calculate FMV. Where foreign market value was based on home market sales, we calculated FMV in accordance with section 773(a) of the Tariff Act. FMV was based on the packed, F.O.B. factory or delivered price

to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, freight insurance, credit, discounts, home market commissions and differences in physical characteristics between the home market and U.S. models. In addition, we adjusted for the difference between home market packing and export packing of the merchandise. For comparison to purchase price sales, we adjusted for the difference between home market and U.S. credit by adding U.S. credit expense to FMV. For comparison to ESP sales, we adjusted for indirect selling expenses by limiting the amount of indirect selling expenses incurred on home market sales by the amount of the indirect selling expenses incurred for sales in the United States. Where there were commissions in the home market and none in ESP sales, we adjusted FMV by the sum of commission and indirect selling expenses, limited to the amount of U.S. indirect selling expenses. NSK's early payment discount claim was not allowed because the company was not able to substantiate during verification the total amount paid for early payment discounts. Koyo claimed a level of trade adjustment in accordance with 19 CFR 353.19, basing its claim on comparisons between home market prices at two levels of trade. However, the home market prices reported as the basis of Koyo's claim differed substantially from the prices in the home market sales listing which we verified. Therefore, Koyo did not adequately establish its entitlement to a level of trade adjustment and we disallowed the claim. No other adjustments were claimed or allowed.

Where there were insufficient home market sales above the cost of production, or where there were no contemporaneous sales in the home market of such or similar merchandise, FMV was based on constructed value for NSK and Koyo Seiko. Where FMV was based on constructed value, we calculated constructed value in accordance with section 773(e) of the Tariff Act. We included cost of materials, labor, and factory overhead in our calculations. Koyo Seiko's actual selling, general, and administrative ("SG&A") expenses were less than the statutory minimum of ten percent of the cost of manufacture so we used the statutory minimum for our determination of SG&A expenses. NSK's actual SG&A expenses were greater than ten percent, so we used the actual SG&A expense figure. For both Koyo Seiko and NSK, we calculated constructed value based on the statutory profit rate of eight percent since profit figures for both companies were less than the statutory minimum of eight percent of the cost of manufacture and general expenses.

We deducted all home market direct selling expenses from constructed value. We adjusted constructed value for the difference between home market and U.S. indirect selling expenses by deducting from constructed value an amount for indirect selling expenses limited by the amount of the indirect selling expenses incurred on sales in the United States. Finally, we added U.S. packing to the constructed value.

For those U.S. sales for which we lacked adequate information to determine FMV, we relief on best information otherwise available. Koyo Seiko did not submit cost of manufacture information for constructed value for certain models. We were missing cost information which we required in order to calculate the differences in physical characteristics adjustment and constructed value for NSK. For Toyota we were unable to match certain U.S. models with an idential contemperaneous home market comparison model and information on selecting similar home market comparison models was not submitted. For Nissan we used best information otherwise available only for certain U.S. sales for which we could not find a similar home market comparison model. Isuzu did not respond to the Department's supplemental questionnaire. Best information otherwise available was the highest weighted average margin for a responding firm.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period August 1, 1986 through July 31, 1987:

Manufacturer/Exporter	Margin (percent)
Isuzu Motors Company	67.40
Koyo Seiko	67.40
Nachi-Fujikoshi	18.07*
Nippon Seiko	33.62
Nissan Motor Company	2.95
Toyota Motor Company	1.20

*No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

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 percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments after July 31, 1987 and who is unrelated to any of the reviewed firms, or any previously reviewed firms, a cash deposit of 67.40 percent shall be required. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms (49 FR 8976, March 9, 1984).

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of our antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19122 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Carbon Steel Wire Rod From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

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

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

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from New Zealand. Because there were no shipments during the review period, we preliminarily determine the total bounty or grant for the period January 1, 1987 through September 30, 1987 to be 25.69 percent *ad valorem*, the rate established in the final determination. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 7971) a countervailing duty order on carbon steel wire rod from New Zealand. On March 31, 1988, Pacific Steel Limited requested an administrative review of the order. We published the initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspeces of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is not classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of New Zealand coiled, semi-finished, hot-rolled carbon steel wire rod of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00.

The review covers the period January 1, 1987 through September 30, 1987, one known manufacturer/exporter of this merchandise, Pacific Steel Limited (PSL), and 14 programs:

A. Export Performance Taxation Incentive (EPTI);
B. Export Market Development Taxation Incentive (EMDTI);
C. Sales Tax Exemptions or Refunds on Imported Capital Equipment and Machinery;
D. Crown Loans;
E. Technical Assistance from the Building Research Association of New Zealand;
F. Export Marketing Assistance from the Department of Trade and Industry;
G. Preferential Treatment of Exporters in Granting Export Licenses;
H. Research and Development Incentives;
I. Export Credits and Development Financing from the Development Finance Corporation;
J. Export Suspensory Loan Scheme;
K. Export Programme Suspensory Loan Scheme;
L. Export Marketing Assistance from the New Zealand Export-Import Corporation;
M. Technical Assistance from the Standards Association of New Zealand; and
N. Technical Help to Exporters.

There were no known shipments of this merchandise to the United States by PSL during the review period. The United States Customs Service confirmed that the only shipment of carbon steel wire rod entering the United States during the review period was exported from New Zealand by New Zealand Steel Limited, a firm not included in the countervailing duty order.

Preliminary Results of Review

As a result of our review, we determine that no shipments of the subject merchandise were exported to the United States during the review period by firms subject to the countervailing duty order. Because there were no shipments, we preliminarily determine the total bounty or grant to be 25.69 percent *ad valorem*, the rate established in the final determination.

The Department intends to instruct the Customs Service to continue the suspension of liquidation on all shipments of the merchandise that are subject to the order and to collect a cash deposit of estimated countervailing duties of 25.69 percent of the f.o.b. invoice price on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Date: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-19123 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminarily results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We preliminary determine the net subsidy to be *de minimis* for nine firms and 2.10 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the net

subsidy to be *de minimis* for 12 firms and 3.21 percent *ad valorem* for all others. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone. (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 168) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 16, 1982). We received requests from the Amalgamated Clothing and Textile Workers Union, AFL-CIO, a domestic interested party, and the Government of Uruguay, that we conduct administrative reviews of this order. We published the initiation on August 19, 1987 (52 FR 31056) for the period January 1, 1986 through December 31, 1986, and on August 30, 1988 (53 FR 33163) for the period January 1, 1987 through December 31, 1987. The Department has now conducted its review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. During the period of review, such merchandise was classifiable under item numbers 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under HTS item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1987, and four programs.

Analysis of Programs

(1) Export Tax Refunds ("ETRs")

On July 25, 1983, the Government of Uruguay instituted a system of indirect tax refunds on exports of leather wearing apparel (Decree 289/983) for all shipments of the merchandise exported on or after January 1, 1983. Until May 24, 1984, the amounts of these refunds, which are issued in the form of tax certificates, ranged from 1.7 to 2.9 percent of the f.o.b. value of the merchandise, depending on the type of leather used in the garment. The Government of Uruguay suspended this program from May 25, 1984 (Decree 200/984) until July 10, 1985, when it was reinstated with the same or slightly lower (1.7 to 2.6 percent) refund rates (Decree 309/985).

In our review of the period April 17, 1982 through December 31, 1983, we established the requisite linkage between the payment of ETRs and the incidence of indirect taxes. In that review and in our last review, we verified that the total indirect tax incidence of leather wearing apparel exports to the United States was higher than the rebate rates. There were no changes in this program or in the amounts of the ETRs during the period of review. Accordingly, we preliminary determine that there were no overrebates under this program during the review period.

(2) Bonification Payments

Bonification payments are export rebates of 22 percent of the value of the processed wool portion of the leather wearing apparel. Because these payments are limited to exporters and not linked to the payment of indirect taxes, we preliminarily determine that this program confers a subsidy.

The Uruguayan government made such payments on shipments to the United States from one exporter in both 1986 and 1987. Although the weighted-average country-wide benefit from this program was greater than *de minimis*, the aggregate benefit from all programs was *de minimis* for nine of the ten known exporters of the subject merchandise during the period January 1, 1986 through December 31, 1986, and 12 of the 13 known exporters during the period January 1, 1987 through December 31, 1987. Therefore, we calculated company-specific rates in accordance with § 355.22(d)(3)(ii) of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Because these payments can be tied to specific shipments, we calculated the benefit by dividing the amount received by the recipient firm on U.S. shipments in each year by the total value of its exports from Uruguay to the United States in that year. On this basis, we preliminarily determine the benefits udner this program to be zero for nine firms and 2.10 percent *ad valorem* for all other firms for the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the benefits to be zero for 12 firms and 3.21 percent *ad valorem* for all others.

(3) Uncollected Social Security Taxes

On May 11, 1982, the Government of Uruguay notified the Department that it had ceased its efforts to collect social security taxes that the leather wearing apparel industry had not paid in 1980.

Because the Government of Uruguay was not able to collect these taxes, we consider the uncollected taxes to be a grant given on the date the government officially declared the taxes uncollectable. We consider the amount of the grant to be the total amount of the uncollected taxes plus the interest which would have accrued from June 16, 1981 (the date on which the Uruguayan government agreed to eliminate all benefits on leather wearing apparel exports to the United States) to May 11, 1982. We used as our benchmark interest rate the prime rate available in Uruguay in 1981.

To calculate the benefit, we used a declining balance methodology. We allocated the grant over 11 years, the average useful life of assets in the leather wearing apparel industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the short-term 1982 interest rate, as published by the Central Bank of Uruguay, because we have no information on long-term interest rates or on the weighted cost of capital in the leather wearing apparel industry for that year.

We allocated the benefit attributable to each year of the review period over total Uruguayan production of the merchandise for that year. On this basis, we preliminarily determine the benefit from this program to be 0.003 percent *ad valorem* for the period January 1, 1986 through December 31, 1986, and 0.001 percent *ad valorem* for the 1987 period.

(4) Preferential Export Financing

Central Bank Circular No. 1.229 of July 5, 1985, instituted a system of short-term preferential rate loans for "non-traditional" exports. Leather wearing apparel is considered a non-traditional export. However, Article 3 of Decree 309/985 of July 10, 1985 (the Decree which reinstituted the ETRs), prohibited these loans on certain specified exports, including leather wearing apparel.

Accordingly, we preliminarily determine that this program was not used by Uruguayan leather wearing apparel exporters during the review period.

Firms Not Receiving Benefits

A. We preliminarily determine that the following nine firms received *de minimis* benefits during the period January 1, 1986 through December 31, 1986:

1. Cubalan, S.A.
2. Osami, S.A.
3. Orolon, S.A.
4. Ness, LTDA
5. Fair Play, LTDA
6. Sirfil, S.A.
7. Modur, S.A.
8. Laren, S.A.
9. Paris New York, S.A.

B. We preliminarily determine that the following twelve firms received *de minimis* benefits during the period January 1, 1987 through December 31, 1987:

1. Cubalan, S.A.
2. Osami, S.A.
3. Orolon, S.A.
4. Ness, LTDA
5. Exportador Esporadico
6. Cleson, S.A.
7. Orwix, S.R.L.
8. Modur, S.A.
9. Union Euroamericana, S.A.
10. Raulin, S.A.
11. Ladibel, S.A.
12. Bicron, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.003 percent for nine firms and 2.10 percent *ad valorem* for all other firms for shipments of Uruguayan leather wearing apparel exported to the United States during the period January 1, 1986 through December 31, 1986. For the period January 1, 1987 through December 31, 1987, we preliminarily determine the net subsidy to be 0.001 percent for 12 firms and 3.21 percent ad valorem for all other firms. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the nine firms listed in section A above and to assess countervailing duties of 2.10 percent of the f.o.b. invoice price on all other shipments of the merchandise exported from Uruguay on or after January 1, 1986 and on or before December 31, 1986. The Department also intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 12 firms listed in section B above and to assess countervailing duties of 3.21 percent of the f.o.b. invoice price for all shipments exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 12 firms listed in section B above and to collect cash deposits of estimated countervailing duties of 3.21 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days from the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication.

Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the new Commerce Regulations.

Dated: August 8, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration

[FR Doc. 89-19124 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Oil Well Casing; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain seamless oil well casing.

DATE: Comments must be submitted no later than August 28, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-shpply request for the following quantity of two types of seamless oil well casing in R-3 lengths for delivery in the third quarter of 1989: (a) 315 joints of grade L-80 with an outside diameter of 10¾ inches and weighing 60.70 pounds per foot; and (b) 71 joints of grade S-90 with an outside diameter of 16 inches and weighing 84.00 pounds per foot.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 28, 1989. Comments should focus on the economic factors

involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file wil be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: August 7, 1989.

Lisa B. Barry,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 89-19125 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

[CFDA No. 90.001]

Notice Inviting Applications for New Awards for FY 1990 Bicentennial Educational Grant Program

AGENCY: Commission on Bicentennial of the United States Constitution.

ACTION: Notice inviting applications and providing application forms for Bicentennial Educational Grant Program for fiscal year 1990.

SUMMARY: The Commission on Bicentennial of the United States Constitution announces its application deadlines for FY 1990 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program notice informs all interested individuals and organizations about the closing dates for the receipts of applications for funding. The application conditions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: The closing date for the receipt of applications in the fall competition is November 13, 1989. Applications for the spring competition will be accepted from April 15, 1990 and no later than May 21, 1990 at 5:30 pm. Applications by mail must be postmarked no later than May 21, 1990.

ADDRESS: For further information contact: Anne A. Fickling, Associate Director of Educational Programs, Commission on Bicentennial of the U.S. Constitution, 808 17th Street, NW., Suite 800, Washington, DC, 20006, (202) 653-5110.

SUPPLEMENTARY INFORMATION: The objective of this program is to help elementary and secondary school teachers develop a better understanding of the history and development of the U.S. Constitution and Bill of Rights and to provide them with materials and methods so they will become more able to teach the Constitution to young learners. Programs designed to affect students directly are also encouraged. Programs designed for adult learners in an elementary or secondary school environment are also eligible. The Commission continues to encourage proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, people for whom English is a second language, and other special interest organizations such as those concerned with the learning disabled and the physically handicapped.

Available funds anticipated: Approximately $1.8 million per competition.

Estimated range of awards: $3,000-$125,000.

Estimated number of awards: 25-35.

Project period: No longer than 24 months, beginning no later than September 1, 1991.

Priority areas for funding: The Program Announcement and Final Rule governing the Bicentennial Educational Grant Program were published in the **Federal Register** on August 14, 1987. Specifically, the Commission encourages proposals which focus on themes paralleling those of the Commission's five-year plan and the development of the three branches of government. In the fall competition of the 1990 Educational Grant Program, the Commission's focus is on the Judiciary and its historical development in the 200 years since the first session of the Supreme Court and, for those projects to be implemented during the 1990-1991 school year, the Commission welcomes proposals which focus on the Bill of Rights and subsequent Amendments. The emphasis in the spring competition shifts to the Bill of Rights and subsequent Amendments. The focus of any proposal, therefore should be dictated to some extent by when the project will go into effect.

Limited funding is available for expanding, replicating, or continuing highly successful educational programs which effectively link the Constitution to civic literacy and responsibility today. A significant aspect of any such program would be the inclusion of a co-curricular activity and/or community involvement component. The Commission encourages applications for funding these exemplary projects from schools, school districts, or organizations. A well-developed dissemination plan should be included in any proposal for funding under this initiative.

Selection criteria: The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history, while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)

2. The project has potential to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grant Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate for the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applications have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Applicable regulations: 45 CFR 2010 as published in the August 14, 1987 **Federal Register** (52 FR 30582). The Commission's program announcement was also published together with the grant regulation.

Interested applicants are invited to call or write to the Commission for a copy of the printed version of the program announcement and application forms.

Authority: Title V of Pub. L. 99-194; 45 CFR part 2010.

Herbert M. Atherton,

Deputy Staff Director and Director of Education.

[FR Doc. 89-19162 Filed 8-15-89; 8:45 am]

BILLING CODE 6340-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

August 11, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United Mexican States requested an increase in the current Special Regime limit for categories 359-C/659-C. Recognizing the special circumstances concerning the availability of Special Regime quota for coveralls, the United States Government agreed to 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 53 FR 44937, published on November 7, 1988). Also see 54 FR 52461, published on December 28, 1988.

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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

August 11, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends but does not cancel, the directive issued to you on December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of cotton and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on August 18, 1989, the directive of December 22, 1988 is amended further to increase the limit for Categories 359-C/659-C, as follows:

Category	Amended twelve-month limit [1]
359-C/659-C [2]	1,164,691 kilograms
Non-Special Regime Category Sublimit	
359-C/659-C	180,880 kilograms

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, and 621.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-19185 Filed 8-15-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice. The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Signature and Tally Record; DD Form 1907; and OMB Control Number 0702-0027

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 2 minutes.

Frequency of Response: On Occasion.

Number of Respondents: 48,000.

Annual Burden Hours: 1,600.

Annual Responses: 48,000.

Needs and Uses: Signature and Tally Record is an integral part of the Defense Transportation System to provide continuous accountability and custody of classified and sensitive material when using commercial carriers. Form records the shipment transfer from one carrier to another from pickup point to delivery to the consignee.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19140 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Use of the Global Positioning System (GPS)

AGENCY: Command, Control, Communications, and Intelligence (C^3I), Office of the Secretary, DoD.

ACTION: Use of the Global Positioning System (GPS).

SUMMARY: This announcement notifies all civil users that the Global Positioning System (GPS) satellites should not be used during the period 20 September 1989 through 4 October 1989. The GPS satellites will be set "unhealthy" as an additional precautionary measure.

The Department of Defense (DoD) is working to establish a fully operational GPS satellite constellation. As noted in previous notices in the **Federal Register**,

until a 21-satellite constellation is achieved, the GPS satellites will transmit signals which are intended primarily for military purposes and are subject to change without prior notice. All civil users have been advised that the use of GPS for positioning, navigation, time transfer, or any other purpose, will be at their own risk.

However, to minimize impacts to the civil community, DoD will, where possible, provide advance notice when the GPS satellites should not be used. This advance notice will be distributed by the US Coast Guard (USCG). Within the USCG, the Office of Navigation Safety and Waterway Services is the primary point of contract for GPS users. Beyond this initial notification, DoD will not use the Federal Register for this purpose.

ADDRESS: Office of the Assistant Secretary of Defense, Command Control, Communications, and Intelligence, Room 3D174, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jules McNeff, telephone (202) 695-6123, for general information on GPS.

August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19141 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devies (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 24 August 1989.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 93-463, as amended (5 U.S.C. App. II, 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 11, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19250 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974, Systems of Records Notices

AGENCY: Office of the Secretary, DOD.

ACTION: Deletion of one and addition of three new systems of records notices for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to delete one system and add three new systems of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The deletion and record systems notices for the three new systems are set forth below.

DATES: The deletion will be effective upon August 16, 1989. The new systems will be effective September 15, 1989 unless comments are received which would result in a contrary determination.

ADDRESS: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Dan Cragg, OSD Privacy Act Officer. Telephone: (202) 695-0970, Autovon: 225-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, 29 May 1985 (Compilation, changes follow)
50 FR 47087, 14 Nov 1985
51 FR 11807, 7 Apr 1986
51 FR 11803, 7 Apr 1986
51 FR 17508, 13 May 1986
51 FR 23573, 30 Jun 1986
51 FR 44668, 11 Dec 1986
51 FR 44672, 11 Dec 1986
51 FR 44670, 11 Dec 1986
51 FR 44665, 11 Dec 1986
52 FR 4645, 13 Feb 1987
52 FR 11849, 13 Apr 1987
52 FR 23334, 19 Jun 1987
52 FR 16431, 5 May 1987
52 FR 22837, 16 Jun 1987
53 FR 15868, 4 May 19888
53 FR 27894, 25 Jul 1988

The proposed deletion is not within the purview of the provisions of 5 U.S.C. 552a(r), which requires the submission of a new or altered system report. The new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on August 8, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: August 10, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

DPA DXA.B 08

SYSTEM NAME:

Contact Files (50 FR 22090, May 29, 1985).

REASON:

This system will be incorporated into DWHS P43, entitled, "Emergency Personnel Locator Records".

NEW SYSTEMS OF RECORDS
DWHS P43

SYSTEM NAME:

Emergency Personnel Locator Records.

SYSTEM LOCATION:

Segments are maintained within the Office of the Secretary of Defense (OSD), the Joint Staff, and all other activities deriving administrative support from Washington Headquarters Services (WHS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and military personnel, and in some instances, their dependents, consultants, contractors, both in and out of government, with whom the Office of the Secretary of Defense, the Joint Staff, and all other activities deriving administrative support from Washington Headquarters Services (WHS) conduct official

business. Inclusion is at the discretion of the maintaining office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number and/or name, organizational address, home address or unit of assignment, work and home telephone numbers and related information. Emergency personnel rosters, contact listing files, organizational telephone directories, and listings of office personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133 and Executive Order 9397.

PURPOSE(S):

Records support agency requirements for emergency notification of personnel, establishment of locator listings, and all other official management functions where personnel and organizational point of contact information is required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Office of the Secretary of Defense (OSD) "Blanket Routine Uses" set forth at the beginning of OSD's listing of systems notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, index cards, Rolodex-type files, loose-leaf and bound notebooks. Computer files are maintained on magnetic tape, diskette, or other machine-readable media.

RETRIEVABILITY:

Files are retrieved by Social Security Number and/or name of employee or individual.

SAFEGUARDS:

Facilities where the systems are maintained are locked when not occupied. Paper records are kept in filing cabinets and other storage places which are locked when office is not occupied. Electronic records are on computer terminals in supervised areas using a system with software access control safeguards. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Retained until information is no longer current and then destroyed. Obsolete paper information is destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Obsolete computer records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155. The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense (OSD) Privacy Act Officer, OSD Records Management and Privacy Act Branch, Washington Headquarters Services, Room 5C315, Pentagon, Washington, DC 20301-1155. The individual should make reference to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the subject individual, and official personnel office documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DWHS P41

SYSTEM NAME:

OSD/JS Drug-Free Workplace Files

SYSTEM LOCATION:

Office of the Secretary of Defense, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for positions in, the Office of the Secretary of Defense (OSD), the Joint Staff (JS), and all other activities deriving administrative support from Washington Headquarters Services (WHS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the selection, notification, and testing of employees and applicants for illegal drug abuse; collection authentication and chain of custody documents; and laboratory test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100-71; Executive Order 12564, "Drug-Free Federal Workplace"; and Executive Order 9397.

PURPOSE(S):

The system is used to maintain Drug Program Coordinator records on the selection, notification, and testing (i.e., urine specimens, drug test results, chain of cutody records, etc.) of employees and applicants for illegal drug abuse.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exists on

magnetic tape, diskette, or other machine-readable media.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, agency name, collection site and date of testing.

SAFEGUARDS:

Paper records are stored in file cabinets that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas using a system with password access safeguards. All employee and applicant records are maintained and used with the highest regard for employee and applicant privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Files on applicants for positions are maintained for a period not to exceed six months.

Files on employees are retained for two years. In instances of a positive test finding resulting in the reassignment or separation of an employee, files are destroyed two years after case is closed.

Destruction of records is accomplished by shredding or burning of paper records. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B345, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the OSD/JS Drug Program Coordinator, Directorate for Personnel and Security, Washington Headquarters Services, Room 3B347, Pentagon, Washington, DC 20301-1155. The request should contain the full name, Social Security Number, and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURE:

The Office of the Secretary of Defense (OSD) rules for accessing records and for contesting contents and appealing initial OSD determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The test subject, Medical Review Officials, collection personnel and others on a case-by-case basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHA 03

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records.

SYSTEM LOCATION:

Pentagon Employee Referral Service, c/o Civilian Employees Health Services Clinic, Room 1E356, Pentagon, Washington, DC 20310-6800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian DoD employees assigned to duty in the Pentagon and environ who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on patients which are generated in the course of professional counseling. Records consist of information on condition, current status, progress and prognosis for patients who have personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 43; 5 U.S.C. 310; 5 U.S.C. 7301; 10 U.S.C. 3012; 42 U.S.C. 290dd-3 and 290ee-3; 42 U.S.C. 4582; Pub. L. 100-71; Executive Order 12564, "Drug-Free Federal Workplace"; and Executive Order 9397.

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd-3 and 290ee-3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency;

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders are stored in filing cabinets. Extracts of treatment records are entered into an electronic database on a microcomputer.

RETRIEVABILITY:

Manual and automated records are retrieved by patient's last name, Client Case Number, and Social Security Number.

SAFEGUARDS:

Paper records are maintained in file cabinets that are locked when the office is not occupied by authorized personnel. The automated database files are on a password-protected, stand alone microcomputer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counselling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data five years after termination of counselling. Aggregate data without personal identifiers is

maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310-6800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310-6800. The request should contain the full name, address, Social Security Number and the notarized signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Pentagon Employee Referral Service, Room 1E356, Pentagon, Washington, DC 20310-6800. The request should contain the full name, address, Social Security Number and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records and for contesting contents and appealing initial OSD determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel; private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-19142 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Federally Funded Research and Development Center (FFRDC)

AGENCY: United States Army, Armament, Munitions and Chemical Command, Armament Research, Development and Engineering Center.

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84-1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing as applicable to future weapons systems. This is the third and final notice.

Program Requirements: This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a university or consortium of universities, other nonprofit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC-PCW-D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806-5000. The due date for proposals is 22 August 1989.

FOR FURTHER INFORMATION CONTACT: Robert Wisser, Contract Specialist, Research, Development and Engineering Center on (201) 724-4674.

Kenneth L. Denton,

Department of the Army Alternate Liaison Officer With the Federal Register.

[FR Doc. 89-19193 Filed 8-15-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet September 5-6, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development and application of both cryogenic and high temperature superconductivity to naval systems and related intelligence, particularly that related to integrated ship power and combat systems. The entire agenda of the meeting will consist of discussions of key issues regarding research requirements and risks, the ability of the industrial base, both here and abroad, to support these requirements and field prototype systems, and related intelligence analyses. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 7, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-19178 Filed 8-15-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education and its Executive Committee. This notice also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to atttend.

DATES: September 14-15, 1989.

ADDRESSES: Room 3000, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue, SW., Washington, DC, 20202-7576, 202-732-3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning

intergovernmental policies and relations pertaining to education.

On September 14, the Executive Committee of the Intergovernmental Advisory Council on Education will meet from 9:00 a.m. to 4:00 p.m. (hours are tentative). Interested parties may call the information contact on September 13 for the exact hours. The meeting is open to the public. The proposed agenda of the meeting includes discussion of items for the full Council meeting agenda, a budget review, and other matters pertaining to the Executive Committee's responsibilities.

On September 15, the full Council will meet from 9:00 a.m. to 4:30 p.m. The meeting is open to the public. The proposed agenda of the meeting includes discussion of the Council's work plans, selection of topics for the Council's conference, planning for the 1989 conference, and administrative issues that are related to the operation of the Council.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue, SW., Room 3036, Washington, DC 20202-7576, from the hours of 9:00 a.m. to 5:00 p.m.

Dated: August 11, 1989.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs

[FR Doc. 89-19254 Filed 8-15-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Hunter College

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE34023 to Hunter College.

Scope: The funding for this grant will support research in the area of biological effects of electro-magnetic fields and will allow Hunter College to study the interaction of such fields with basic genetic material.

Eligibility: Based on acceptance of an unsolicited application, eligibility of this grant award is being limited to Hunter College, who has high qualifications in research exploring alteration in genetic structure after exposure to electromagnetic fields. The project will allow Hunter College to continue its research and investigate the effects of electric and magnetic fields on genetic transcription and translation.

The term of this grant will be two years from effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89-19201 Filed 8-15-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the Interstate Oil Compact Commission

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for a grant award.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.14, it intends to make an award based on an unsolicited application submitted to the Bartlesville Project Office, Bartlesville, OK. The title of this application is "Evaluation of the Oil Resource and the Economic Recovery of Mobile and Immobile Light Oil".

Scope: The objective of this grant project is to conduct a study of "Advanced Oil Recovery and the States". The project is for the assessment of the economic producibility of unrecovered mobile and immobile light oil. The primary goals include the complete evaluation on the technical and economic potential of the known domestic oil resource, and the identification of the recovery methods and financial and technical alternatives for maximizing this potential. The intended research will (1) continue to consolidate and supplement ongoing reservoir data collection and updates to characterize the remaining resources in various states, (2) apply TORIS data base for analyses which will provide comprehensive assessment of the potential for recovery of the remaining known oil resources in various states, and (3) transfer the learned technologies to the oil operators through publications and workshops.

The Interstate Oil Compact Commission will make available to this research project the states well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.14, the IOCC has been selected as the grant recipient. This activity would be conducted by the IOCC based on the meritorious application of the general evaluation. DOE support of the activity would enhance the public benefits to be derived by allowing more thorough coverage of the states' reservoirs. This activity represents an unique idea and a method which would not be eligible for financial assistance under solicitation, and, as determined by DOE, a competitive solicitation would be inappropriate.

The term of the grant is for a one-year period at an estimated value of $730,000.00 to DOE. There is no cost sharing with the Interstate Oil Compact Commission.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Dona G. Sheehan, Telephone: AC 412/892-5918.

Dated: July 18, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division Pittsburgh Energy Technology Center.

[FR Doc. 89-19202 Filed 8-15-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-1886-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP89-1886-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1886-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Dekalb Energy Canada Ltd. (Dekalb), a marketer, under ANR's blanket certificate issued in Docket No. CP89-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated May 19, 1989, it proposes to receive up to 38,000 dt equivalent of natural gas per day

from Dekalb at a specified point located in Wood County, Wisconsin and redeliver the gas at other specified points located in Wisconsin. ANR estimates that the peak day and average day volumes would be 38,600 dt equivalent of natural gas and that the annual volumes would be 14,089,000 dt equivalent of natural gas. It is stated that on June 1, 1989, ANR initiated a 120-day transportation service for Dekalb under § 284.223(a) as reported in Docket No. ST89-4150-000.

ANR further states that no facilities need be constructed to implement the service. ANR indicates that the primary term of the transportation agreement would expire on December 31, 1989, but that the service would continue on a month-to-month basis until terminated by either party on 30 days written notice. ANR proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP89-1877-000]

August 8, 1989.

Take notice that on July 31, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1877-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Meridian Oil Trading Inc. (Meridian), a broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated October 20, 1988, amended and restated as of March 17, 1989, under its Rate Schedule T-1, it proposes to transport up to 158,250 MMBtu per day equivalent of natural gas for Meridian. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Oklahoma and Texas, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.102(a) commenced November 2, 1988, as reported in Docket No. ST89-1099 (filed December 1, 1988). El Paso further advises that it would transport 52,750 MMBtu on an average day and 19,253,750 MMBtu annually.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline

[Docket No. CP89-1853-000]

August 8, 1989.

Take notice that on July 25, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1853-000 an application pursuant to Section 7(c) of the Natural Gas Act Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of 9.87 miles of 36 inch pipeline looping its main transmission line in Kentucky. Tennessee also requests permission to abandon 25.4 miles of mainline trnasmission pipeline that is obsolete and badly deteriorated also in Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the 25.4 miles of 26-inch pipeline from mainline valve (MLV) 102-2 to MLV 105-2 in its Line 100-2, located in Garrard, Madison and Clark Counties, Kentucky, was constructed in 1948 without coating or cathodic protection, is badly deteriorated and needs to be replaced. Tennessee proposes to replace the capacity of the aging pipeline with 9.87 miles of 36 inch pipeline loop from MLV 873-2 to Mile Post 873-2+9.87 on its higher pressure 800 System in Lincoln County, Kentucky. Tennessee states that both of its 100 and 800 systems deliver gas into Station 106 in Clay County, Kentucky, hence a shift of capacity from one system to the other will not affect the operational capabilities of the network. Tennessee estimates the proposed construction and abandonment will cost $12,029,000.

Comment date: August 29, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Co.

[Docket No. CP85-381-006]

August 8, 1989.

Take notice that on July 26, 1889, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-381-006 a petition to amend the order issued in Docket No. CP85-381 pursuant to section 7(c) of the Natural Gas Act, as amended, so as to authorize CIG to change the General Daily Entitlement and Total Annual Entitlement for a Jurisdictional Sales Customer, Questar Pipeline Company (Questar). CIG proposes to change Questar's General Daily Entitlement from 15,000 Mcf to 1,500 Mcf and the Total Annual Entitlement from 3,056,000 Mcf to 547,000 Mcf effective July 14, 1987, through October 1, 1992, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Prior to the filing in this proceeding, CIG twice filed Section 4 rate proceedings in Docket Nos. RP85-122-000 and RP87-30-000 wherein CIG's cost allocation and rate design were based on Questar purchasing 15,000 mcf of natural gas per day from CIG. CIG's Section 4 in Docket No. RP-85-122-000 also proposed to reclassify Questar and other CIG customers serviced under Rate Schedules P-1 and G-1, that purchased more than 25 percent of their requirements from suppliers other than CIG, as PR-1 customers. Questar objected to the PR-1 classification and CIG's cost/design calculation based on a requirement to purchase 15,000 mcf per day instead of 1,500 Mcf daily. Under a partial offer of settlement CIG withdrew Rate Schedule RP-1, effective September 25, 1985, and was directed to file a Section 7 to request Questar's change in entitlements. Therefore, Questar executed a service agreement for 15,000 Mcf per day from September 28, 1985, through July 13, 1987; and for 1,500 Mcf per day from July 14, 1987, through October 1, 1992.

Comment date: August 29, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP89-1881-000]

August 8, 1989.

Take notice that on July 31, 1889, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1881-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf Union Pacific Resources Company (Union Pacific), a shipper of natural gas, under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 52,750 MMBtu equivalent of natural gas on a peak day, 52,750 MMBtu equivalent on an average day, and 19,253,750 MMBtu equivalent on an annual basis for Union Pacific. It is stated that El Paso would receive the

gas for Union Pacific's account at any point on El Paso's system and would deliver equivalent volumes at designated points on El Paso's system at the border between Arizona and California and in Colorado, New Mexico, Oklahoma and Texas. It is indicated that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4208.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Pipeline Co.

[Docket No. CP89-1889-000]

August 8, 1989.

Take notice that on August 1, 1889, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1889-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas, for Chevron U.S.A., Inc. (Chevron), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 3,000 dt equivalent of natural gas on a peak day, 3,000 dt equivalent on an average day and 1,095,000 dt equivalent on an annual basis for Chevron. ANR states that it would perform the transportation service for Chevron under ANR's Rate Schedule ITS. ANR indicates that it would transport the gas from receipt points in Louisiana, Oklahoma, and the offshore Louisiana and Texas gathering areas, to delivery points located in Iowa.

It is explained that the service commenced June 1, 1989, under the automatic authorizaiton provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4149. ANR indicates that no new facilities would be necessary to provide the subject service.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Co.

[Docket No. CP89-1890-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1890-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Inland Steel Co. (Inland), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 15,000 dt of natural gas per day for Inland from receipt points located in Louisiana, offshore Louisiana, Michigan and offshore Texas to delivery points located in Indiana and Michigan. ANR anticipates transporting, on an average day 5,025 dt until October 31, 1989, and 15,000 dt thereafter and an annual volume of 5,475,000 dt.

ANR states that the transportation of natural gas for Inland commenced June 2, 1989, as reported in Docket No. ST89-4155-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gulf Transmission

[Docket No. CP89-1892-000]

August 8, 1989.

Take notice that on August 1, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89-1892-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223 under the Natural Gas Act for authorization to transport, on an interruptible basis, on behalf of Tejas Power Corporation (Tejas), a marketer of natural gas, under Columbia Gulf's blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf states that pursuant to a gas transportation service agreement dated February 21, 1989, it proposes to receive up to 100,000 MMBtu of natural gas from Tejas at specified points in Rapides, St. Landry and Acadia Parishes, Louisiana and to redeliever the gas at specified points in Davidson County, Tennessee, Alcorn County, Mississippi, and Acadia Parish, Louisiana. The volume anticipated to be transported on a peak day is 100,000 MMBtu, on an average day approximately 10,000 MMBtu, and approximately 3,650,000 MMBtu on an annual basis. Columbia Gulf further states that on July 1, 1989, Columbia Gulf commenced a 120-day service for Tejas under § 284.223(a), as reported in Docket Number ST89-4198-000.

Columbia Gulf further states that no facilities need to be constructed to implement the service. Columbia Gulf proposes to charge rates and abide by the terms and conditions of its Rate Schedule FTS-2.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Co.

[Docket No. CP89-1887-000]

August 8, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed with the Commission in Docket No. CP89-1887-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transport natural gas under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

ANR proposes to transport gas on an interruptible basis for Grace Petroleum Corporation (Grace). ANR states that service commenced June 9, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4148. ANR also states that the peak day quantity would be 5,000 dekatherms, the average daily quantity would be 5,000 dekatherms, and that the annual quantity would be 1,825,000 dekatherms. ANR states that it would receive the natural gas at ANR's existing receipt points in Wyoming and redeliver the gas for Grace's account at existing interconnections in Wyoming.

Comment date: September 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Co.

[Docket No. CP89-1891-000]

August 9, 1989.

Take notice that on August 1, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1891-000

a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unifield Natural Gas Group, Limited Partnership (Unifield), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would receive the gas at existing points of receipt in Louisiana, Michigan, offshore Texas and offshore Louisiana and would redeliver the gas for the account of Unifield at existing interconnections located in Wisconsin and Michigan.

ANR further states that the maximum daily and average daily quantities that it would transport for Unifield would be 1,000 dt equivalent of natural gas until October 31, 1989, and 2,985 dt equivalent of natural gas thereafter. ANR states that the annual quantities that it would transport for Unifield would be 1,089,525 dt equivalent of natural gas.

ANR indicates that in a filing made with the Commission in Docket No. ST89-4154, it reported that transportation service for Unifield commenced on June 23, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Co.

[Docket No. CP89-1901-000]

August 9, 1989.

Take notice that on August 2, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1901-000 a request pursuant to § 284.223 (18 CFR 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Entrade Corporation (Entrade), a marketer, under Tennessee's blanket transportation certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes the interruptible transportation of gas for Entrade pursuant to agreements dated March 20, 1987 and March 18, 1988, as amended, from points of receipt located principally offshore Texas and offshore Louisiana and the states of Alabama, Connecticut, Kentucky, Louisiana, Massachusetts, Mississippi, New York, Pennsylvania and Texas to multiple delivery points off Tennessee's system in the states of Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin.

Tennessee states that the proposed transportation service replaces the former section 311 terminated services retaining the scheduling priority that existed under the agreements previously authorized under section 311 of the Natural Gas Policy Act. Tennessee states that the maximum daily quantity and average day deliveries to be 350,000 dekatherms and estimates that the annual deliveries will be 127,750,000 dekatherms. It is further stated that transportation service under § 284.223(a) of the Commission's Regulations commenced on June 15, 1989, as reported to the Commission in Docket No. ST89-4300-000 on July 28, 1989.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89-1899-000]

August 9, 1989.

Take notice that on August 2, 1989, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-1899-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate three sales taps and related jurisdictional facilities necessary to deliver natural gas from its jurisdictional system for resale by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), under Arkla's blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001, and pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla specifically proposes (1) to construct and operate a sales tap on its Line KM-43 in Section 14, T9S, R11W, Cleveland County, Arkansas, to deliver natural gas to ALG for service to Tyson Foods Valmac Hatchery (Tyson), an industrial customer who would use approximately 15,000 Mcf per year; (2) to construct and operate a sales tap on its Line F-4-F in Section 28, T21N, R7W, Claiborne Parish, Louisiana, to deliver natural gas to ALG for service to Curtis Nelson (Nelson), a domestic customer who would use approximately 85 Mcf per year; and (3) to construct and operate a sales tap for service on its Line 6 in Section 20, T33S, R1E, Sumner County, Kansas, to deliver natural gas to ALG for service to Loue Farley (Farley), a domestic customer who would use approximately 140 Mcf per year.

Arkla states that Tyson is an existing customer who is presently being served from a 1-inch tap on the same line and whose annual gas consumption runs between 7,000 and 8,000 Mcf. Arkla states that Tyson has expanded its hatchery operations and, as a result, the installation of a 2-inch tap is necessary to handle the increased gas load. It is stated that the proposed jurisdictional facilities will cost approximatley $5,470 to install. It is also stated that Nelson's and Farley's facilities will cost approximately $1,825 each to install.

Arkla states that the gas would be delivered from its general system supply, which is adequate to provide the service. Additionally, Arkla states that the gas will be billed at ALG's applicable retail rates as filed and effective with the state regulatory authority from time to time.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Altamont Gas Transportation Project

[Docket No. CP89-1851-000]

August 9, 1989.

Take notice that on July 21, 1989, Altamont Gas Transportation Project (Altamont), 111 5th Avenue, SW., 11th Floor, Calgary, Alberta T2P 3E3, filed an application in Docket No. CP89-1851-000, seeking a certificate of public convenience and necessity under section 7(c) the Natural Gas Act and Subpart A of Part 157 of the Commission's Regulations, for authorization to construct and operate interstate pipeline facilities and to transport natural gas in interstate commerce, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Altamont seeks authorization to construct and operate a new natural gas pipeline from a point on the U.S./Canada international border near Wild Horse, Montana, through the states of Montana and Wyoming to a terminus near Opal, Wyoming. The proposed pipeline would interconnect with the proposed facilities of the Kern River Gas Transmission Company (Kern River GTC), (See Notice of Application in Docket No. CP85-552-000, published in

the Federal Register on July 2, 1985, (50 FR 27,245)).

Altamont's pipeline would have a transportation capacity of 700,000 Mcf of Natural gas per day. Altamont proposes to transport natural gas for shippers through the new pipeline system for ultimate delivery to customers in California via Kern River GTC. Altamont states it will act solely as a transporter and that supply arrangements and export/import regulatory authorizations will be the responsibility of individual shippers.

Altamont further states it will be established as a partnership, joint venture or corporation prior to acceptance of the requested Commission certificate. The participants in Altamont will be U.S. affiliates of Amoco Canada Petroleum Company, Ltd., Petro-Canada Inc. and Shell Canada Limited. Altamont states that the purpose of the project is to provide natural gas consumers in California access to new and diverse natural gas supplies.

The proposed pipeline will consist of 620 miles of 30" diameter pipe starting from a point of interconnection with the NOVA Corporation of Alberta system near Wild Horse, Montana. The proposed pipeline will traverse through the states of Montana and Wyoming to a terminus near Opal, Wyoming, and interconnect with proposed pipeline facilities of Kern River GTC.

An initiating compressor station near Wild Horse, Montana, will consist of four 12,600 Hp turbine/centrifugal compressor units and aerial coolers to decrease the discharge temperature. Five intervening compressor stations, each consisting of a single 12,600 Hp unit will be located near; (1) Denton, Montana, (2) Rapelje, Montana, (3) Greybull, Wyoming, (4) Lost Cabin/Shoshoni, Wyoming, and (5) Farson, Wyoming. One meter station would be required for the proposed interconnection with Kern River GTC. The estimated cost of the completed project is $580 million. The planned in-service date is November 1, 1993.

Altamont requests authorization to provide firm transportation on behalf of those shippers which enter into firm transportation contracts in the form appended to Altamont's FERC Tariff under Rate Schedule FTS. Firm service will be an annual service sold under a two-part rate, consisting of a monthly demand charge of $8.9146 per Mcf and a maximum commodity charge of 13.4 cents per Mcf and a minimum commodity charge of 1 cent per Mcf. To the extent capacity is available, Altamont will provide interruptible service in addition to firm service under Rate Schedule ITS. The maximum rate for interruptible service will be 42.7 cents per Mcf and the minimum rate will be 1 cent per Mcf.

The maximum rates in each case are designed to recover, on a unit basis only those costs allocated to each service, and minimum rates in each case are based on the average variable costs allocated to each service. Rates for both services are based on projected units of service of 700,000 Mcf per day. All of the pipeline's cost would be recovered by providing the projected levels of service projected at the proposed maximum rates. The rate design for the Altamont project is based on the expectation that the construction will be financed 25% by equity contributions, with a 15% return and 75% by non-recourse debt financing at 11% interest. Altamont also proposes to use a graduated/levelized depreciation schedule over a proposed 20-year project life.

Comment date: August 30, 1989 in accordance with Standard Paragraph F at the end of the notice.

14. Columbia Gas Transmission Corp.

[Docket No. CP89-1900-000]

August 9, 1989.

Take notice that on August 2, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-1900-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to construct and operate facilities for 24 additional delivery points for existing wholesale customers under Columbia's blanket certificate issued in Docket No. CP83-76-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate interconnecting facilities in order to make deliveries of the volumes of gas to the existing wholesale customers as detailed below:

	Customer	Number of delivery points	Volume (dt equivalent) peak day
Annual			
Columbia Gas of Kentucky, Inc	2	3.0	300
Columbia Gas of Maryland, Inc	1	1.5	150
Columbia Gas of Ohio, Inc	5	8.4	985
Columbia Gas of Pennsylvania, Inc	3	6,122	465,150
Commonwealth Gas Services, Inc	1	1.5	150
Dayton Power & Light Company	2	11.1	1,116
Mountaineer Gas Company	10	15.0	1,500

Columbia states that the proposed deliveries would be within all customers' currently authorized daily and annual entitlements and would have no impact on peak day and annual deliveries to the existing customers. It is stated that the gas would be used for residential, commercial and industrial service. It is further stated that the sales at the proposed delivery points would be made under Columbia's Rate Schedule CDS.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corp.

[Docket No. CP89-1903-000]

August 9, 1989.

Take notice that on August 3, 1989, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108 filed in Docket No. CP89-1903-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kimball Energy Corporation (Kimball), under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public imspection.

Northwest would perform the proposed interruptible transportation service for Kimball, a marketer of natural gas, pursuant to a transportation agreement dated January 18, 1989, as amended January 18, 1989, May 1, 1989, and May 30, 1989, under its Rate Schedule TI-1. The term of the transportation agreement is from February 1, 1989, and shall remain in full force and effect until February 1, 1994, and month to month thereafter, subject to termination upon 30 business days written notice by either party. Northwest proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 2,000 MMBtu; and on

an annual basis 730,000 MMBtu for Kimball. Northwest proposes to transport the subject gas through its system from wells located in Rio Blanco, Garfield, and La Plata Counties, Colorado; San Juan, and Rio Arriba Counties, New Mexico; Sweetwater, Sublette, and Lincoln Counties, Wyoming; and Grand and Uintah Counties, Utah to various delivery points on Northwest's system in Colorado, Wyoming, New Mexico, and Utah. Northwest avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on June 28, 1989, as reported in Docket No. ST89-4214-000.

Comment date: September 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19143 Filed 8-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-019]

Kentucky West Virginia Gas Co.; Second Amendment to Compliance Filing

August 9, 1989.

Take notice that on August 3, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed a second amendment to its March 30, 1989 compliance filing so as to extend the proposed effective date for the proposed tariff sheets to November 1, 1989.

Kentucky West states that the tariff sheets filed March 30, 1989, were filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued in the referenced proceedings on March 15, 1989, and in accordance with the mandate of the United States Court of Appeals of the Fifth Circuit, issued in *Kentucky West Virginia Gas Co.* vs. *FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that, under the tariff sheets filed March 30, 1989, it would bill its customers directly for the difference between (1) the amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations. Kentucky West states further that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed 84 months; or (3) by a lump-sum payment during the installment period.

Kentucky West states that, based upon preliminary settlement discussions, on April 13, 1989, it filed an amendment to its March 30, 1989 filing changing the proposed effective date to September 1, 1989. Kentucky West also requested the deadline for interventions or protests be August 14, 1989.

In its August 3, 1989 amendment to the compliance filing, Kentucky West states that it has made substantial progress in settlement discussions. Kentucky West states that since the issues involved are complex and relate to a period of time over 6 years old, it requires further negotiations. To facilitate settlement discussions, Kentucky West has filed to further amend the proposed effective date of the tariff sheets to November 1, 1989, and requests waiver of the Commission's regulations so that the time for filing protests or requests for hearing may be extended until October 16, 1989. Kentucky West states that it will extend its waiver of interest concerning the direct billing amounts involved so as to encompass the months of May through October, 1989.

Kentucky West states that it has contacted all parties to these proceedings and the Commission Staff, and no party nor the Commission Staff have any objection to this extension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 16, 1989. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19144 Filed 8-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-200-001]

Pacific Gas Transmission Co.; Compliance Filing

August 9, 1989.

Take notice that on August 2, 1989, Pacific Gas Transmission Company PGT] filed First Revised Sheet No. 46 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective August 1, 1989.

PGT states that this filing is in compliance with the Commission's order issued July 28, 1989. PGT states that this tariff sheet reflects that pre-October 9, 1985 contracts must be currently in effect so as to receive priority status under open access transportation.

In addition, PGT requests the Commission clarify and confirm that PGT is authorized to provide transportation for Pacific Interstate Transmission Company (PITCO), commencing August 1, 1989, on the basis that PGT and PITCO have a pre-October 9, 1985 transportation agreement which is currently in effect.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, (1988)). All such protests should be filed on or before August 16, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-19145 Filed 8-15-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3629-8]

Air Pollution Control Grants; Maintenance of Effort for FY 1987 and 1988—City of Houston, Health and Human Services Department, Bureau of Air Quality Control

AGENCY: Environmental Protection Agency.

ACTION: Notice and opportunity for public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces an opportunity for public hearing and comment on a tentative determination that the City of Houston, Health and Human Services Department (HHSD), Bureau of Air Quality Control (BAQC) should be allowed a reduced Maintenance of Effort (MOE) level for FY 87 and FY 88, consistent with section 105(b) of the Clean Air Act (CAA).

Hearing Opportunity: If written requests for a public hearing are received by September 15, 1989 the agency will hold a hearing in Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Joan E. Brown, State Programs Section, Air, Pesticides and Toxics Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-7208, (FTS) 255-7208.

SUPPLEMENTARY INFORMATION: Section 105(b) of the CAA, 42 U.S.C. § 7405(b), specifies that "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for Air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, *after notice and opportunity for public hearing,* determines that a reduction in expenditures is attributable to a non-selective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government * * * [Emphasis added.] This statutory requirement is repeated in EPA's "State and Local Assistance" regulations at 40 CFR 35.210(a).

In the FY 87 and FY 88 grant applications, the City of Houston's Health and Human Services Department projected expenditures for the Bureau of Air Quality Control sufficient to meet the MOE requirements of the CAA. However, the City experienced budget reductions subsequent to the submittal of the applications which caused the BAQC to experience difficulty meeting the MOE requirements for both FY 87 and FY 88. The HHSD has provided documentation to EPA reflecting the Mayor's declaration of a public emergency mandating a decrease in salaries by 3 percent in FY 87 and again in FY 88. In addition, further budget reductions were experienced by the HHSD and the BAQC as a result of layoffs, privatization of certain support services, a moratorium on longevity pay increases, inability to fill vacancies through attrition and reduced pay scales, and by a freeze on hiring. The cumulative effect of these budget reductions resulted in a 9.450 percent reduction in the total expenditures of the City of Houston's Health and Human Service Department in FY 87 and a further 9.236 percent reduction in FY 88.

The City of Houston initially attempted to comply with the MOE requirements in FY 87 by returning Federal grant funds to maintain the level of expenditures in City funds rather than requesting a formal non-selective budget reduction and a reduced MOE level. This resulted in the reduced expenditure of Federal grant funds for FY 87, but did not reduce the MOE level which the City of Houston was required to meet for FY 88. Realizing that the previously established MOE level could not be met with the additional budget cuts experienced in FY 88, the City of Houston's Health and Human Service Department requested a determination from EPA that the BAQC is entitled to a reduced MOE level under the non-selective reduction criteria provided in § 105(b) of the CAA.

Based on financial documentation provided by the Health and Human Services Department, EPA has made a preliminary determination that the City of Houston's BAQC is entitled to a reduced MOE level for both FY 87 and FY 88. The documentation provided appears to support a 9.450 percent reduction for FY 87 below FY 86 and an additional 9.236 percent reduction for FY 88 below the reduced FY 87 level. Houston's budget reductions meet the CAA criteria as non-selective since they were part of broader economy measures taken because of loss of City revenues. Further, the Health and Human Services Department and the Bureau of Air Quality Control were not singled out in the budget reductions.

The BAQC's established MOE level for FY 86 was $1,837,334. The reduced MOE levels, if approved, would be $1,663,706 and $1,510,046 for FY 87 and FY 88, respectively. These amounts represent a 9.450 percent reduction in FY 87 of the FY 86 established MOE level, and an additional 9.236 percent

reduction in FY 88 of the reduced FY 87 amount. The financial documentation provided by the Health and Human Service Department appears to support the above reductions.

During each of these fiscal years, the BAQC has substantially met all of its air pollution control program commitments, despite the difficulties of reduced budgets.

This notice provides an opportunity for a public hearing as required by the CAA. EPA will hold the hearing only upon receipt of a written request for a public hearing. Unless written requests for a hearing on the City of Houston's request for an authorized reduction in the MOE level for FY 87 and FY 88 are received by EPA, Region 6 (Dallas) by September 15, 1989, we will proceed to make a determination as indicated.

Dated: August 9, 1989.

Robert E. Layton, Jr.,
Regional Administrator.

[FR Doc. 89-19227 Filed 8-15-89; 8:45 am]
BILLING CODE 6560-50-M

[OPP-00279; FRL-3630-6]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provdes the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, the statutory Panel terminated on September 30, 1987. The Panel was administratively reestablished on October 1, 1987, in accordance with the requirements of the Federal Advisory Committee Act, until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988. Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

DATES: Comments must be postmarked not later than September 15, 1989.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 220, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION: By mail: Robert B. Jaeger, Executive Secretary, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 816G, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-4369/2244).

SUPPLEMENTARY INFORMATION:

I. Background

Amendments to FIFRA enacted November 28, 1975, added among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. (5 U.S.C. App I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in June 1989, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill one vacancy occurring on the SAP. NIH responded by letter dated June 29, 1989, enclosing a list of 17 nominees; NSF responded by letter dated July 3, 1989, with a list of 10 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill two vacancies occurring during the calendar year 1989.

Ames, Bruce Nathan, Department of Biochemistry, University of California, Berkeley, California. Expertise: Biochemical genetics. Education: Cornell University, BA, 1950; California Institute

of Technology, Ph.D (biochemistry) 1953. Professional experience: USPHS fellow, NIH, 1953–54; biochemist, National Institute of Arthritis and Metabolic Disorders, 1954–67; Professor of biochemistry, University of California, Berkeley, 1968 to present. Honors and Awards: Eli Lilly Award, 1964; Arthur Flemming Award, 1966; Lewis Rosenstiel Award, 1976; Federation of American Society of Experimental Biology/3M Award, 1976; ERDA Distinguished Associate Award, 1976; Environmental Mutagen Society Award, 1978; John Scott Medal, 1979; Bolton L. Carson Medal, 1980; Wadsworth Award, 1981. Societies: National Academy of Sciences; American Society of Biological Chemists; National Cancer Advancement Board; American Academy of Arts and Sciences; American Chemical Society. Research: mutagens and mutations; bacterial biochemical genetics; environmental carcinogens and mutagens.

Anderson, Elizabeth L., Clement Associates Inc., Fairfax, Virginia (consulting group with special expertise in hazard assessment for toxic chemicals). Expertise: organic chemist. Education: College of William and Mary, BS, 1962; University of Virginia, MS, 1964; American University, Ph.D (organic chemistry) 1970. Professional experience: Director EPA risk assessment program for 10 years. Established the Carcinogen Assessment Group at EPA in 1976. It formed the core for the new office, the Office of Health and Environmental Assessment, which Dr. Anderson also directed. President, Clement Associates, Inc., 1985 to present. Consultant for the World Health Organization and the Pan American Health Organization. Lectured and published widely on risk assessment methods and the use of risk assessment in the management of toxic chemicals. Honors: Kappa Kappa Gamma National Achievement Award, 1974; EPA Gold Medal for Exceptional Service, 1978; SES Bonus, 1984. Societies: American Association for the Advancement of Science (AAAS); New York Academy of Sciences; Society for Risk Analysis.

Birecka, Helena M., Department of Biological Science, Union College, Schenectady, New York. Expertise: Plant physiology; biochemistry. Educational background: University Perm, MS, 1944; Timiriazev Academy, Moscow, Ph.D (plant physiology), 1948. Professional experience: Professor agricultural chemistry, Agriculture University, Warsaw, Poland, 1949–51, Professor plant physiology, 1953–61, chairman of the department, 1954–68, Professor, 1961–68; Professor agricultural chemistry, University of Poznan, 1951–53; consultant, International Atomic Energy Agency, Vienna, Austria, 1968–69; research associate plant physiology, Yale University, 1969–70; Professor plant physiology and biochemistry, 1970–74, Professor biosciences, Union College, 1974 to present. Concurrent positions: head plant metabolism laboratory, Polish Academy of Science, 1960–68; Professor, Isotope Laboratory, Institute of Plant Cultivation, Warsaw, Poland, 1961–68; chairman of the Committee, Use of Isotopes and Nuclear Energy in Agriculture and Biological Sciences, 1962–68; Food and Agriculture Organization Fellow, 1964. Societies: Polish Botanical Society; Polish Biochemical Society; American Society Plant Physiology; American Society Agronomy. Research: mineral nutrition of plants; alkaloid biosynthesis and metabolism; photosynthesis; long distance translocation in plants; enzyme biosynthesis and activity as related to hormone action.

Brattsten, Lena B., Department of Entomology, Cook College, Rutgers University, New Brunswick, New Jersey. Expertise: biochemical toxicology. Educational background: University of Illinois, Ph.D (insecticide biochemistry/toxicology), 1971. Professional experience: Fellow biochemistry, Cornell University, 1971–72, research associate, 1972–77; assistant professor biochemistry and ecology, University of Tennessee, 1977. Societies: Sigma Xi; AAAS; Entomology Society of America. Research: biochemistry and physiology of microsomal drug metabolizing enzymes in insects and of mitochondrial enzymes related to foreign compound metabolism.

Crosby, Donald Gibson, Department of Environmental Toxicology, University of California, Davis, California. Expertise: environmental chemistry/pesticide chemistry. Educational background: Pomona College, BA, 1950; California Institute of Technology, Ph.D (chemistry), 1954. Professional experience: Chemist, Union Carbide Chemical Company, 1954–55; group leader biological chemistry, 1956–61, associate toxicologist, 1961–62, toxicologist, lecturer food science and technology, 1962–1969, chairman of the Agriculture Toxicology and Residue Research Laboratory, 1962–66, and Regional Research Project W–45, 1968–70, Professor Environmental Toxicology, University of California, 1969 to present; Toxicologist, Experimental Station, 1963 to present, Concurrent positions: Committee on pesticide chemistry, International Union of Pure and Applied Chemistry, 1974 to present; Material Hazards Advisory Committee, Environmental Protection Agency, 1975–79; Editor, Journal of Agriculture and Food Chemistry, 1979 to present. Societies: AAAS; American Chemical Society; Oceanic Society. Research: chemistry of natural products; nutritional and food chemistry; pesticide chemistry and metabolism; chemical ecology; environmental chemistry; marine environmental toxicology.

Dungworth, Doland L., Department of Pathology, School of Veterinary Medicine, University of California, Davis, California. Expertise: veterinary pathology. Educational background: University of Liverpool, BVSc, 1956; University of California, Davis, Ph.D (veterinary pathology), 1961; American College of Veterinary Pathologists displomate, 1963. Professional experience: Lecturer veterinary pathology, University of California, Davis, 1959–61 and University of Bristol, 1961–62; Professor, 1962–70, associate dean of research and graduate education, 1973–77, professor and Chairman of Veterinary Pathology, School of Veterinary Medicine, University of California, Davis, 1970 to present. Concurrent positions: WHO fellow, Institute of Diseases of the Chest, London, England, 1968–69; Fulbright fellow Wallaceville Research Center, New Zealand, 1977–78. Societies: Royal College of Veterinary Surgeons; International Academy of Pathology; American Association of Pathologists; American Thoracic Society. Research: Pulmonary pathology, especially effect of air pollution; inhalation toxicology.

Elashoff, Robert M., Biostatistics Department, School of Medicine and School of Public Health, University of California, Los Angeles, California. Expertise: Biostatistics. Educational Background: Suffolk University, BS, 1953; Boston University, AM, 1955; Harvard University, Ph.D, 1963. Professional experience: Teaching fellow, biostatistics, Harvard University, 1955–1958; researcher, gerontology, Harvard Medical School, 1959–1960; researcher, statistics, Harvard University, 1960–1961; researcher, psychiatry, Massachusetts Mental Health Center, 1961–1963; teaching fellow, mathematics, statistics, Harvard University, 1961–1963; researcher, computer, MIT, 1957–1958; researcher, biostatistics, UCLA, 1963; statistics/biostatistics, University of California, Berkeley, 1963–1964; Professor, biostatistics and research systems, University of California, San Francisco, 1963–1975; Professor, Biomathematics,

Biostatistics, University of California, Los Angeles, School of Medicine, 1975 to present. Concurrent positions: National Study of Prostatic Cancer, 1966–1967; Diabetes Research Program, Kaiser Hospital, 1964–1965; ASA/NCMT Program of Statistics and Probability, 1969–1970; Bay Area Biostatistics Colloquium, 1972–1973; Stanford—VA Study on Drug Abuse, 1974 to present; National Cancer Institute, NIH, Carcinogenesis Bioassay Program, 1975; Site Reviewer, NCI, 1975–1986; Consultant, Biometrics, FDA, 1976–1977; Site Reviewer, National Eye Institute, 1977; Study Section, National Institute of Dental Health, 1977–1978; Incomplete Data Panel, NAS, 1977–1978; National Toxicology Program, NIH, 1981–1983; Special Projects Study Section, NIH, 1981–1983; NIEHS Peer Review, 1982; Consultant, Rand Corporation, 1983 to present; Ad hoc Study Section, Biostatistics, NIEHS, 1984, 1986; President Gardner's Subcommittee on Melanoma at the Lawrence Livermore Laboratory, 1985 to present; University of Arizona Cancer Center, 1986; Site Reviewer, NIEHAS, 1987; Visitor's Committee, University of California, Riverside, 1988. Societies: American Statistical Association; Institute of Mathematical Statistics; Biometric Society; Sigma Xi; AAAS; American Society of Preventive Oncology; American Public Health Association; Bernoulli Society for Mathematical Statistical Probability; Society for Epidemiologic Research; International Biometric Society; International Statistician Institute. Research: Biostatistics, cancer control, AIDS Clinical Trial Group.

Garman, Robert Harvey, Research Scientist in Pathology, Bushy Run Research Center, Pennsylvania. Expertise: Veterinary pathology. Educational background: Cornell University, BA, 1963, DVM, 1966. Professional experience: Veterinarian, general veterinary practice, 1966–67; Veterinary Officer in Public Health Service, NIH, 1967–69; fellow pathology School of Medicine and Dentistry, University of Rochester, 1969–71, instructor 1971–73, assistant professor pathology and toxicology, 1973–78; senior scientist pathology Carnegie-Mellon Institute Research Center, 1978–80; research scientist pathology, Bushy Run Research Center, 1980 to present. Concurrent positions: adjunct associate professor University of Pittsburgh, 1981 to present. Societies: American Veterinary Medical Association; American College Veterinary Pathologists; International Academy of Pathology; American Association of Neuropathology; Society of Toxicology Pathologists; New York Academy of Sciences. Research: spontaneous diseases of animals and models of human disease; toxicologic pathology, including the testing of chemicals for acute, subchronic and chronic effects in animals.

Gatzy, John Thomas, Department of Pharmacology and Toxicology, University of North Carolina Medical School, Chapel Hill, North Carolina. Expertise: pharmacology and toxicology. Education: Pennsylvania State University, BS, 1958; University of Rochester School of Medicine and Dentistry, Ph.D. (pharacology) 1963. Professional experience: Professor of Pharmacology and Toxicology, University of North Carolina, 1973–1982; Director of Graduate Studies, Department of Pharmacology, 1981–1984; Professor of Pharmacology and Toxicology, 1982 to present. Dartmouth Medical School, Assistant Professor of Pharmacology, 1967–73; Instructor in Pharmacology, 1962–67. Graduate Research Associate in the Atomic Energy Project, University of Rochester, 1958–62. Societies: American Society for Pharmacology and Experimental Therapeutics. Research: Effects of saccharin feeding on bioelectric properties and ion transport, permeability and content of the epithelium of rat urinary bladder; HL 34322 Program Project, Pulmonary epithelia in health and disease.

Goodman, Dawn G., PATHCO, Inc., Gaithersburg, Maryland. Expertise: veterinary pathology. Education: George Washington University, BS, 1965; University of Pennsylvania, VMD, 1969; Johns Hopkins University School of Medicine (postdoctoral fellowship certificate in comparative pathology) 1972; Board Certified Diplomate, American College of Veterinary Pathologists, 1974. Professional experience: Veterinary Pathologist, National Cancer Institute, NIH, Bethesda, Maryland, concurrent positions from 1972–1978; Director of Pathology, Clement Associates, Inc., Washington, DC, 1978–1981; Associate Scientist and Senior Pathologist, Clement Associates, Inc., Arlington, Virginia, 1981–1983; Adjunct Assistant Professor, Department of Pathology, University of Maryland School of Medicine, Baltimore, Maryland, 1982 to present; President and Senior Pathologist PATHCO, Inc., Gaithersburg, Maryland, 1983 to present. Honors and Awards: Society of Phi Zeta; USPHS, NIH Special Research Fellowship. Societies: American College of Veterinary Pathologists; AAAS; American Veterinary Medical Association; Association of Women Veterinarians; DC Academy of Veterinary Medicine; United States and Canadian Academy of Pathology; Mid-Atlantic Comparative Pathology Colloque; Society of Toxicologic Pathologists; Society of Toxicology; Veterinary Cancer Society.

Hildebrandt, Paul K., PATHCO, Inc., Gaithersburg, Maryland. Expertise: Pathologist. Education: Colorado A&M College, BS, 1955; Colorado State University, DVM, 1959; Residency, Armed Forces Institute of Pathology, 1962–1964. Board Certified Diplomate, American College of Veterinary Pathologists, 1968. Professional experience: Veterinary Clinician, Ft. Detrick, Maryland, 1959–1962; Director, Division of Pathology, Walter Reed Army Institute of Research, 1971–1976; Military consultant to U.S. Department of Agriculture, 1978–1980; Consultant to the Surgeon General on Veterinary Pathology, 1972–1980; Veterinary Pathologist, Tracor Jitco, Inc., 1980–1985; Vice President, Senior Pathologist, PATHCO, Inc., 1985 to present. Honors and awards: Commendation for presentation at American Veterinary Medical Association, July 1972; Legion of Merit, Oak Leaf Cluster, 1980 Legion of Merit, 1978. Societies: American Veterinary Medical Association Council on Research; DC Veterinary Medical Association; American College of Veterinary Pathologists; American Registry of Pathology, American College of Veterinary Pathologists; United States and Canadian Academy of Pathology; Federation of American Societies for Experimental Biology; Society of Tropical Medicine and Hygiene; Washington DC Society of Pathologists; Society of Tropical Veterinary Medicine; Veterinary Flying Association.

Lijinsky, William, Director, Chemical Carcinogenesis Program, Cancer Research Facility, Frederick, Maryland. Expertise: biochemist. Educational background: University of Liverpool, BS, 1949; Ph.D, 1951. Professional experience: Professor biochemistry, Chicago Medical School, 1955–68; Professor of biochemistry, University of Nebraska Medical School, 1968–71; group leader carcinogenesis program, Oak Ridge National Laboratory, 1971–76; director chemical carcinogenesis program, Cancer Research Facility, NCI, 1976 to present. Societies: Biochemical Society; American Chemical Society; American Association in Cancer Research; American Society of Biological Chemists; Environmental Mutagen Society; Society of

Occupational and Environmental Health; Sigma Xi.

McConnell, Ernest Eugene, consultant, NIEHS/NTP, Research Triangle Park, North Carolina. Expertise: pathology an toxicology. Educational background: Ohio State University, DVM, 1961; Michigan State University, MS 1966; American College of Veterinary Pathologists diplomate, 1968; American Board of Toxicologists diplomate, 1980. Professional experience: Base Veterinarian, Hill Air Force Base, Utah, 1961–64; resident pathologist at Armed Forces Institute of Pathology, 1965–67 and Aerospace Pathology Division, 1967–69; researcher Onderstepoort Veterinary Institute, South Africa, 1968–72; Pathology Branch Chief, Inhalation Toxicology Laboratory, Wright-Patterson Air Force Base, 1972–74; researcher, 1974–80, branch chief, 1980–83, and Director, Toxicological Research Testing Program, NIEHS, NTP, 1983 to present. Concurrent positions: consultant Zoological Park, North Carolina, 1967–71; Biohazards Safety Committee, NIH, 1976–79; National Cancer Institute, 1977–80; Professor veterinary science, NC State University, 1977 to present; Agent Orange Working Group, Veteran's Administration, 1982 to present; National Research Council/NAS; American Board of Toxicology; Animals as Sentinels/Chemical Exposure, NAS. Societies: American College of Veterinary Pathologists; American Veterinary Medical Association; Society of Toxicological Pathologists; Society of Toxicology. Awards: Commendation Medal USPHS, 1978; Outstanding Service Medal, NIH, 1985. Research: pathology of toxic chemicals of environmental interest, especially halogenated hydrocarbons; spontaneous diseases of primates; asbestos; veterinary medicine.

Paulson, Glenn, Center for Hazardous Waste Management, Chicago, Illinois. Expertise: Environmental toxicology. Educational Experience: Northwestern University, BA, 1963; Rockefeller University, Ph.D (pesticide toxicity in mammals), 1971; Long Island University, ScD, 1972. Professional experience: staff scientist, Natural Resources defense Council, Inc., 1971–73; administrator Science Support Program, 1973–74, Assistant Commissioner Science and Research, New Jersey Department Environmental Protection, 1974–79; vice-president Science and Sanctuaries, National Audubon Society, 1979–84; senior vice-president, 1984–85, vice-president Technical review and Compliance, Clean Sites, Inc., 1984–1988. Concurrent positions: member board of directors NY Scientists Committee for Public Information, 1965–74; Scientists Institute for Public Information, 1970–78; professor State University of New York, 1971–73; distinguished lecturer Southhampton College, 1972; City College of New York, 1973–74; Rene Dubos Center for Human Environment, 1985 to present; Societies: AAAS; American Chemical Society; Signa Xi; Society for Environmental Toxicology and Chemistry; American Institute of Chemists. Research: environmental toxicology, toxic chemcials; air and water pollution; environmental policy (national and international).

Stegeman, John J., Department of Biology, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts. Expertise: biology/biochemistry. Education: St. Mary's College, BA, 1966; Northwestern University, Ph.D (biology/biochemistry) 1972. Professional experience: NSF pre-doctoral fellow, Northwestern University, 1966–1967; Northwestern University assistanceship, 1967–1968; NIH pre-doctoral fellow, 1968–1971; post-doctoral fellow, Woods Hole Oceanographic Institution, 1971–1972; Scientist, Woods Hole Oceanographic Institution, 1972 to present. Societies: AAAS; American Society for Pharmacology and Experimental Therapeutics; American Society of Zoologists; International Society for Study of Xenobiotics; Sigma Xi; Society for Protection of Old Fishes. Concurrent positions: NATO Study visit, 1982; Exxon fellowship, Bermuda Biological Station, 1982; MIT/Woods Hole Oceanographic Institution joint doctoral program; Toxicology Study Section, NIH; Site review and Special Study Sections, NIEHS; serves on editorial boards of Aquatic Toxicology, Marine Environmental Research and Zenobiotica; reviews for NSF, NIH, Seagrant, EPA, Department of the Interior and FDA. Research: non-mammalian foreign compound metabolism and cytochrome P–50.

Travis, Curtis, Director, Office of Risk Analysis, Health and Safety Research Division, Oak Ridge National Labortory, Oak Ridge, Tennessee. Expertise: Health risk assessment. Education: California State University, Fresno, BA, 1966; California State University, Fresno, MA, 1967; University of California, Davis, Ph.D (applied mathematics) 1971. Professional experience: Research Engineer, Jet Propulsion Laboratory, California Institute of Technology, 1966–1968; Professor, mathematics, Vanderbilt University, 1971–1974; Professor, University of Tennessee, mathematics, 1974–1976; Oak Ridge National Laboratory, 1976 to present. Honors and awards: Distinguished Service Award, Society for Risk Analysis. Professional activities: Editor, Risk Analysis, 1983 to present; Health and Environmental Toxicology, 1989; Chairman, Office of Science and Technology Policy Task Force on Risk Analysis, 1985 to present; Co-Director, Pan American Health Organization Workshop on Environmental Risk Analysis, Havana, Cuba, 1988; Co-Director, Pan American Health Organization Workshop on Risk in Developing Countries, Mexico City, Mexico; President, East Tennessee Chapter of the Society for Risk Analysis, 1988; Co-Director, NATO Advanced Study Institute on Risk Assessment for Environmental Applications of Biotechnology, 1987.

Vore, Mary Edith, Department of Pharmacology, College of Medicine, University of Kentucky. Expertise; Pharmacology. Educational background: Asbury College, BA, 1968; Vanderbilt University, Ph.D (pharmacology), 1972. Professional experience: Biochemistry and Drug Metabolism, Hoffman-LaRoche, Inc., 1972–74; Professor toxicology, Department of Pharmacology, University of California Medical Center, 1974–78; Professor, pharmacology, 1978 to present, College of Medicine, University of Kentucky, 1981 to present. Societies: American Society for Pharmacology and Experimental Therapeutics; Society of Toxicology; American Association for the Study of Liver Diseases. Research: mechanisms by which estrogen and estrogen glucuonides induce cholestasis and to define the substrate specificities of the carriers for the bile acids and organic ions.

Wilson, John T., Pediatrics and Pharmacology Department, School of Medicine, Louisiana State University. Expertise: Medicine; pharmacology; pediatrics. Educational background: Tulane University, BS, 1960, MS and MD, 1963. Professional experience: research, clinical pediatrics, Palo Alto-Stanford Medical Center, 1963–65; research biochemistry and pharmacology, University of Iowa, 1965–66; research, bio-chemistry, pharmacology and endrocrinology, National Institute Child Health and Human Development, 1966–68; attending pediatrician and Laboratory Director, Children's Hospital, San Francisco, 1969–70; Professor Medical School, Vanderbilt University, 1970–77; Professor Pediatrics and Pharmacology; Chief, Clinical Pharmacology, School of Medicine, Louisiana State University, 1978 to present. Concurrent positions: Neonatal Medicine and Laboratory Director Children's Hospital, San Francisco, 1968–69; NIH Research

Career Development Award, 1969 and 1970; lecturer Medical Center, University of California, San Francisco, 1969–70; Researcher, J.F. Kennedy Center, 1970 to present; World Health Organization Task Force on Drugs on Breast Milk. Societies: AAAS; Society of Pediatric Research; American Society Pharmacology and Experimental Therapeutics; American Society of Clinical Pharmacology and Therapeutics; American Academy of Pediatricians. Research: pediatric clinical pharmacology, drug metabolism.

Dated: August 9, 1989.

Charles L. Elkins,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

[FR Dec. 89–19247 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36169; FRL-3629-3]

Pesticide Registration Standard; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft standard for comment.

SUMMARY: This notice announces the availability of a draft pesticide Registration Standard document for comment. The Agency has completed a review of the listed pesticide and is making available a document describing its regulatory conclusions and actions.

DATE: Written comments on the Registration Standard should be submitted on or before October 16, 1989.

ADDRESSES: Three copies of comments identified with the docket number listed with the Registration Standard should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice maybe claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: To request a copy of a Registration Standard, contact the Public Information Branch, in Rm. 246 at the address given above (703–557–2805). Requests should be submitted no later than September 15, 1989 to allow sufficient time for receipt before the close of the comment period.

For technical questions related to the Registration Standard, contract the Review Manager listed for that Standard, at the phone number given.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to detemine whether they meet the criteria for continued registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. In accordance with 40 CFR 155.34(c), before issuing certain Registration Standards, the Agency makes the draft document available for public comment.

A draft Registration Standard for the following pesticide is now available:

Name of pesticide	Docket No.	Contract person
Chlorpyrifos	2921–88–2	Joanne Edwards, 703–557–9089.

A copy of the Registration Standard may be obtained from the Agency at the address listed under **FOR FURTHER INFORMATION CONTRACT.** Because of the length of the Standard and the limited number of copies available for distribution, only one copy can be provided by mail to any one individual or organization. The Registration Standard is also available for inspection and copying in EPA Regional offices at the addresses listed below after September 15, 1989.

List of EPA Regional Offices

Pesticides and Toxic Substances Branch, EPA–Region I, JFK Federal Building, Boston, MA 02203, contact person: Marvin Rosenstein.

Pesticides and Toxic Substances Branch, EPA–Region II, Woodbridge Avenue, Edison, NJ 08837, contract person: Ernest Regna.

Toxic and Pesticides Branch, EPA–Region III, 841 Chestnut St., 7th Fl., Philadelphia, PA 19107, contract person: Larry Miller.

Pesticides and Toxic Substances Branch, EPA–Region IV, 345 Courtland St., NE, Atlanta, GA 30365, contract person: Richard BuBose.

Pesticides and Toxic Substances Branch, EPA–Region V, 230 South Dearborn St., Chicago, IL 60604, contract person: Phyllis Reed.

Pesticide and Toxic Substances Branch, (6T–PT), EPA–Region VI, 1445 Ross Avenue, Dallas, TX 75270, contract person: Robert Murphy.

Pesticide and Toxic Substances Branch, EPA–Region VII, 726 Minnesota Ave., Kansas City, Kan. 66101, contract person: Leo Alderman.

Toxic Substances Branch, EPA–Region VIII, 999 18th St., Suite, 500, Denver, CO 80202, contract person: C. Alvin Yorke.

Pesticides and Toxics Branch, (T–5–1), EPA–Region IX, 215 Fremont St., San Francisco, CA 94105, Contract person: Davis Bernstein.

Pesticides and Toxic Substances Branch, EPA–Region X, 1200 6th Ave., Seattle, WA 98101, contract person: Jon Heller.

Dated: August 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–19085 Filed 8–15–89; 8:45 am]

BILLING CODE 6560-50-M

[FRC-3629-9]

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the membership of the PCIE Performance Review Board.

DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspector General.

SUPPLEMENTARY INFORMATION: Section 4314(C)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the President's Council on Integrity and Efficiency Performance Review Board are:

Members	Title
Agency for International Development	
James B. Durnil	Deputy Inspector General & Asst. Inspector General for Audit
Gene Richardson	Assistant Inspector General for Investigations
Department of Commerce	
J. Steven Sadler	Deputy Assistant Inspector General For Regional Audits
Department of Defense	
June Gibbs Brown	Inspector General
Derek J. Vander Schaaf.	Deputy Inspector General
Donald Mancuso	Assistant Inspector General for Investigations
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management
Miriam F. Browning.	Deputy Assistant Inspector General for Administration and Information Management
Robert J. Lieberman.	Assistant Inspector General for Analysis and Followup
Morris B. Silverstein.	Assistant Inspector General for Criminal Investigations Policy and Oversight
Stephen A. Trodden.	Assistant Inspector General for Auditing
Michael R. Hill	Assistant Inspector General for Audit Policy and Oversight
Stephen A. Whitlock.	Assistant Inspector General for Special Programs
Nancy L. Butler	Director, Financial, Manpower and Security Assistance Programs, OAIG, AUD
Edward Jones	Deputy Assistant Inspector General for Auditing
William F. Thomas	Director, Intelligence, Communications and Related Programs, OAIG, AUD
David A. Brinkman	Director, Acquisition Support Programs, OAIG-AUD
Donald E. Reed	Director, Major Acquisition Programs, OAIG-AUD
Terry L. Brendlinger.	Director, Contract Audit Programs, OAIG-AUD
Katherine A. Britten.	Deputy Assistant Inspector General for Inspections
Department of Energy	
Gordon W. Harvey	Assistant Inspector General for Audits
Lanny L. VanCamp.	Assistant Inspector General for Investigations
M. Thomas Abruzzo.	Deputy Assistant Inspector General for Investigations
Gregory H. Friedman.	Director, Audit Management Division
Stanley R. Sulak	Director, Program Development and Technical Support Division
Department of Health and Human Service	
Michael Mangano	Assistant Inspector General for Analysis and Inspections
Joseph Vengrin	Deputy Assistant Inspector General for Audits
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General
Department of Labor	
Joseph Fisch	Deputy Assistant Inspector General for Audit
Gustave Schick	Asst. Inspector General for Labor Racketeering
Department of State	
John C. Payne	Assistant Inspector General for Audits
Katheleen J. Charles.	Assistant Inspector General for Policy, Planning and Management
Milton McDonald	Deputy Assistant Inspector General for Audit
Department of the Treasury	
Robert P. Cesca	Deputy Inspector General
Jay M. Weinstein	Assistant Inspector General for Audit
Gary L. Whittington.	Assistant Inspector General, Policy, Planning and Resources
Charles D. Fowler III.	Assistant Inspector General for Investigations
Department of Transportation	
Raymond J. DeGarli.	Assistant Inspector General for Auditing
H. Rae Scott	Assistant Inspector General for Investigations
Department of Veterans Affairs	
Jack H. Kroll	Assistant Inspector General, Policy, Planning & Resources
Michael G. Sullivan.	Acting Assistant Inspector General for Audits
Environmental Protection Agency	
John E. Barden	Assistant Inspector General for Investigations
Railroad Retirement Board	
William J. Doyle III	Inspector General
Charles R. Sekerak.	Assistant Inspector General for Investigations
Small Business Administration	
Daniel B. Peyser	Deputy Inspector General & Council to the Inspector General
United States Information Agency	
J. Richard Berman	Assistant Inspector General for Audits

Dated: August 9, 1989.

John C. Martin,

Inspector General,

Environmental Protection Agency, and Chairman, PCIE Committee on Administration, Inspections, and Special Reviews.

[FR Doc. 89-19228 Filed 8-15-89; 8:45 a.m.]

BILLING CODE 6560-50-M

[OPTS-44535; FRL-3630-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl chloride (CAS No. 74-87-3), parachlorobenzotrichloride (CAS No. 5216-25-1), and p-nitrophenol (CAS No. 100-02-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data on methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4), Aniline (CAS No. 62-53-3), and 2-chloroaniline (CAS No. 95-51-2), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St. SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of SCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for methyl chloride was submitted by the Methyl Chloride Industry Association (MCIA) pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 31, 1989. The submission describes the hydrolysis of methyl chloride as a function of pH. Hydrolysis testing is required by this test rule.

Test data for parachlorobenzotrichloride was submitted by Occidental Chemical Corporation pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 26, 1989. The submission describes a 90 day oral toxicity study of parachlorobenzotrichloride in rats. Oral

toxicity testing is required by this test rule.

Test data for p-nitrophenol was submitted by Monsanto pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 27, 1989. The submission describes a subchronic toxicity study in rats. Subchronic testing is required by this test rule.

Test data for methyl tert-butyl ether was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) on behalf of: Amoco Corporation, ARCO Chemical Company, Exxon Chemical Company—a division of Exxon Corporation, Sun Refining and Marketing Company, and Texaco Chemical Company pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 26, 1989. The submission describes a developmental toxicity study of inhaled MTBE in CD-1 mice. Developmental toxicity testing is required by this consent order.

Test data from aniline was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 28, 1989. The submission describes the chronic toxicity of aniline to daphnia magna. Chronic toxicity testing is required by this consent order.

Test data for 2-chloroaniline was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 28, 1989. The submission describes the toxicity of 2-chlorobenzenamine to daphnia magna. Chronic toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44535). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 8, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-19229 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59260B; FRL-3630-4]

Certain Chemicals; Approval of a Modification to a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a modification of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-88-12. The test marketing conditions are described below.

EFFECTIVE DATES: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M St. SW., Washington, DC 20460, (202) 382-7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves the modification of the test marketing period for TME-88-12. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and modification request, and for the modified time period specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-88-12

Date of Receipt of Original Application: May 2, 1988.

Notice of Approval of Original Application: July 12, 1988 (53 FR 26307).

Modified Test Marketing Period: Six months, commencing on the date of approval of this modification, as indicated below.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which case significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 9, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-19230 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59271; FRL-3630-2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for text marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-89-12, TME-89-13, TME-89-14, TME-89-15, and TME-89-16. The test marketing conditions are described below.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Rona Birnbaum, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 245-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test

marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-12, TME-89-13, TME-89-14, TME-89-15, and TME-89-16. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-12, TME-89-13, TME-89-14, TME-89-15, and TME-89-16. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substances.

T-89-12

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential.
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T-89-13

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T-89-14

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257).
Applicant: Confidential
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T-89-15

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257)
Applicant: Confidential.
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

T-89-16

Date of Receipt: May 22, 1989.
Notice of Receipt: June 6, 1989 (54 FR 24257)
Applicant: Confidential.
Chemical: (G) Polyphenylene/polyamide alloy.
Use: (G) Resin for molding.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 1 year, commencing on first day of importation.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 9, 1989.

John W. Melone,

Director, Chemical Control Division Office of Toxic Substances.

[FR Doc. 89-19231 Filed 8-15-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0103
Title: FEMA Nuclear Power Plant Alert and Notification System: Public Telephone Survey
Abstract: The Federal Emergency Management Agency (FEMA) shall randomly telephone survey the residents within the Emergency Planning Zone (EPZ) of 3 nuclear power plants as stipulated in Appendix 3 of NUREG0654/FEMA-REP-1, Rev. 1. From an approximate sample of 2500 households, between 250 and 385 residences will be voluntarily surveyed following the attached standardized questionnaire
Type of Respondents: Individuals or households
Estimate of Total Annual Reporting and Recordkeeping Burden: 44
Number of Respondents: 5526
Estimated Average Burden Hours per Response: .008
Frequency of Response: Other: Per survey.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and

Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 10, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-19190 Filed 8-15-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 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 notices are set forth in parapgraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also 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 August 30, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *John P. Casey, Jr.*, Baton Rouge, Louisiana; William P. Delaune, Sr., Prairieville, Louisiana; Earl D. Dixon, Prairieville, Louisiana; D. Dale Gaudet, Baton Rouge, Louisiana, Leon S. Geismar, Gonzales, Louisiana; Roy M. Marchand, Jr., Gonzales, Louisiana; Audrey B. Waggensack, Gonzales, Louisiana; and C. Penrose St. Amant, Bay St. Louis, Mississippi; to acquire 22.03 percent of the voting shares of Bank of Gonzales Holding Company, Inc., Gonzales, Louisiana, and thereby indirectly acquire Bank of Gonzales, Gonzales, Louisiana.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19167 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

First Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Community Bancorp, Inc.*, Cartersville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank & Trust, Cartersville, Georgia, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marine Corporation*, Springfield, Illinois; to acquire 100 percent of the voting shares of Central Financial Group, Inc., Monticello, Illinois, and thereby indirectly acquire National Bank of Monticello, Monticello, Illinois, and Deland State Bank, Deland, Illinois.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19169 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks of Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 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. Once the notices have been accepted for processing, they will also be available for inspection at the office 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 August 29, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Paul C. Griebel*, Eagan, Minnesota, and Alan Kluis, Mankato, Minnesota; to acquire 100 percent of the voting shares of First American Bancshares of Blooming Prairie, Inc., Eagan, Minnesota, and thereby indirectly acquire First Prairie Bank, Blooming Prairie, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael B. Athey*, Enid, Oklahoma, to acquire an additional 16.75 percent of the voting shares of Security Financial Services Corp., Enid, Oklahoma, for a total of 36.61 percent, and thereby indirectly acquire Security National Bank, Enid, Oklahoma.

2. *Otis Guy Bacon*, Ardmore, Oklahoma; to acquire an additional 0.6 percent of the voting shares of Ardmore Financial Corporation, Ardmore, Oklahoma, for a total of 10.9 percent, and thereby indirectly acquire American National Bank, Ardmore, Oklahoma.

3. *Michael N. McGowan*, McAlester, Oklahoma; to acquire an additional 11.07 percent for a total of 22.22 percent, and E.L. Oliver Testamentary Trust A., Michael N. McGowan, Trustee, to acquire an additional 29.63 percent for a total of 37.04 percent, of the voting shares of NBM Corporation, McAlester, Oklahoma. and thereby indirectly acquire The Bank, N.A., McAlester, Oklahoma.

4. *V. Paul Moltz*, and Rhonda Moltz both of Cody, Wyoming; to acquire an additional 20 percent of the voting shares of Collegiate Peaks Bancorporation, Inc., Buena Vista, Colorado, and thereby indirectly acquire Collegiate Peaks Bank, Buena Vista, Colorado.

5. *Ward Sauvage*, and Janice Sauvage, both of Oberlin, Kansas; to acquire an additional 19.08 of the voting shares of Dakota Banchares, Inc., St. Joseph,

Missouri, for a total of 41.87 percent, and thereby indirectly acquire Dakota County State Bank, South Sioux City, Nebraska.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *George A. Carrithers*, Brady, Texas; to acquire 11.39 percent of the voting shares of Brady National Holding Company, Inc., Brady, Texas, and thereby indirectly acquire The Brady National Bank, Brady, Texas.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19168 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-16414) published at page 29620 of the issue for Thursday, July 13, 1989.

Under the Federal Reserve Bank of Dallas, the entry for James M. Tate is amended to read as follows:

1. *James M. Tate*, Abilene, Texas, to acquire 12.45 percent; and Harold L. Smith, Abilene, Texas, to acquire 10.96 percent of the voting shares of Security Shares, Inc., Abilene, Texas and thereby indirectly acquire Security State Bank, Abilene, Texas.

Comments on this application must be received by August 31, 1989.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19171 Filed 8-15-89; 8:45 am]

BILLING CODE 6210-01-M

Village Financial Services, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments, regarding each of these applications must be received not later than September 1, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

1. *Village Financial Services, Ltd.*, Port Chester, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Village Savings Bank, Port Chester, New York.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alexis Bancorp, Inc.*, Carol Stream, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Alexis, Alexis, Illinois.

2. *HTB, Inc.*, Osage, Iowa; to become a bank holding company by acquiring 88.71 percent of the voting shares of The Home Trust and Saving Bank, Osage, Iowa.

3. *Fourth St. Financial Corporation*, Pekin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Herget Financial Corp., Pekin, Illinois, and thereby indirectly acquire The Herget National Bank, Pekin, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *West Point Bancorp*, St. Joseph, Missouri; to acquire an additional 16.76 percent of the voting shares of Dakota Bancshares, Inc., St. Joseph, Missouri, and thereby indirectly acquire Dakota County State Bank, South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, August 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19170 Filed 8-15-89; 8:45 am]

BILLING CODE 6120-01-M

FEDERAL TRADE COMMISSION

[Dkt. 8845]

Adolph Coors Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on February 4, 1975 [40 FR 14894], by deleting provisions that prohibited respondent from imposing certain territorial and customer restrictions on its distributors.

DATES: Order issued February 4, 1975.* Modifying Order issued Agusut 1, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 2687.

SUPPLEMENTARY INFORMATION: In the Matter of Adolph Coors Company. A portion of the prohibited trade practices and/or corrective actions, as set forth at 40 FR 14894, is deleted.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Granting in Part and Denying in Part Petition To Reopen and Modify Order

Adolph Coors Company ("Coors"), has filed, on April 3, 1989, a "Petition to Modify Order" ("Petition"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. The Petition asks the Commission to reopen the proceeding and set aside the modified cease and desist order entered by the Commission on February 4, 1975, in Docket No. 8845, 85 F.T.C. 187, "except insofar as the Order prohibits price fixing or resale price maintenance." Petition at 2. Specifically, Coors requests that the Commission set aside in their entirety paragraphs 4(c), 5, 6, 7, 8, and 11 of the order, which prohibit Coors from, among other things, imposing non-price vertical restraints on distributors of Coors' beer products.[1] In

* Decision issued July 24, 1973 (38 FR 23399).

[1] In addition to prohibiting Coors from refusing to deliver beer to distributors selling outside their designated territory, Paragraph 7 of the order also prohibits Coors from refusing to deliver beer to distributors who sell beer at prices, markups or profits lower than those approved by Coors. 85 F.T.C. at 189.

support of its request, Coors argues that the order modification is warranted by changed conditions of law. Petition at 2–3. The Petition was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules, and one comment was received. For the reasons discussed below, the Commission has determined that Coors has not shown a changed condition of law requiring reopening the order but that Coors has shown that granting the request, with one exception, would be in the public interest. The Commission has therefore reopened and modified the order.

I

The Commission's complaint, issued on June 7, 1971, 83 F.T.C. 32, alleges that Coors violated section 5 of the Federal Trade Commission Act by, among other things, fixing wholesale and retail prices, imposing territorial and customer restrictions on its distributors, and using unfair short-term termination provisions in its contracts with distributors. Following extensive evidentiary hearings, the Administrative Law Judge ("ALJ") ordered the dismissal of the complaint against Coors. 83 F.T.C. at 174. On appeal from the ALJ's Initial Decision, the Commission substituted its findings for those of the ALJ and issued its order on July 24, 1973. 83 F.T.C. at 211. The Commission condemned Coors' territorial restraints as *per se* unlawful because they were part of an unlawful resale price maintenance scheme. Coors appealed the Commission's order to the United States Court of Appeals for the Tenth Circuit, which upheld all of the provisions of the Commission's order, except those dealing with the notice and arbitration requirement in the event of a distributor's termination. The court also held that Coors' territorial restraints were themselves *per se* unlawful under *United States* v. *Arnold, Schwinn & Co., et al.*, 388 U.S. 365 (1967). *See Adolph Coors Company* v. *FTC*, 497 F.2d 1178 (10th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

Consequently, the Commission issued its final order on February 4, 1975. The order, among other things, prohibits Coors from engaging in wholesale and retail price fixing, imposing certain non-price vertical restrictions on its distributors, including territorial restraints, and requiring exclusive draught accounts. 85 F.T.C. 187.

II

Coors requests that the Commission reopen the proceeding and set aside in their entirety paragraphs 4(c), 5, 6, 7, 8, and 11, of the order. Paragraph 4(c) of the order prohibits Coors from refusing to sell beer to any Coors distributor or terminating any Coors distributor because the distributor sold Coors beer to another distributor or retailer located outside of the territory granted to the Coors distributor. 85 F.T.C. at 188. Paragraph 5 prohibits Coors from restricting "the territory in which or the persons to whom a distributor may sell Coors beer." [2] *id.* at 189. Paragraph 6 prohibits Coors from allocating Coors beer among its distributors "in times of beer shortage at the Coors brewery," by any means not equitably related to their proportionate purchases of Coors beer during "the last three months before the allocation * * *." *Id.* Paragraph 7 prohibits Coors from refusing to deliver all of a distributor's order because the distributor made sales outside of his assigned territory or because the distributor is selling Coors beer at "unapproved" prices or markups. *Id.* Paragraph 8 of the order prohibits Coors from prohibiting its distributors from selling Coors beer for "central warehouse delivery." [3] *Id.* Finally, paragraph 11 generally prohibits Coors from hindering, suppressing or eliminating competition between or among distributors or retailers handling Coors beer. *Id.* at 189–90.[4]

Coors argues that these provisons of the order, expecially in the context of Coors' unique brewing method, and experience with the unauthorized distribution of its products in expansion markets, have "placed Coors at a competitive disadvantage and [have] been harmful." Petition at 9. Among other things, Coors beer distributors are required to maintain Coors' beer products in refrigerated warehouses. Additionally, the distributors must monitor the age of their Coors inventory and are responsible for closely monitoring product shelf-life and ensuring that only fresh product is available to consumers. Petition at 5. Coors believes that its ability to restrict its distributors' territories and impose other non-price vertical restraints is necessary because such restrictions would allow Coors to (1) monitor better its distributors' performance, (2) provide incentives to distributors to invest the resources and provide services necessary to comply with Coors' quality control requirements, and (3) compete better against other beer brewers.

Coors asserts that the relief it seeks is required by a change in law. Specifically, Coors argues that the order provisions it is asking the Commission to set aside were predicated upon the *Schwinn* doctrine, which the Supreme Court overruled in *Continental T.V., Inc.* v. *GTE-Sylvania, Inc.*, 433 U.S. 36 (1977). Consequently, according to Coors, Coors' non-price vertical restraints "were never put to * * * the 'market power' analysis currently used in vertical, non-price restraint cases." Petition at 12. Coors asserts that it does not have sufficient market power [5] to raise its prices significantly without materially and adversely affecting it business, and suggest that Coors' non-price vertical restraints would be judged under a rule of reason analysis today.

III

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4.

The Commission may also modify an order pursuant to Section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Therefore, § 2.51 of the Commission's Rules of Practice invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In

[2] A proviso to paragraph 5 states, however, that the order does not prohibit Coors from "complying with the requirements of any state law." *Id.*

[3] Coors, however, is not prohibited from establishing refrigeration standards for the central warehouses "which are substantially similar to those established for distributors." 85 F.T.C. at 189.

[4] Paragraph 1 of the order prohibits Coors from fixing the prices at which distributors sell Coors beer to retailers or the prices at which retailers sell Coors beer to consumers. Paragraphs 2 and 3 of the order (prohibiting Coors from suggesting prices or mark-ups for its distributors) expired by their own terms in 1978. Subparagraphs 4 (a), (b) and (d) prohibit Coors from terminating any distributor because the distributor either sold beer or advertised at prices different from those approved by Coors, or because the distributor has distributed the product of another brewer. Paragraph 9 prohibits Coors from requiring that retailers serve Coors draught beer as their only light-colored draught beer. Paragraph 10 prohibits Coors from requiring its distributors to eliminate or refrain from obtaining and handling rival brands of beer in order to become or remain a Coors distributor. 85 F.T.C. at 187–90. Coors does not seek relief from these remaining operative order provisions. Petition at 16.

[5] Coors' national market share is less than eight percent and it no longer holds the leading position in any state. Petition at 4.

the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 689 (1983). If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make the requisite satisfactory showing. The petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified.[6] If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV

Based on the information provided by Coors, and other available information, the Commission has determined that Coors has not made a satisfactory showing that changes in law require reopening the proceeding and setting aside the order provisions prohibiting Coors from imposing upon its distributors certain non-price vertical restraints, including territorial restrictions. However, the Commission has concluded that Coors has made a satisfactory showing that reopening the order and setting aside the non-price vertical restraints provisions is in the public interest.

The Commission's 1973 decision in this case, after finding that Coors engaged in unlawful resale price maintenance, called the territorial restraints "an obvious adjunct to Coors' efforts to control the prices at which its distributors and their retail accounts dispose of the product". 83 F.T.C. at 192. Consequently, the Commission condemned Coors' territorial restraints as *per se* unlawful because they were part of the unlawful RPM scheme, but determined that it was not necessary to conclude that the restrictions in themselves were unlawful *per se*.[7] The court of appeals held the restraints in themselves *per se* unlawful, citing *Schwinn*, albeit with substantial criticism. 497 F.2d 1178 at 1186-87.

Sylvania, which was decided shortly after the Commission issued the final order in this case, recognized that exclusive territories and other non-price vertical restraints are not inherently anticompetitive and must thus be judged under the rule of reason.[8] *Sylvania* replaced the *per se* test for non-price vertical customer and territorial restraints outside RPM with a rule of reason test, but the Court did not change the *per se* rule for non-price vertical restraints that are part of a RPM scheme. *See Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 760, n. 6 (1984). *Sylvania*, therefore, is not a change in law as to the order in this matter.

Although non-price vertical restraints are still *per se* unlawful as part of a RPM scheme, Coors does not request elimination of the order's prohibitions on RPM. Therefore, any territorial or other non-price vertical restrictions imposed as part of a resale price maintenance scheme would be *per se* unlawful and would violate this order even if modified as Coors requests. The non-price provisions of the order, apart from the RPM provisions, are thus best viewed as fencing-in provisions, intended to prevent the recurrence of research price fixing. Coors has shown that the benefits of those provisions, when viewed under the rule of reason approach in *Sylvania*, are outweighed by the costs they impose, and may now be set aside in the public interest.

V

Coors has made a threshold showing that the order provisions it requests be set aside impede and deter Coors (in states that do not permit or require territorial restrictions) from correcting impaired distribution problems and from adopting efficiency-maximizing distribution arrangements that would intensify interbrand competition.[9] These arrangements are available to Coors' competitors, and these order provisions therefore injure Coors' ability to compete effectively with other breweries.

Setting aside the non-price vertical restraints provisions of the order would enable Coors to employ distribution methods that likely would be reasonable under the rule of reason standard, because Coors lacks the necessary market power to raise its prices to supracompetitive levels. It would also allow Coors to take advantage of certain efficiencies in the distribution of its products, which, in turn, would promote interbrand competition. *Sylvania, supra*, at 54-55.

Allowing Coors to use what it considers the most efficient and cost effective distribution of its products, including agreeing with distributors in certain states to dedicate their sales efforts to designated geographic areas, would put Coors on an equal footing with other brewers and should make Coors and its distributors more effective competitors. This is consistent with the recognition that in competitive markets consensual non-price vertical arrangements can benefit both competition and the consumer. Coors' inability to impose non-price vertical restraints that its competitors are using places Coors at a competitive disadvantage. Because of the competitive nature of the beer industry, the costs of the prohibitions on non-price vertical restraints outweigh the continued need for these provisions. That balancing therefore supports

[6] The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979).

[7] The Commission noted that "[a]s the Court in *Schwinn* recognized, whatever the status of vertical restrictions unaccompanied by price-fixing, the presence of price-fixing as part and parcel of a system of territorial restrictions renders the entire package illegal *per se*." *Id.* at 194.

[8] *See Beltone Electronics Corporation*, 100 F.T.C. 68 (1982).

[9] For example, any steps Coors might take to increase distributor emphasis on providing a consistently fresh, quality product to the consuming public or to improve geographic market coverage may subject Coors to the risk of being accused of violating the order and, consequently, the risk of a civil penalty suit and judgment. By not being able to correct these distribution problems effectively, Coors is injured in its competition with other brewers. In fact, this order may injure Coors more than it would other brewers, because of Coors' unique brewing and distribution methods. *See* Bureau of Economics, Federal Trade Commission, *The Brewing Industry* at 111-13 (1978)

modifying the order in the public interest.

VI

With respect to Coors' request that the Commission set aside paragraph 11 of the order, the Commission has concluded that that paragraph's general prohibition against Coors "[h]indering, suppressing or eliminating competition * * * between or among distributors * * *," 85 F.T.C. at 189–90, overly restrictive and broad. This language may have a chilling effect on Coors' ability to take advantage of certain efficiencies in the distribution of its products. Moreover, in view of the current legal framework for analyzing vertical restraints, and the retention of the order's resale price maintenance prohibitions, paragraph 11 is no longer necessary to fence-in Coors' conduct concerning non-price vertical restraints it may impose upon its distributors.

Finally, the Commission has also concluded that Coors has not made a satisfactory showing that changed conditions of fact or law or the public interest require that the Commission set aside the part of paragraph 7 of the order that concerns conduct involving resale price maintenance. Setting aside this part of paragraph 7 would be inconsistent with Coors' request that the Commission set aside "the Order * * * except insofar as that Order prohibits price fixing or resale price maintenance." Petition at 3.[10] Additionally, retention of the resale price maintenance part of paragraph 7 is consistent with the primary objective of the order.

VII

Accordingly, *it is ordered* That this matter be reopened and that the Commission's order in Docket No. 8845, issued on February 4, 1975, be, and it hereby is, modified, as of the date of service of this order, by setting aside paragraphs 4(c), 5, 6, 8, and 11, and by modifying paragraph 7 to read:

7. Refusing to deliver all of a distributor's order because the distributor or the distributor's customer is selling Coors beer at prices, markups or profits lower than those approved by respondent.

By the Commission, Commissioner Strenio not participating.

Donald S. Clark,

Secretary.

[FR Doc. 89–19180 Filed 8–15–89; 8:45 am]

BILLING CODE 6750–01–M

[10] Coors has not asked to be relieved from subparagraphs 4 (a) and (b), which prohibit Coors from terminating a distributor because that distributor or its customers resell at other than approved prices.

[File No. 881 0081]

Structural Engineers Association of Northern California, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an association of approximately 1,000 engineers from restricting truthful advertising, price competition, and services to clients of other engineers.

DATE: Comments must be received on or before October 16, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 995–5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Structural Engineers Association of Northern California, Inc. ("SEAONC"), a corporation, and it now appearing that SEAONC, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between SEAONC, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. SEAONC is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal business address located at 217 Second Street, San Francisco, California 94105.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service.

Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered That, for purposes of this Order, "SEAONC" means the Structural Engineers Association of Northern California, Inc., and its board of directors, committees, officers, delegates, representatives, agents, employees, successors, and assigns.

II

It Is Further Ordered That SEAONC shall cease and desist, directly or through any corporate or other device, in connection with its activities, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, from:

A. Restricting, regulating, impeding, declaring unethical, interfering with or advising against truthful, non-deceptive advertising;

B. Restricting, regulating, impeding, declaring unethical, interfering with or advising about the consideration offered or provided to any engineer in return for the sale or purchase of his or her professional services; and

C. Restricting, regulating, impeding, declaring unethical, interfering with or advising against any engineer providing or offering to provide services to persons or entities that are the clients of other engineers.

Provided, however, that nothing contained in this Order shall prohibit SEAONC from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to: (1) representations, including unsubstantiated representations, that SEAONC reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; and (2) the notice to be provided to an engineer prior to any review of his work by another engineer.

III

It Is Further Ordered That SEAONC shall:

A. Within thirty (30) days after this Order becomes final, remove from its canons of ethics, and from any other existing policy statement or guideline of SEAONC, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this Order;

B. Within sixty (60) days after this Order becomes final, publish in the *Structural Engineers Association of Northern California News* or in any successor publication the revised versions of such documents, statements, or guidelines, and a copy of this Order;

C. Within sixty (60) days after this Order becomes final, file a verified report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

D. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which SEAONC has complied, and is complying with this Order; and

E. Notify the Commission at least thirty (30) days prior to any proposed change in SEAONC, such as dissolution, reorganization, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Structural Engineers Association of Northern California ("SEAONC" or "proposed respondent"). SEAONC is a professional association comprised of California-lincensed structural engineers and civil engineers who provide structural engineering services. SEAONC is one of four regional associations that make up the state-level Structural Engineers Association of California. The agreement with the propsed respondent would settle charges by the Federal Trade Commission that it violated section 5 of the Federal Trade Commission Act by restricting or attempting to restrict its members from: (1) Soliciting business by truthful advertising; (2) engaging in price competition; and (3) providing services to pesons or entities that are the clients or other engineers.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that SEAONC is a voluntary professional association of structural engineers who comprise over 70% of the Northern California-licensed structural engineers and civil servants who perform structural engineering. It also alleges that SEAONC's members compete among themselves and with other structural engineers. The complaint alleges that the propsoed respondent acted as a combination of its members or has conspired with at least some of its members to restrict competition. In particular, it alleges that SEAONC has restricted its members from: (1) Soliciting business by truthful advertising; (2) engaging in price competition; and (3) providing services to the clients of other engineers.

According to the complaint, the proposed respondent enacted and published canons of ethics that: (1) Prohibit its members from advertising their work or merit in a self-laudatory manner (2) require that its members when engaging in engineering work uphold the principle of appropriate and adequate compensation for engineers and for employees in subordinate capacities; and (3) prohibit its members from reviewiing the work performed by another engineer for the same client except with reason to believe that the other engineer's contract for services is not in contention.

The complaint further alleges that the restraints injured consumers in the following ways, among others: (1) By depriving consumers of truthful information; (2) by restraining price

competition; (3) by preventing consumers from obtaining an expert second opinion of a structural engineer's work; and (4) by hindering competition among structural engineers.

The Proposed Consent Order

Part I of the proposed order provides a definition of SEAONC. Part II prohibits SEAONC from restricting, regulating, impeding, declaring unethical, or interfering with: (1) Truthful, non-deceptive advertising; (2) the consideration offered or provided to any engineer in return for the sale or purchase of his or her professional services; and (3) any engineer providing or offering to provide services to persons or entities that are the clients of other engineers.

Part II of the propsed order does not prohibit SEAONC from adopting reasonable ethical quidelines governing the conduct of its members with respect to: (1) Representations, including unsubstantiated representations, that SEAONC reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act;[1] and (2) the notice to be provided to an engineer prior to any review of this work by another engineer.

Part III of the proposed order requires SEAONC to remove provisions from its canons of ethics that are inconsistent with the proposed order, and to publish in its newsletter a revised version of its canons of ethics and a copy of the order. Part III of the proposed order also requires SEAONC to file a compliance report within 60 days after the order becomes final, and for five years to permit Commission staff access to proposed respondent's records for compliance purposes. Finally, Part III of the proposed order requires that the proposed respondent notify the Commission prior to a change in the association which may affect compliance with the order.

The purpose of this analysis is to facilitate public comment of the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-19181 Filed 8-15-89; 8:45 am]

BILLING CODE 6750-01-M

[1] The copy of the consent agreement of the public record does not contain the signatures usually found on an original document. This is because the agreement as presented to the Commission did not include the phrase "SEAONC reasonably believes" in section (1) of the proviso in Part II of the order. The Commission determined to insert that phrase before accepting the agreement for comment. See the amended order in the matter of the American Medical Ass'n, et al., Dkt. 9064, 99 F.T.C. 440, 441 (1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rate with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 15.625% for the quarter ended June 30, 1989. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: August 11, 1989.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

FR Doc. 89-19251 Filed 8-15-89; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-09-4322-12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on September 15, 1989.

The meeting will convene at 9:30 a.m. on September 15, 1989 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Range improvement maintenance requirements; (2) Status of Broom Snakeweed control project. (3) Secretary/Treasurer's report; (4) Drought impacts. (5) Review proposed range improvements for FY-90. (6) Information items—Land Pool Exchange Concept.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by September 14, 1989 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: September 15, 1989.

ADDRESS: Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: August 8, 1989.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 89-19195 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-GG-M

Public Room Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Utah State Office, Bureau of Land Management, Department of the Interior, 324 South State Street, Salt Lake City, Utah 84111-2303, announces that effective September 4, 1989, the Public Room will be opened to the public from 7:45 am to 4:30 pm for reviewing records and conductng other official business.

Dated: August 8, 1989.

W.R. Papworth,

Deputy State Director, Operations.

FR Doc. 89-19172 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-942-09-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., August 8, 1989.

The plat representing the dependent resurvey of portions for the south, east, west and north boundaries and subdivisional lines; the subdivision of certain sections and the survey of lot 5 in section 30, T. 44 N., R. 4 W., Boise Meridian, Idaho, Group No. 670, was accepted August 2, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 8, 1989.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-19196 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Amended notice of proposed contractual actions.

The Bureau of Reclamation amends its Notice of Proposed Contractual Actions as published in Vol. 54, No. 145, **Federal Register**, page 31588, July 31, 1989, item number 6 to read as follows:

6. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round negotiations of a water service contract for sale of the regulatory capacity of Ruedi Reservoir including an agreement with the Colorado Water Conservation Board and other proposed entities for release of up to 10,000 acre-feet of water annually for the protection of threatened and endangered fish in the Upper Colorado River Basin.

Dated: August 9, 1989.

Darrell D. Mach,

Acting Commissioner of Reclamation.

FR Doc. 89-19138 Filed 8-15-89; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-423 (Final)]

Generic Cephalexin Capsules from Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of generic cephalexin capsules,[2] provided for in subheading 3004.20.00 of the Harmonized Tariff Schedule of the United States (previously item 411.76 of the Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 12, 1989, following a preliminary determination by the Department of Commerce that imports of generic cephalexin capsules from Canada were being sold at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 4, 1989 (54 FR 19251). The hearing was held in Washington, DC, on June 28, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 10, 1989. The views of the Commission are contained in USITC Publication 2211 (August 1989), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 11, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19207 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The imported products covered by this investigation are generic cephalexin capsules from Canada. Generic cephalexin capsules are cephalexin monohydrate in capsule form. Cephalexin monohydrate is a semisynthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is $C_{16}H_{17}N_3O_4SH_2O$. Generic cephalexin capsules contain not less than 90 percent and not more than 120 percent of the labeled amount of cephalexin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

[Investigation No. 337-TA-302]

Investigation; Self-Inflating Mattresses

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 10, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cascade Designs, Inc., 4000 1st Avenue South, Seattle, Washington 98134. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-inflating mattresses by reason of alleged infringement of claims 1, 3, 4, and 5 of U.S. Letters Patent 4,025,974, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Deborah Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 8, 1989, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-inflating mattresses by reason of alleged infringement of claims 1, 2, 4, or 5 of U.S. Letters Patent 4,025,974, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cascade Designs, Inc., 4000 1st Avenue South, Seattle, Washington 98134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Goodway Corporation, Room 6A, Taiwan Glass Building, No. 261, Nanking E. Road, Sec. 3, Taipei, Taiwan

Gymwell Corporation, 10 Silverbit Lane, Rolling Hills Estates, California 90274

(c) Deborah J. Kline, Esq., Office of Unfair, Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. Internationl Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057, 33063 (Aug. 29, 1988). Pursuant to § 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33059 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 10, 1989.

By order of the Commission.

Kenneth. R. Mason,

Secretary.

[FR Doc. 89-19206 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-295]

Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Two Additional Respondents; Novelty Teleidoscopes

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 8) issued by the presiding administration law judge (ALJ) granting the motions of complainant Homespun Imports, Inc. d/b/a Silver Deer, Ltd., to add two respondents to the above-captioned investigation. The ID amends the complaint and notice of investigation by adding as respondents China Toy and Novelty Company and ABC Cosmos Trading Co., Ltd., both of Taiwan.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On July 14, 1989, the presiding ALJ issued an ID amending the complaint and notice of investigation to add the two firms as respondents. No petitions for review of the ID or government agency comments were received. These actions are taken under authority of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h).

By order of the Commission.

Issued: August 7, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19205 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-426-428 (Final)]

Certain Telephone Systems and Subassemblies thereof from Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-426-428 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Korea, and Taiwan of small business telephone systems,[1]

[1] For the purposes of these investigations, "small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total nonblocking ports capacities of between 2 and 256 ports, and discrete subassemblies thereof designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are: control and switching equipment, circuit cards and modules, and telephone sets and consoles.

provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States (previously reported under items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States), and that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before October 10, 1989, and the Commission will make its final injury determinations within 45 days of notification of Commerce's final determinations (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201) as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:.

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of small business telephone systems from Japan, Korea, and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on December 28, 1988, by American Telephone & Telegraph Co., Parsippany, NJ, and Comdial Corp., Charlottesville, VA. In response to that petition, the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 7891, February 23, 1989).

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report. The prehearing staff report in these investigations will be placed in the nonpublic record on October 13, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on October 31, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 20, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 25, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 24, 1989. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 6, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 6, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be

submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), *as amended* by 53 FR 33034 (August 29, 1988), 54 FR 5220 (February 2, 1989), and 54 FR 13672 (April 5, 1989).

Parties that obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 13, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 11, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19246 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-263 (Sub-No. 1X)]

Staten Island Railway Corp.—Abandonment Exemption—in Richmond County, NY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.8-mile line of railroad between milepost 3.8 at or near John Street, Port Richmond, to the end of the line at or near St. George, in the Borough of Staten Island, Richmond County, NY.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 15, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 28, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael F. Armani, Staten Island Railway Corporation, 1 Railroad Avenue, Cooperstown, NY 13326.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 21, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-19203 Filed 8-15-89; 8:45 am]

BILLING CODE 7035-01-M

[1] The Port Authority of New York and New Jersey filed a comment expressing concern about operations at the Howland Hook Terminal, which it operates under lease from the City of New York, but does not specifically oppose this abandonment since the line does not connect with the terminal.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by September 15, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is

issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Museum Program FY 1991 Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Affected public includes non-profit organizations, educational institutions, and state and local governments. Federal aid is provided in the form of grants for arts and education oriented projects. Guideline instructions and applications elicit relevant information from applicants who apply for funding under specific Museum Program categories. This information is necessary for a thorough and fair consideration of competing proposals in the peer panel review process.

Estimated Number of Respondents: 787.

Average Burden Hours per Response: 18.

Total Estimated Burden: 22,377.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-19191 Filed 8-15-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Division of Ocean Sciences: Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: August 22-24, 1989 8:30-5:00

Place: American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005, First Floor Auditorium-A (Biological Ocean.), First Floor Auditorium-B (MG&G), Eighth Floor Conference Room (Phy. Ocean.), Eleventh Floor Conference Room (Chem. Ocean.)

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9601.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Reason for Late Notice: Administrative Oversight.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-19179 Filed 8-15-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-6 issued to the Consumers Power Company (the licensee), for the operation of Big Rock Point Plant, located in Charlevoix County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specification (TS) sections 6.2 and 6.5 of the Administrative Controls to reflect the change from the Nuclear Safety Board (NSB) to the Nuclear Safety Services Department (NSSD) and elimination of the Independent Safety Engineering Group (ISEG).

The proposed action is in accordance with the licensee's application for amendment dated September 22, 1988 and supplemented on January 17, and April 12, 1989.

The Need for the Proposed Action

The proposed change to the Technical Specifications provides an independent safety review function to be carried out by a full-time organization rather than a committee. This change increases the total resources committed to safety reviews and provides more timely reviews. The independent safety engineering function was eliminated because it was not required by the NRC at Big Rock Point.

Environmental Impact of the Proposed Action

The proposed organizational changes do not increase the risk of facility accidents. Thus, the proposed organizational changes do not involve any increase in the likelihood of the release of radioactive or non-radioactive effluents from those already determined, nor does the proposed action have other environmental impacts. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed organizational changes.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 29, 1989 (54 FR 12977). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the organizational change, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative should be to deny the requested amendment. The proposed organizational changes do not increase the risk of facility accidents. Thus, the proposed organizational changes do not involve any increase in the release of radioactive or non-radioactive effluents from the plant.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing 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 application for amendment.

For further details with respect to this action, see the licensee's application dated September 22, 1988, as supplemented January 17, and April 12, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland this 10th day of August 1989.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19215 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al; San Onofre Nuclear Generating Station, Units 2 and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-10 and No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Technical Specification 3/4.6.1.7, "Containment Ventilation System." This specification permits each 8-inch containment purge supply and exhaust isolation valve to be open for less than or equal to 1000 hours (3000 hours for Unit 3 prior to the third refueling outage) per 365 days, and requires each 42-inch containment purge supply and exhaust isolation valve to be sealed closed, in operational modes 1, 2, 3 and 4. The proposed change would revise Specification 3.6.1.7 to allow blind flanging the 8-inch or 42-inch containment purge supply and exhaust isolation valves as an acceptable method to close and/or seal closed the valves. In addition, the proposed change would revise the current allowable period that the 8-inch containment purge supply and exhaust isolation valves may be open, to permit unrestricted valve operation as required for specific safety related purposes. These purposes would be defined as containment pressure control, ALARA and respirable air quality for personnel entry, and surveillance tests. The proposed change would also revise Action Statement 'a' of Specification 3.6.1.7 to increase the allowable time to close or blind flange an open valve from 1 hour to 4 hours. Finally, the proposed change would exempt blind flanges on the containment purge supply and exhaust lines from the 31-day inspection requirement and would include these blind flanges in the quarterly leakage rate test of the purge supply and exhaust isolation valves.

The Need for the Proposed Action

The proposed amendments are required to limit the purposes for which the 8-inch containment purge supply and exhaust isolation valves may be opened during power operation, to provide flexibility in the methods of sealing the penetrations, and to clarify the surveillance requirements of the 42-inch valves.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not significantly affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1989 (54 FR 19271). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives of the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata date June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 25, 1988, and the revision to that request dated April 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 9th day of August, 1989.

For The Nuclear Regulatory Commission.

George W. Knighton,

Director Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19218 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This

series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-3001 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Records Important for Decommissioning for Licensees Under 10 CFR Parts 30, 40, 70, and 72" and is intended for Division 3, "Fuels and Materials Facilities." This guide is being developed to provide guidance on the specific information that should be kept and maintained in the decommissioning records on the radiological conditions at the facility that could affect occupational and public health and safety during decommissioning.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guide, including any implementation schedule. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 6, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Request for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution listed for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 7th day of August 1989.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-19222 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

Public Service Electric and Gas Co.; Issuance of Amendment to Facility Operating License

[Docket No. 50-354]

The U.S. Nuclear Regulatory Commission has issued Amendment No. 30 to Facility Operating License No. NPF-57, issued to Public Service Electric and Gas Company, which revised the Technical Specifications for operation of the Hope Creek Generating Station, located in Salem County, New Jersey. The amendment was effective as of the date of issuance.

The amendment changed the Technical Specifications concerning the Reactor Building Filtration, Recirculation, and Ventilation System (FRVS) and the Control Room Emergency Filtration System (CREFS). It provided separate Technical Specification sections for the Ventilation and Recirculation subsystems of the FRVS, changed the acceptance criterion for testing the charcoal absorbent in the FRVS Recirculation System, and changed the definition of situations where tests of the FRVS need to be performed. In addition, there are minor clarifications for the FRVS and CREFS.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amemdments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 10, 1988 (53 FR 3967). No request for a hearing or petition for leave to intervene was filed following this notice. The Bureau of Nuclear Engineering (BNE) staff of the State of New Jersey submitted comments in a letter dated April 5, 1988 and those comments are addressed in the safety evaluation issued with this amendment.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (54 FR 29119).

For further details with respect to the action see (1) the application for amendment dated November 25, 1987, as supplemented on April 17, 1989, (2) Amendment No. 30 to License No. NPF-57, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 7th day of August 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19216 Filed 8-15-89; 8:45 am]

BILLING CODE 7510-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37 issued to Virginia Electric and Power Company (the licensee) for operation of the Scurry Nuclear Power Station, Units 1 and 2 located in Surry County, Virginia.

The proposed amendment would modify the Technical Specifications (TS) on an interim basis to permit the replacement of two service water (SW) lines. There are currently two six-inch SW lines that provide cooling water to

the charging pumps' lube oil coolers and intermediate seal coolers and to the three control room/switchgear room air conditioning chiller units. The licensee has proposed to amend the TS, on an interim basis, to facilitate the replacement of the two six-inch SW lines with three eight-inch SW lines. Implementation of these modifications requires the use of action statements allowed by TS 3.23.C and the use of the proposed interim TS 3.14.C.1. The use of these action statements would allow the licensee to remove a SW line from service provided that a temporary SW supply line is installed and is capable of providing the required cooling water flowrate to one control room/switchgear room chiller SW pump.

This temporary SW pipe will be placed in service prior to removing the SW line from service and the dependence on the temporary line will be limited to 24 hour intervals that may be repeated until the modifications are completed. If construction difficulties are encountered which require an early termination of the planned activities, the SW system will be restored to an operable condition and the action statement exited. The interim TS, if granted, would expire March 31, 1990.

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 request for amendments involves no significant hazards considerations. 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. The licensee has reviewed the proposed change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations because operation of the facility in accordance with the proposed TS change using the alternate service water flow path would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of a loss of service water to the control and relay room chiller service water pump is not significantly increased since the temporary line will be installed and operated in accordance with the compensatory measures identified in [the licensee's submittal] which establishes relative equivalence for the temporary line.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for accidents or malfunctions created by these activities has been evaluated in the UFSAR. Flooding of safety-related components due to failure in the circulating water system has been evaluated in the UFSAR. The flooding source which would result from a crack in the temporary line is bounded by the current evaluation. The temporary service water line does not generate any new or unreviewed accident precursors.

3. Involve a significant reduction in a margin of safety.

The temporary line will be used only for short periods of time (less than 24 hours) and be controlled by the proposed action statement. Operation of the temporary line under the conditions imposed will provide sufficient service water flow to meet the design basis requirement for two unit operation without any reduction in Technical Specification margin.

Construction and operations of the temporary line will be accomplished in accordance with applicable station procedures to ensure that plant safety is maintained.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

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. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. 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 are discussed below.

By September 15, 1989, 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 petition for leave to intervene. Request for a hearing and petitions 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. 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 fifteen (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 fifteen (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, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. 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 considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances changes during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission. U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 3426700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

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 Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a) (1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 2, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 10th day of August 1989.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19217 Filed 8-15-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Personnel Management Demonstration Project: Alternative Personnel Management System at the National Institute of Standards and Technology

AGENCY: Office of Personnel Management.

ACTION: Final notice.

SUMMARY: This action provides for the approval of amendments to the final project plan published October 2, 1987 (52 FR 37082). The amendments were published on May 17, 1989 (54 FR 21331), as proposed changes, with a 30 day comment period. Changes were to be made final unless any compelling objections were raised. Representatives of the local bargaining units and all other employees covered by the project plan were notified of the proposed changes and the comment period. There were no requests to bargain and only two letters were received, neither of which contained comments addressing the proposed amendments.

EFFECTIVE DATE: August 16, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Cassday (301) 975-3031, at the National Institute of Standards and Technology; Paul Thompson, (202) 632-6164, at OPM.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

[FR Doc. 89-19136 Filed 8-15-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-27109]; [File No. DTC-89-14]

August 8, 1989.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Company Relating to Changes in its Fee Schedule for Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 24, 1989 the Depository Trust Company ("DTC") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described below (SR-DTC-89-14). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Description of the Proposed Rule Change

The following is the proposed schedule of charges for DTC's interface service with the National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"),[2] as set forth by DTC in its filing:

Service	Fee
For each Mutual Fund Order Entry, Settlement, and Registration.	$0.70 per settled transaction.
Usage Charge	$50.00 monthly.

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] On July 24, 1989 the Commission approved DTC's proposed interface service with NSCC's Fund/SERV. *See* Securities Exchange Act Release No. 27056 (July 24, 1989), 54 Fed. Reg. 31,752 (August 1, 1989).

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission 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

According to the Self-Regulatory Organization, the purpose of the proposed rule change is to recover DTC's costs for providing the Fund/SERV Interface service. In its filing DTC states that the proposed rule change was adopted pursuant to section 17A(b)(3)(D) of the Act, which, according to the filing, authorizes DTC to adopt reasonable fees for the services it provides.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [3] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such 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.

[3] 15 U.S.C. 78s(b)(3) (1981).

IV. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File number SR-DTC-89-14 and should be submitted by September 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19149 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27121 SR-MSTC-89-4]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company ("MSTC") Relating to Fees Revisions Imposed To Cover the Costs of Additional Reports Available Through MSTC's File Transmission Service ("FTS")

August 9, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 18, 1989, the Midwest Securities Trust Company 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

Attached as Exhibit A is the Midwest Securities Trust Company's ("MSTC") proposed fee revisions imposed to cover the costs of additional reports available through its File Transmission Service ("FTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for the addition of new files to FTS. FTS is a CPU to CPU interface between MSTC and the computers of Participatns or their service bureuas. FTS makes processing smoother and more efficient by replacing tape handling and decreasing processing times.

The proposed rule change establishes fees for the following files which are being added to FTS:

Accommodation Transfer
Bond Comparison
Dividend Announcements

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor recieved.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of

the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such 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 Securities Exchange Act of 1934.

IV. Solicitation on Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of SR-MSTC-89-4 will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

(*Additional Italicized;* [Deletions Bracketed])

	Daily	Weekly	Monthly*	Upon request (testing)
R-Activity	$165.99	N/A	N/A	$75.00
R-Net Position	165.00	125.00	75.00	75.00
R-Net Position/Activity	275.00	N/A	N/A	75.00
B-Net Position/Activity	275.00	200.00	75.00	75.00
Purchase & Sales	165.00	N/A	N/A	75.00
ACATS Activity	165.00	N/A	N/A	75.00
R-Masterfile Updates	165.00	N/A	N/A	75.00
R & B Masterfile (FTP)	N/A	200.00	75.00	75.00
NIDS	165.00	N/A	N/A	75.00
Accommodation Transfer	*165.00*	*125.00*	*75.00*	*75.00*
Bond Comparison	*165.00*	*N/A*	*N/A*	*75.00*
Dividend Announcements	165.00	*N/A*	*N/A*	*75.00*

* Includes settlement month end, calendar month end.

[FR Doc. 89-19211 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27105; File No. SR-NASD-89-26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to Notice and Availability to Membership and Press of Suspensions, Expulsions, Revocations and Monetary Sanctions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to Article VI of the Rules of Fair Practice would permit the NASD to provide notice of disciplinary actions and all suspensions and cancellations of membership in Notices to Members, rather than in the NASD Manual,[1] and would require members to distribute such list within the firm as may be necessary. The proposed rule change to Article IV, Section 1 of the Rules of Fair Practice would require that the NASD Manual be maintained in each branch office of a member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of the Rules of Fair Practice requires the Secretary of the Association to furnish every office of every member of the Association with a list of all members of the Association and, by amendments to the list, to keep every office of every member advised of all new members and of all suspensions and cancellations of membership. This list has been provided to members of the Association in monthly updates to the Manual. Members are entitled to rely on this list as last amended for purposes of complying with Article III, Section 25 of the Rules of Fair Practice.

The proposed rule change to Article VI of the Rules of Fair Practice would require that the list be provided to each member, but would require the member to make such distribution within the firm as may be necessary, and would also allow the NASD to provide notice

[1] A conforming amendment is also being proposed to the Resolution of the Board of Governors at Article V, Section 1 of the Rules of Fair Practice.

to its members and the press of suspensions, expulsions, revocations, and monetary sanctions, by means other than Changes to the List of Members in the Manual. This would include the Notice to Members mechanism. Under the proposed rule change to Article VI of the rules of Fair Practice, publication of these matters in Notices to Members will substitute for inclusion in NASD Manual updates and will provide the membership with more timely notification of disciplinary actions.

Article IV, Section 1 of the Rules of Fair Practice requires that the NASD Manual be maintained in "every office" of a member. In light of the new definition of "branch office," effective on April 13, 1989, the NASD is proposing to amend this provision to state that the NASD Manual will be required to be maintained in each *branch* office of the member.

In addition, a Resolution of the Board of Governors that follows Article V, Section 1 of the Rules of Fair Practice that requires the NASD to provide notice to the membership and releases to the press of disciplinary actions resulting in suspensions, bars or monetary sanctions in excess of $10,000, also contemplates the inclusion of this information in the Changes to the List of Members section of the NASD Manual. The proposed conforming rule change to this Resolution of Governors will permit these notifications to the membership and releases to the press to be disseminated by way of Notices to Members.

The NASD believes that the proposed rule changes are consistent with the provisions of section 15A(b)(2) of the Act, in that they will enable the NASD to more effectively enforce compliance with its rules by permitting the NASD to provide its membership with more timely notice of disciplinary actions and requiring each branch office of a member to maintain an NASD Manual.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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 NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-89-26 and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19150 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27111; File No. SR-NASD-89-30]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Financial and Operations Principal ("Series 27") Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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 National Association of Securities Dealers, Inc. ("NASD" or the "Association"), hereby submits amendments to the examination specifications and study outline for the Financial and Operations Principal ("Series 27") qualifications examination. The amendments update existing material pertaining to the Insider Trading and Securities Fraud Enforcement Act of 1988 and general NASD regulations. In addition, the relative weighting of the various categories was modified as a result of a review of NASD disciplinary proceedings to determine areas that warranted additional coverage to prevent regulatory problems. Finally, the material pertaining to the Rules of the Municipal Securities Rulemaking Board ("MSRB") has been segregated into a separate section in order to facilitate the MSRB's access to the questions.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Section 15A(g)(3) of the Securities Exchange Act of 1934 (the "Act"), the NASD is authorized to prescribe standards of training,

experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD believes the proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Securities Exchange Act of 1934, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 27 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

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 NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19151 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27119; File No. SR-NASD-89-31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination Specifications and Study Outline for the Investment Company/Variable Contracts Products Representative ("Series 6") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989 the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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 National Association of Securities Dealers, Inc. ("NASD" or the "Association") hereby submits amendments to the examination specifications and study outline for the Investment Company/Variable Contracts Products Representative ("Series 6") qualifications examination. The amendments update the sections on taxation, retirement plans, and industry regulations, add material covering new regulations and products, including variable life insurance and Section 12b-1 contingent/deferred sales charges, and segregate material pertaining to advertising rules into one section. The number of test selection categories was expanded; however, the number of questions per test remains at 100 and the testing time is still 135 minutes.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 15A(g)(3) of the Securities Exchange Act of 1934 (the "Act"), the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD believes the proposed rule change is consistent with the provisions of section 15A(g)(3) of the Securities Exchange Act of 1934, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 6 examination specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

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 NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the capition above and should be submitted by September 6, 1989.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority, 17 CFR 200.30-3(a)(12)

Dated: August 9, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-19213 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27108; File No. OCC-89-09]

August 8, 1989.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Options Clearing Corporation Relating to Changes in Its Fee Schedule for Certain Clearing Member Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 28, 1989 the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below (SR-OCC-89-09). The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Description of the Rule Change

As set forth in the filing, OCC's proposal would enable it to alter its calculation of the microfiche fee, eliminating the current $.03 per frame charge and replacing it with a $1.10 per card charge and an additional $.10 for duplicate cards.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Commission 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

According to the Self-Regulatory Organization, the current calculation of its microfiche fees dates back to 1985. At that time, OCC believed that a per frame cost would be the best way to distribute OCC's cost of microfiching reports. OCC now claims that its analysis of the present methodology shows that the per frame cost was only advantageous to the smaller clearing members. According to OCC, larger clearing members were paying $8.10 per card, and were, in effect subsidizing the cost for smaller members. In its filing, OCC states that by re-working its calculation it will be able to equitably distribute the cost of microfiching among all its clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The rule filing states that OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

OCC represented in the filing that comments were not solicited or received regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [2] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such 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

You are invited to submit written data, views and arguments concerning the foregoing. Persons making wirtten submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at OCC's principal office. All submissions should refer to File number SR-OCC-89-09 and should be submitted by September 6, 1989.

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] 15 U.S.C. 78s(b)(3) (1981).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19152 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27110; File No. SR-PSE-09]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating To Appeal of Floor Citations

On May 12, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PSE Rule XX, Section 11 to clarify the precise procedures by which floor citations are reviewed, and to facilitate the systematic, complete, and orderly operation of the reivew proceedings.

The proposed rule change was noticed in Securities Exchange Act Release No. 26944 (June 19, 1989), 54 FR 26872 (June 26, 1989). No comments were received on the proposed rule change.

The proposed rule change describes two different procedures by which a person aggrieved by an Exchange action imposed via the issuance of a floor citation ("applicant") can obtain review of the complained of action. Specifically, the proposal clarifies that applicants have the right to request that their appeal of floor citations be reviewed via oral presentation ("request for hearing") or based on written documentation ("review on the papers").

The proposed rule change also more clearly describes the procedures to be followed during the review process. In particular, the procedures, as modified, are as follows. First, the Exchange shall supply the applicant with notification of disciplinary action. The notification shall state the specific grounds for the action taken, and notify the applicant of its right to make a request either for a hearing or a review on the papers. In order to obtain a review of the citation, an applicant must file and application with the PSE Compliance Department indicating whether it desires a hearing or a review on the papers, within five days of receipt of the notification. In a hearing review, each of the parties is permitted to make an opening statment, present witnesses and documentary evidence, cross-examine witnesses, and present closing arguments. In a review on the papers, an applicant can choose to proceed only upon the existing written materials that were the basis for the Exchange's initial decision, or it can decide to submit any additional documents or materials in support of its position.

Second, the Exchange committee responsible for the complained of action shall appoint a panel ("Panel") to conduct the hearing and/or review on the papers ("initial review"). Parties to the proceedings shall be notified of the composition of the Panel, and any objection to the Panel's composition must be submitted within five business days of receipt of the notification regarding the composition. Within fifteen business days after receipt of the notification of the Panel's composition the applicant, if the application is for a review on the papers, shall submit to the Panel any additional documents, statements, arguments, or other materials. The Exchange will then have fifteen days to submit to the Panel any additional documents, statements, arguments, or other materials in response to the applicant's submission. If the application is for a hearing, each party shall furnish to the Panel and to the other parties, not less than five business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at least 15 business days notice of the time and place of the hearing.

Third, the initial review is conducted under the authority of the Panel. In this regard, proposed new paragraph (c)(3) provides that whether the proceeding is a hearing or a review on the papers, the Panel shall determine all questions concerning the admissibility of evidence, and shall otherwise regulate the conduct of the initial review. The formal rules of evidence shall not apply. As previously mentioned, in the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine witnesses, and present closing arguments. The Panel shall have the right to question all parties and witnesses to the initial reivew proceedings, and may also request the production evidence and witnesses. No member, person associated with a member, or employee of the Exchange shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel. A transcript of any hearing held shall be made and shall become part of the record. Within 30 days after the date of the hearing or the review on the papers, the Panel shall render its decision. The Panel may confirm, reverse, or modify, in whole or in part, the decision of the Exchange committee, and may make any findings or conclusions which in its judgment are proper. The Panel's decision shall be in writing, shall contain a concise statement setting forth the specific findings and conclusions of the Panel and the reasons in support thereof, and shall be sent to the parties to the initial review proceedings.

The proposed rule change also distinguishes between the initial review held before the Panel and a second review, termed a "Board Review," conducted by an Appellate Review Panel ("ARP") appointed by the Exchange's Board of Governors ("Board"). The decision of the Panel shall be subject to appellate review by the Board either on the Board's own motion, within thirty days of issuance of the Panel's decision, or upon the written petition of any party to the initial review filed within fifteen business days after the Panel's decision. Subsequent to the filing of petitions for Board Review or the Board's motion to review the matter, parties may submit a written statement to the Board, and may request an opportunity to make an oral presentation. The Board, in its discretion, may grant or deny such a request. In addition, in the absence of a request for an oral presentation, or at any time, the Board may require an oral presentation. A transcript shall be made of any oral presentation and shall become part of the record. The decision of the ARP shall be in writing and shall contain a concise statement of the findings and conclusions of the ARP and the reasons in support thereof.

The PSE states that the proposed rule change is designed to clarify the procedures by which floor citations are reviewed, and to facilitate the systematic, complete, and orderly operation of the review proceedings. The PSE believes that the proposed amendments distinguishing the two levels of review (*i.e.*, initial review v. Board Review) and delineating the manner in which both reviews are conducted should help eliminate PSE member confusion regarding the floor citation review process. The PSE also believes that it is logical to amend section 11(c)(2) to provide the Exchange with the opportunity to respond to a submission made on the papers. The PSE notes that because the Exchange operates in the capacity of a respondent to the applicant's appeal, it should have an opportunity to respond to the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

applicant's submission made on the papers, because to do otherwise would require the Exchange to rebut arguments which may not be raised by the applicant.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[3] Specifically, the Commission believes that the proposed rule change is consistent with the requirements of section 6(d)(1) of the Act [4] because adoption of the proposed rule change will improve the efficiency of the PSE's appeal process by clarifying the precise procedures by which floor citations are reviewed and facilitiating the systematic, complete, and orderly operation of the review proceedings. In this regard, the Commission agrees with the PSE's assertion that the proposed amendments to Section 11 should help eliminate PSE member confusion regarding the floor citation review process by distinguishing between the two levels of review and delineating the manner in which both reviews are conducted. The Commission also agrees with the PSE's assertion that it is logical to provide the Exchange with the opportunity to respond to a submission made on the papers because the Exchange operates in the capacity of a respondent to the applicant's appeal. To do otherwise would require the PSE to rebut arguments which may not be raised by the applicant.

In addition, the Commission believes that proposed new paragraph (c)(3), providing the Panel with, among other things, the power to call and question parties and witnesses, demand the production of documents, and rule on the admissibility of evidence, will facilitate the Panel's ability to obtain all relevant facts necessary for it to reach a well-informed decision when reviewing floor citations. At the same time, the Commission believes that the proposal is not inconsistent with the Exchange's maintenance of a fair hearings and review process for its members. Moreover, the Commission previously approved a similar rule change submitted by the Chicago Board Options Exchange, Inc. that gave its hearings and review panel the express power to compel the production of documentary evidence and witnesses, and that also distinguished between the two different levels of review.[5]

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(7) of the Act [6] because it should ensure adherence to just and equitable principles of trade and protect investors and the public interest by improving the disciplinary process of the PSE. The procedures proposed by the PSE are fair and provide an applicant with an adequate opportunity to appeal a floor citation.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR-PSE-89-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19153 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78f(d)(1) (1982). In pertinent part, Section 6(d)(1) requires that "[in] any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined . . . the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record."

[5] *See, e.g.,* CBOE Rules 19.4 and 19.5.

[6] 15 U.S.C. 78f(b)(7) (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-27107; File No. SR-Phlx-89-25]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Allocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on August 3, 1989, the Philadelphia Stock Exchange, Inc. 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 Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange") pursuant to Rule 19b-4, hereby proposes the following rule change respecting allocation of new equity books or option classes. (Italics indicate additions, brackets indicate deletions.)

Allocation, Reallocation and Transfer of Issues

* * * * *

Rule 506 (a) No change.

(b) No change.

[(c) At least five days before an allocation meeting, the Committee shall provide reasonable notice to all floor members of the security to be allocated and its applicants.]

[(d)] *(c)* The Committee shall hold allocation meetings as appropriate. The Department of Securities shall provide Committee members data on the securities to be allocated, copies of the applications, the most recent specialist performance evaluation ratings, and any other information that the Committee may deem to be relevant. Applicants may make and the Committee may request personal appearances.

[(e)] *(d)* Allocation decisions shall be in writing and shall be distributed to all floor members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

Under the PHLX's allocation rules, when new equity books or option classes are to be allocated, the Committee distributes notice of the proposed allocation to all floor members, at least five days prior to the meeting. The notice includes details about the new issue and the names of all applicants. The purpose of the provision was to afford an opportunity to the members on the floor to provide input to the Committee regarding any special qualifications of particular applicants for particular new issues, or regarding factors of which the Committee might not otherwise by aware, that would make particular applicants unsuitable to be specialists in those issues. Since this was adopted in October, 1982, there have been hundreds of new issues allocated. Not once in

those seven years has the Committee received such special input pursuant to this provision.

The practical impact of the rule has been to add an unnecessary delay to the allocation and listing process. This delay has been especially harmful with respect to new over-the-counter options which are subject to multiple trading by other exchanges. When allocating these new options, it is critical to preserve the confidentiality of new selections until they are ready to be introduced by the Exchange and to streamline the selection and allocation process as much as possible in order to improve the competitive posture of the Exchange. It has been shown in the past that the Exchange which trades an issue first, ultimately gets a significant share of the order flow. Once a new over-the-counter option which is subject to multiple trading has been selected by the Exchange for listing, it is important to solicit applications from specialists, allocate the option and start trading as soon as possible. This rule change will facilitate this goal and thereby encourage competition, all without impairing the integrity of the allocation process.

The proposed rule change is consistant with Section 6(b)(5) of the Exchange Act in that it will help perfect the mechanism of a free and open market market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX 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 comments on this proposed rule change have been solicited or received.

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 apropriate 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 NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 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 the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1989.

Jonathan, G. Katz,
Secretary.

[FR Doc. 89-19154 Filed 8-15-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27123; Filed No. SR-Phlx-89-30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Persons To Serve as Trustees of the Stock Exchange Fund

On May 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its By-Law Article IX, section 9-1 to permit up to five partners, officers, directors or persons employed by or associated with a member of member organization to serve, if appointed, as Trustees of the Stock Exchange Fund.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26922 (June 13, 1989), 54 FR 26129 (June 21, 1989). No comments were received on the proposed rule change.

In its filing, the Exchange stated that the purpose of the rule change is to allow the Exchange to maximize the utilization and contribution of persons associated with members and member organizations for the benefit of the entire Exchange community. The Exchange note that the expanded eligibility, as proposed in the rule change, will allow the Chairman to recommend and the Board to appoint persons who are not members but who possess significant investment advisory expertise to the position of Trustee of the Stock Exchange Fund.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6(b)(3) of the Act.[5] The Commission believes that the proposal is consistent with the section 6(b)(3) requirement that "the rules of the exchange assure a fair representation of its member in the * * * administration of its affairs * * *". In this regard, the Commission notes that the rule change only will expand the eligibility of persons able to serve as a Trustee of the Stock Exchange Fund to those persons affiliated with member organizations. The Commission believes that the investment advisory expertise of member affiliate Trustees may help the Trustees of the Stock Exchange Fund to discharge their responsibilities, as described in Article IX, sec. 9-3.[6]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR. 240.19b-4 (1988).

[3] Article IX, Sec. 9-1 currently provides that there shall be no less than six nor more than eight trustees of the Stock Exchange Fund, composed of the Chairman of the Board of Governors, two Vice-Chairman of the Board of Governors, and up to five members of the corporation. The proposed rule change would permit up to five members and/or member affiliates to serve as trustees. Each member of and/or member affiliated trustee appointed by the Board will serve for three years or until his successor is appointed.

[4] Article IX, Sec. 9-3 of the Exchange's By-Laws, which describes the duties of the trustees of the Stock Exchange Fund, provides that "[t]he Trustees * * * shall hold such securities and other property of the Corporation, real or personal, as shall be vested in them by order of the Board of Governors, with full power to invest the same and to sell and re-invest the proceeds of such sales, as they may deem proper, without being limited in investments, to so-called 'legal investments.'"

[5] 15 U.S.C. 78f (1982).

[6] *See* note 4, *supra*.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the purposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: August 10, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 19212 Filed 9-15-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17102; File No. 812-7334]

The Life Insurance Company of Virginia, et al.

August 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

Applicants: The Life Insurance Company of Virginia ("Life of Virginia"); Life of Virginia Separate Account II ("Account II"); Life of Virginia Separate Account III ("Account III"); and Life of Virginia Separate Account 4 ("Account 4") (each "Account" or the "Accounts").

Relevant 1940 Act Section: Order requested under section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of securities issued by certain management investment companies and held by Account II and Account III to fund variable life insurance contracts and by Account 4 to fund variable annuity contracts.

Filing Date: The application was filed on May 30, 1989 and amended on August 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 31, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request noitification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Life Insurance Company of Virginia, 6610 West Broad Street, Richmond, Virginia 23230.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is the summary of the applicaton; the complete application is available for a fee from either the SEC's Public Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Life of Virginia is a stock life insurance company operating under a charter granted by the Commonwealth of Virginia on March 21, 1871.

Account II was established by Life of Virginia as a separate investment account on August 21, 1986 to fund certain flexible premium variable life insurance contracts. Account II is organized and registered under the Act as a unit investment trust. Account II currently has twenty subdivisions, each of which invest exclusively in the shares of an investment portfolio of one of four series management investment companies described below.

Account III was established by Life of Virginia as a separate investment account on February 10, 1987 to fund certain flexible premium variable life insurance contracts. Account III is also organized and registered under the Act as a unit investment trust. Account III currently has twenty-three subdivisions, each of which invest exclusively in the shares of the same investment portfolios of the four series investment companies whose shares are held by Account II as well as in shares issued by three portfolios of a fith series company.

Account 4 was established by Life of Virginia as a separate investment account on August 26, 1987 to fund certain variable annuity contracts. Account 4 is organized and registered under the Act as a unit investment trust. Account 4 currently has twenty subdivisions, each of which invest exclusively in the shares of the same investment portfolios as does Account II.

2. The flexible premium variable life insurance contracts and the variable annuity contracts (the "Contracts") permit contract owners to allocate purchase payments among as many as seven subdivisions at one time as long as each subdivision has at least 10% of a Contract's cash value. Owners of variable life insurance contracts issued through Account III and variable annuity contracts issued through Account 4 may transfer cash values at any time among the sub-divisions available at the time of a transfer request. The first transfer in any calendar month is free; otherwise each transfer costs $10.00. Owners of variable life insurance contracts issued by Account II may make up to twelve transfers each calendar year with the first transfer being made without charge and those thereafter having a $10.00 charge.

3. Four open-end diversified management investment companies of the series type offer shares of their various investment portfolios to corresponding subdivisions of each of the Accounts while a fifth company offer shares of its portfolios to Account III but not to Accounts II and 4. The companies, which are all registered with the Commission on Form N-1A, are: American Life/Annuity Series (the "AL Series"); Life of Virginia Series Fund, Inc. (the "LOV Series"); Oppenheimer Variable Account Funds (the "Oppenheimer Funds"); Variable Insurance Products Fund (the "Fidelity Fund"); and Zero Coupon Bond Fund (the "Fidelity ZCB Fund"). The application relates to a substitution involving only shares of the AL Series and the LOV Series.

The AL Series was organized as a Massachusetts Business Trust in 1986 and has five portfolios: The Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA Rated Securities Fund.

The LOV Series was organized as a Virginia corporation on May 14, 1984 and currently has four portfolios: the Commond Stock Portfolio, the Bond Portfolio, the Money Market Portfolio, and the Total Return Portfolio.

4. On March 16, 1989 Life of Virginia received written notice that the AL Series' Board of Trustees decided, at a meeting held on March 6, 1989, to cease operations of the AL Series because of the Series' relatively small asset size and high level of expenses. The notice stated that AL Series' investment adviser, Capital Research and Management Company, was exercising its right to terminate participation agreements between the AL Series and the Accounts and that the AL Series will discontinue offering shares of its investment portfolios to the Accounts on December 15, 1989. By a supplement dated April 17, 1989 to the prospectuses for the Accounts, all contract owner

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[7] 15 U.S.C. 78s (b)(2) (1982).

[8] 17 CFR 200.30-3(a)(2) (1988).

(and all prospective investors) received notice of the Series' intent to cease business.

5. Applicants propose to substitute shares of three portfolios of the LOV Series for shares of the five portfolios of the AL Series by transferring the cash values of contract owners from the subdivisions of each Account holding shares of the AL Series to subdivisions of each Account holding shares of the LOV Series. Applicants propose to do this by redeeming shares of the various AL Series portfolios and purchasing with the proceeds shares of an appropriate portfolio of the LOV Series as follows:

For shares of the AL Series	Shares of LOV Series
Cash Management Fund	Money Market Portfolio.
High-Yield Bond Fund	Bond Portfolio.
Growth-Income Fund	Common Stock Portfolio.
Growth Fund	Common Stock Portfolio.
Gov't Guar./AAA Rated Fund.	Bond Portfolio.

The subdivisions investing in shares of the AL Series would then be eliminated.

6. The substitution would take place at simple relative net asset value with no change in the amount of any contract owner's cash value or in the dollar value of his or her investment in an Account or underlying portfolio. Contract owners will not incur any fees or charges as a result of the substitution nor will their rights or Life of Virginia's obligations under any variable annuity or variable life insurance contract be altered in any way. All expenses incurred in effecting the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Life of Virginia. In addition, the proposed substitution will not impose any tax liability on contract owners. The substitution will not be treated as a transfer for the purpose of assessing transfer charges. All current and prospective contract owners will receive notice in the form of a supplement to the May 1, 1989 prospectuses for the Accounts that Life of Virginia is seeking an order from the SEC approving the substitution.

7. The prospectus supplement sent to contract owners will also inform them that they may, at any time prior to the proposed substitution, transfer their cash values from subdivisions investing in the AL Series to any of the remaining subdivisions not investing in the AL Series without incurring any transaction fees and without the transfer counting as the one free transfer permitted annually in Account II or the one free transfer permitted monthly in Accounts III and 4. In addition, shortly after the substitution, Life of Virgina will notify, in writing, all contract owners who had remaining cash values transferred from the AL subdivision of their right to make "free transfers" for another thirty days.

8. The Contracts reserve to Life of Virginia the right, subject to SEC approval, to substitute shares of another management investment company for shares of any management investment company held by a subdivision of the Accounts or to add or eliminate one or more subdivisions. The prospectuses for the Accounts clearly discloses this under the caption "Addition, Deletion, or Substitution of Investments." Life of Virginia reserved this right of substitution and elimination to protect itself and its contract owners in precisely the type of circumstances it faces now: Unilateral election (for any reason) by a management investment company to cease operations.

9. Because of the relatively small amount of assets, expenses incurred by the AL Series have remained relatively high even after reimbursement of advisory fees. A large portion of each portfolio's expenses remain fixed and, consequently, the expenses remain high as a percent of average daily net assets. The expense ratio will presumably become considerably less favorable in several months when the separate accounts of two other life insurance companies redeem their shares of the AL Series for the same reasons. Life of Virginia has therefore determined that it is in the best interests of contract owners to replace the investment portfolio of the AL Series with alternative investment vehicles.

The investment portfolios of the LOV Series have somewhat lower investment advisory fee structures than, and current expense ratios similar to, their companions in the AL Series. Applicants anticipate that this consolidation will modestly increase economies of scale and lead to a reduction of administrative expenses in the LOV Series.

10. Applicants state that the investment objectives of the LOV Series portfolios make them suitable and appropriate as investment vehicles for contract owners currently invested in the AL Series. Two of the AL Series portfolios, the Cash Management Fund and the Growth Fund, have investment objectives that are substantially identical to their LOV Series counterparts. The remaining three, the Growth-Income Fund, the High-Yield Bond Fund and the Government Guaranteed/AAA Rated Fund, have investment objectives that are compatible with those of the their LOV Series substitutes, and pursue their objectives by investing in the same general types of securities as those invested in by their LOV Series substitutes.

11. Two of the AL Series portfolios, the Growth-Income Fund and the High-Yield Bond Fund, may find a closer match of investment objectives with portfolios of the Fidelity Fund or the Oppenheimer Funds. However, Life of Virginia cannot predict, with funds managed by an unaffiliated organization, the future occurrence of disruptive unilateral events such as the one that occasioned the proposed substitution. Life of Virginia believes that the LOV Series, in contrast, which is managed by its affiliate Aon Advisors, Inc. and which only sells its shares to the Accounts, is much less likely to experience such a disruptive event in the foreseeable future than are funds managed by unaffiliated organizations. Moreover, Life of Virginia does not want to appear to be endorsing one or more of the investment options managed by unaffiliated advisers over other options managed by unaffiliated advisers. Consequently, Life of Virginia believes that contract owners should only invest with unaffiliated advisers at their own initiative by exercising their right to make free transfers of their cash value to any subdivision of the Accounts. In addition, if contract owners prefer to invest in one or more portfolios managed by the same investment adviser then substituting the investment portfolios of two or three different investment advisers would not be consistent with this preference.

12. The proposed automatic substitution will be only temporary in character because contract owners may always exercise their own judgement as to the most appropriate alternative investment vehicle. All contract owners may at any time before the substitution transfer their cash value to any other subdivision, and for thirty days after the substitution transfer to any of the remaining fourteen (or in the case of Account III seventeen) subdivisions of the Accounts without any cost or other disadvantage. The application states that, in this regard, the proposed substitution is not the type of substitution which Section 26(b) was designed to govern. The proposed substitution will not, therefore, result in the type of costly forced redemption which Section 26(b) was intended to guard against. No sales load deductions will be made beyond those already provided for in the Contracts and the substitutions will be effected at relative

net assets value without the imposition of any transfer or other charges.

13. The application states that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19155 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Lifetime Corporation, Common Stock, Par Value $0.01 (File No. 1-8204)

August 8, 1989.

Lifetime Corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's Common Stock is also listed on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following: In making the decision to withdraw its Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 29, 1989, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19156 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17104; 812-7257]

UBS Mortgage Securities, Inc.; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: UBS Mortgage Securities, Inc. ("UBS" or "Applicant"), on behalf of itself and all owner trusts (each, a "Trust") it may establish in the future (collectively "Applicants" or "Issuers").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the Act.

Summary of Application: Applicants seek a conditional exemptive order to permit each Issuer to issue and sell one or more series of bonds collateralized by certain Mortgage Collateral (defined below), issue and sell residual interests in certain of the Issuers, and elect status as a "real estate mortgage investment conduit" (REMIC) under the Internal Revenue Code of 1986, as amended.

Filing Date: The application was filed on February 28, 1989 and amended on June 8 and August 8, 1989.

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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, UBS Mortgage Securities, Inc., 299 Park Avenue, New York, New York 10171.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney (202) 272-3035 or Karen L. Skidmore, Branch Chief (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct wholly-owned limited purpose subsidiary of UBS Securities Inc. UBS Securities Inc. is a New York corporation, a registered broker-dealer, and a direct wholly-owned subsidiary of Union Bank of Switzerland. Applicant was formed for the purpose of engaging in asset-backed financing, including issuing and selling, or establishing Trusts to issue and sell, series of bonds ("Bonds"), and of purchasing, owning and depositing with such Trusts mortgage collateral (the "Mortgage Collateral") and pledging, or causing such Trusts to pledge, such Mortgage Collateral to a Trustee (as described below) to secure a series of Bonds.[1]

2. Applicant will not engage in any business or investment activities unrelated to such purpose; however, Applicant may also issue securities, or form other trusts or pools that may issue securities secured by other types of collateral in such a way that Applicant or such other trusts or pools would be excepted from the Act's definition of an investment company pursuant to section 3(c)(5)(C).

3. Each series of Bonds will be issued by the Issuer pursuant to an indenture (the "Indenture") between an independent trustee (the "Trustee") and

[1] Each series of Bonds for which an order is requested will be separately secured by collateral (the "Mortgage Collateral") consisting primarily of mortgage pass-through certificates ("GNMA Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"), Mortgage Participation Certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC"), or Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") issued and guaranteed by the Federal National Mortgage Association ("FNMA") (collectively, "Agency Certificates"), funding agreements ("Funding Agreements") entered into with various limited purpose entities affiliated with a concern engaged in the homebuilding or mortgage lending business (each a "Participant"), and which are secured by Agency Certificates and Mortgage Loans, and the Agency Certificates and Mortgage Loans securing such Funding Agreements. Applicants will neither issue nor own stripped mortgage-backed securities as described in the Application. Agency Certificates pledged to secure a series of Bonds or a Funding Agreement may or may not represent the entire beneficial interest in the mortgage pool related to such Agency Certificates.

the Issuer consisting of a Series Indenture for such series incorporating by reference a set of standard indenture provisions. Each Indenture will be qualified under the Trust Indenture Act of 1939. The Applicant anticipates that the Mortgage Collateral securing each series of Bonds will be acquired by the Issuer thereof using the net proceeds of the sale of such Bonds.

4. Trusts will be created pursuant to an agreement (the "Trust Agreement") between Applicant, acting as depositor, and a bank, trust company or other fiduciary, acting as owner trustee (the "Owner Trustee"). Under the terms of each Trust Agreement, the Applicant will convey the Mortgage Collateral and any "Other Collateral" to the related Trust in return for Trust Certificates. When the Issuer is a Trust, the Owner Trustee will not purchase any Trust Certificates but will function as a legal stakeholder for the assets of the Trust. Applicant contemplates that the Owner Trustee will enter into an agreement with respect to each Trust whereby UBS Securities Inc., another affiliate of Applicant, or an independent company will provide certain management services in connection with the issuance of the Bonds.

5. If the Issuer elects REMIC status, one class of the Bonds of the Series issued by such Issuer may be designated as the "residual interest" in the REMIC and will be the "Residual Bonds." If a REMIC election is made, all other classes of Bonds of such Series will be designated as the "regular interests" in the REMIC and will be referred to as "Regular Bonds." All Bonds of a Series for which no REMIC election is made will also be included in the term "Regular Bonds." Residual Bonds will be entitled to the excess cash flow remaining after payment of principal of and interest on all Bonds of such Series, together with any remaining value in the Mortgage Collateral after payment in full of all of Bonds of such Series. Such Residual Bonds and Trust Certificates are referred to as the "Residual Interests."

6. Each series of Bonds will consist of one or more classes of Bonds, including one or more classes of current interest Bonds, compound interest Bonds, zero coupon Bonds, or capital appreciation Bonds; reduced volatility Bonds, such as planned amortization class Bonds and targeted amortization class Bonds; fixed rate Bonds, including step-up Bonds by which the interest rate changes from one fixed rate to another fixed rate on a date certain, or Floating Rate Bonds; and Residual Bonds. Current interest Bonds will pay interest on the payment dates specified in the prospectus or other offering document for the Bonds. Compound interest Bonds are Bonds upon which interest accrues and is compounded, added to the principal of the Bond, and is not paid until all classes with an earlier stated maturity have been paid in full or until a stated date. Compound interest Bonds may provide that after a certain date they will cease to accrue compound interest and will become current interest Bonds. Zero coupon and capital appreciation Bonds bear no interest and are sold at a discount. The principal amount of a zero coupon Bond will be payable on or before the maturity date. The principal amount of a capital appreciation Bond would be paid only on the maturity date; if a capital appreciation Bond were to be paid before the maturity date, the amount payable would be a compounded or accreted value calculated in the manner specified in the prospectus or private placement memorandum for the Bonds. For reduced volatility Bonds, such as planned amortization class Bonds and targeted amortization class Bonds, there will be established a schedule of payment for various payment dates, and payments on the underlying Mortgage Collateral will be directed first to meet these payments and then to the other classes of Bonds. Floating Rate Bonds bear interest at rates which vary in relation to an index specified in the related prospectus. The maximum and minimum interest rates may vary from period to period, but there will always be an overall maximum and minimum rate that cannot be exceeded during the life of the Bonds. All allocations of principal will be consistent with, and will provide for, retirement of each class not later than the stated maturity date for each class.

7. The collateral pledged to secure the Bonds will include, in addition to the Mortgage Collateral, a separate collection account for each series of Bonds and may include a debt service reserve fund or other reserve fund as specified in the prospectus supplement for a particular series. Amounts in the Collection Account for each series will be invested by the Trustee in certain investments permitted under the Indenture, including obligations of the United States or any agency thereof backed by the full faith and credit of the United States, certificates of deposit of, demand and time deposits in, and bankers' acceptances issued by, eligible depository institutions or trust companies, and certain repurchase agreements in respect of obligations of the United States and certain agencies thereof with eligible depository institutions or trust companies (collectively "Eligible Investments"). Eligible Investments will mature on or before the next payment date for the series, and will thus be available to make required payments on the Bonds of such series.

8. Amounts remaining in the Collection Account following the payment of principal of an interest on the Bonds on a payment date will be used for the payment of expenses and distribution of "excess cash flow" to either the Residual Bond Holders or the Issuer. In connection with the sale of Bonds secured only by Agency Certificates or Funding Agreements secured by Agency Certificates, the Applicant may sell Residual Interests, subject to specified conditions. Holders of Residual Interests will be entitled to receive distributions of excess cash flow from each Issuer only after payment of all expenses, taxes, and other liabilities, including Owner Trustee fees in the case of a Trust Issuer.

9. For each series of Bonds: (a) Each Issuer will hold no substantial assets other than the Mortgage Collateral (except to the extent UBS may hold Residual Interests); (b) payments on the mortgage loans underlying the Mortgage Collateral securing the Bonds will be the primary source of funds for payments of principal and interest due on such Bonds; (c) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (d) scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds (together with any required payments from any reserve funds with respect to the Bonds) plus income received thereon at the assumed reinvestment rate will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturities; and (e) the Mortgage Collateral will be pledged in their entirety by each Issuer to the Trustee and will be subject to the lien of the related Indenture.

10. Certain series of Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate that will provide sufficient income to pay interest on the Bonds. Other series of Bonds may provide for optional redemptions by the holders of such Bonds or for mandatory redemption by the Issuer, in each case to the extent payments on the underlying Mortgage Collateral and

related reserve funds are available to pay the principal of, and interest on, the Bonds so redeemed. Except in limited circumstances arising upon an event of default of the Bonds under the Indenture, Bondholders cannot liquidate Mortgage Collateral to redeem the Bonds before maturity. Until such Bonds are paid, the Mortgage Collateral pledged to secure a series of Bonds will not be released from the lien of the Indenture, except in certain limited circumstances.

11. Neither the Issuer, the Residual Interest Holders, the Trustee nor the Owner Trustee will be able to impair the security afforded by the Mortgate Collateral to the Regular Bondholders because, without the consent of each affected Bondholder, neither the Issuer, nor the Residual Interest Holders nor the Trustee will be able to: (1) Change the stated maturity on any Bond; (b) reduce the principal amount, or the rate of interest on any Bond; (c) change the priority of repayment on any class of any series of Bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (e) permit the creation of a lien ranking before or on parity with the lien of the related Indenture with respect to the Mortgage Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

12. The sale of Residual Interests will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to an Indenture to support payments of principal and interest on the Bonds. The interests of the Regular Bondholders will not be compromised or impaired by the ability of an Insurer to sell Residual Interests, and there will not be a conflict of interest between the Regular Bondholders and the Residual Interest Holders as: (a) The Mortgage Collateral that will be deposited to secure each series of Bonds will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Regular Bonds in one of its two highest rating categories, which by definition means that the capacity of the Issuer to repay principal and interest on the Regular Bonds is extremely strong; (c) the relevant Indenture subjects the Mortgage Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest the name of the Trustee on behalf of the Bondholders; [2] and (d) the Residual Interest Holders are entitled to receive only current distributions representing the residual payments on the collateral. Furthermore, unless the Issuer makes a REMIC election, the Issuer, including the Trust Certificate Holders of a particular series of Bonds, will be liable for the administrative expenses in respect of such series of Bonds (other than the principal and interest on such Bonds) to the extent not previously paid from the trust estate.

13. The choice of the form of Issuer and the identity of the Residual Interest Holders will not alter the payments to be made to Bondholders, which payments are governed by the Indenture. The aggregate interests of each Insurer (including Residual Interest Holders) in the Mortgate Collateral and the expected returns earned by them will be far less than the payments made to Regular Bondholders. The Applicant does not intend to deposit, in respect to any series of Bonds, Mortgage Collateral with a collateral value that exceeds 120% of the aggregate principal amount of the related Bonds.

14. Except for the limited right to substitute Mortgage Collateral, it will not be possible for the Issuers including the Residual Interest Holders to alter the initial Mortgage Collateral, and, in no event will such right to substitute Mortgage Collateral result in a diminution in the value or quality of such collateral. Therefore, although substituted Mortgage Collateral may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the Issuers and Residual Interest Holders, which market conditions are likely to affect all Mortgage Collateral or similar payment terms and maturities in a similar fashion; (b) the interest of the Residual Interest Holders will not be different from those of the Bondholders with respect to collateral prepayment experience; and (c) with respect to Trust Issuers, to the extent that the Trust Certificate Holders can cause the substitution of Mortgage Collateral which has a different prepayment experience than the original Mortgage Collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are listed by an entity that is a single purpose finance subsidiary.

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the Issuer (and any Residual Interest Holder) until (i) the Trustee has made the scheduled payments of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) deposits have been made to certain reserve funds. Each Issuer is obligated to collect or cause to be collected all amounts released from the lien of the indenture by the Trustee and to pay or cause to be paid all expenses of the Trust, including its own fees. For Trust Issuers, once amounts have been released from the lien of the Indenture, each Trust Agreement provides that the Owner Trustee has a lien superior to that of the Trust Certificate Holders in and to the remaining cash flow.

Applicants' Legal Conclusions

15. The requested order is necessary and appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisions of the Act were intended to be applied; (b) the Issuers' activities are intended to serve a recognized and critical public need; (c) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration provisions of the Securities Act and thereafter by the Trustee representing their interests under the Indenture; and (d) any Residual Interests will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors or accredited noninstitutional investors through private placements.

Applicants' Conditions

Applicant agrees that if an order is granted it may be expressly conditioned on the following conditions:

A. General Conditions

(1) Each series of Regular Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act or because such series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Regular Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a noaction letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then revise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United

States investors in United States offerings.

(2) The Regular Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the collateral directly securing the Bonds will be GNMA Certificates, FNMA Certificates, FHLMC Certificates, Funding Agreements (and the Agency Certificates and Mortgage Loans securing such Funding Agreements) or any combination thereof.

(3) If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (i) Be of equal or better quality then the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in Conditions A(2) and A(4). New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under this condition. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian will be an "affiliate" (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant, any Issuer, any Owner Trustee, or any Participant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) The master servicer of the mortgage loans underlying Funding Agreements securing a series of Bonds may not be an affiliate of the Trustee or of any custodian. If there is no master servicer for the mortgage loans underlying Funding Agreements securing a series of Bonds, no servicer of those mortgage loans may be an affiliate of the Trustee. In addition, any master servicer and any servicer of a mortgage loan underlying Funding Agreements will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Funding Agreements shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(6) Each series of Regular Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with any Issuer. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

(7) So long as applicable law requires, at least annually, an independent public accountant will audit the books and records of each Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) The interest rate for each class of Floating Rate Bonds will have set maximum interest rates (interest rate caps), which may vary from period to period, but which will always be subject to an overall maximum interest rate, and the method of calculating the interest rate will always be specified in the related prospectus or other offering document; each class of Floating Rate Bonds will be secured by Mortgage Collateral to the same extent as any other class of Bonds.

(2) At the time of the acquisition of the Mortgage Collateral by the Applicant or the deposit of the Mortgage Collateral with the issuing Trust, as the case may be, as well as during the life of the Bonds, all Mortgage Collateral deposited with the Trustee and pledged to secure the Bonds, plus reinvestment income thereon, and reserve funds and other collateral, if any, pledged to secure the Bonds (as described in the Application) will be sufficient for the full and timely payment of all principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of Floating Rate Bonds. Such Mortgage Collateral will be paid down as the mortgages comprising or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture before the payment of the Bonds.[3]

C. Conditions Relating to REMIC Election

(1) A REMIC election by an Insurer will have no effect on the level of the expenses that would be incurred by any such Issuer. If such REMIC election is made, the Issuer making the REMIC election will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Each such Issuer will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the trust estate by one or more of the methods described in the Application (*i.e.*, guaranty of fees and expenses, reserve fund, excess collateral, and personal liability).

(2) Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods

[3] In the case of a Series of Bonds that contains a class or classes of Floating Rate Bonds, a number of mechanisms exist to ensure that the representations above will be valid notwithstanding subsequent potential increases in the interest rate applicable to the Floating Rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the Floating Rate Bonds; (ii) "inverse" Floating Rate Bonds (which pay a lower rate of interest as the rate increase on the corresponding "normal" Floating Rate Bonds); (iii) floating rate collateral to secure the Bonds); (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated principal amount, such as the principal amount of Bonds in the floating rate class, in exchange for receiving corresponding periodic payment from the counterparty at a variable rate of interest based on the same principal amount); (v) hedge agreements (including interest rate futures and option contracts under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the floating rate class of Bonds); and (vi) structuring the Bonds so that the weighted average interest rate on the entire Series of Bonds is equal to or less than the weighted average pass-through rate on the Mortgage Certificates securing such Series. It is expected that other mechanisms may be identified in the future. Whatever method is used for a particular Series, the collateral structure for each Series of Bonds will be reviewed independently by the agency or agencies rating the Bonds (as well as by the independent accountants for the Applicant issuing such series) in order to ensure, for the appropriate rating, that the Mortgage Collateral is sufficient to meet all scheduled payments, as stated above. In all cases, these mechanisms will be adequatae to ensure the accuracy of the representations set forth above. In the event that other mechanisms to ensure the accuracy of the representations set forth above are used by the Applicant, the Applicant will notify the Securities and Exchange Commission by letter of the use of any such additional mechanisms and shall give the SEC an opportunity to comment on such mechanisms before they are used in order to give the SEC an opportunity to raise any questions as to the appropriateness of their use. No Bonds will be issued for which this is not the case.

(which methods may be used in combination) are selected by such Issuer to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests will be sold pursuant to this Application only where the related Bonds are collateralized by one or more of the following: GNMA Certificates, FNMA Certificates, FHLMC Certificates or Funding Agreements secured by one or more of the foregoing Agency Certificates. Certificates will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at a minimum $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and other types of mortgage-related securities.

(2) Residual Interests will be sold only in transactions not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

(3) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest Holders of any series of Bonds at any time.

(4) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interest in its own name or for accounts as to which it exercises some investment discretion. Each purchaser of a Residual Interest will be required to agree that it will not resell such Residual Interest unless (i) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from Applicant under the terms of Conditions D(1), (ii) after the sale there would be no more than one hundred Residual Interest Holders, and (iii) the subsequent purchaser agrees to be subjected to the same representations and undertakings as are applicable to the reselling purchaser.

(5) No Residual Interest Holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral or the rating agency rating the Bonds of the relevant series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any rating agency rating the Bonds.

E. Other Conditions

(1) If the sale of the Residual Interests or an equity interest results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of a Trust Issuer, the relief afforded by any Order granted on the Application would not apply to subsequent bond offerings by that Trust Issuer. If the sale of the Residual Interests or an equity interest results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of Applicant, the relief afforded by an order granted on the Application would not apply to subsequent Bond offerings by Applicant or any of the Trusts.

(2) For those transactions in which the Applicant is the Issuer, the Applicant will only sell Bonds, including Residual Bonds sold in accordance with the "Conditions Relating to the Sale of Residual Interests" set forth above, and will not sell any equity or residual interests in the excess cash flow from the Mortgage Collateral remaining after all payments are made on the Bonds, including such Residual Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegate authority.

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19157 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24937]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 10, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 5, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation (70-7665)

EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly owned subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration under sections 6(b) and 12(c) of the Act and Rules 42(a) and 50(a)(5) thereunder.

By order dated April 26, 1988 (HCAR No. 24628) ("April 1988 Order"), Cogenex was authorized to effect, from time-to-time during the period ending December 31, 1989, up to $15 million of short-term borrowings from lending institutions and up to $15 million in short-term loans and/or capital contributions from its parent, EUA. As of June 1, 1989, Cogenex had short-term borrowings of $15 million from banks, the maximum amount authorized, and $9,023,000 from EUA. As of June 1, 1989, Cogenex had received no capital contributions from EUA.

Cogenex now proposes to issue and sell, through December 31, 1989, pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, up to $25 million aggregate principal amount of unsecured or secured long-term notes ("Notes") and/or first mortgage bonds ("Bonds"). Cogenex further requests authorization to begin negotiating terms of the Notes and Bonds with institutional investors, or to engage a placement agent to negotiate with and place the Notes and Bonds with institutional purchasers. Cogenex may do so.

The $30 million of short-term borrowings and capital contributions authorized in the April 1988 Order, together with the $25 million of long-term Notes and Bonds now proposed, would result in an aggregate amount of $55 million in borrowings authorized through December 31, 1989.

The Notes and Bonds will mature in not less than three nor more than 30 years. The Notes may be unsecured or secured and, if secured, may be secured, as the Bonds, by a lien on substantially all or a portion of Cogenex's assets. The net proceeds of the sale of the Notes and Bonds will be applied to pay or reduce outstanding short-term borrowings from banks, to pay or reduce outstanding short-term loans from EUA, for the acquisition of tangible assets of Cogenex, and for general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19214 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17106/File No. 812-7318]

Security First Life Insurance Co., et al.

Date: August 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "Act").

Applicants: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A (the "SFL Account"), The Capitol Life Insurance Company ("Capitol Life"), Capitol Life Separate Account A ("CL Account") and Security First Financial, Inc. ("First Financial").

Relevant 1940 Act Sections: Section 11.

Summary of Application: Applicants seek an order pursuant to Section 11 of the Act approving an exchange offer to be made in connection with an agreement between Security First and Capitol pursuant to which certain group variable annuity contracts issued by the CL Account will be reinsured by Security First.

Filing Dates: The Application was filed on May 11, 1989, and an amendment was filed on July 28, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 4, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o Routier and Johnson, P.C., 1725 K Street, NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney (202) 272-2622, or Clifford E. Kirsch, Acting Assistant Director (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Security First is a stock life insurance company organized under the laws of the State of Delaware. At December 31, 1988 its total consolidated assets were approximately $949.2 million and consolidated retained earnings were approximately $15.5 million. Security First is the depositor of the SFL Account.

2. The SFL Account is a separate account of Security First established as a facility for the issuance of individual and group variable annuity contracts. The SFL Account has been registered under the Act as a unit investment trust since 1982.

3. Capitol Life is a stock life insurance company organized under the laws of the state of Colorado in 1905. At December 31, 1988, Capital Life had total assets of approximately $2,297,259 and retained earnings of approximately $41,216,000. Capitol Life is the depositor of the CL Account.

4. The CL Account is a separate account of Capitol Life established on September 20, 1973 for the purpose of funding certain group deferred variable annuity contracts, including contracts issued in connection with plans qualifying under Section 457 of the Internal Revenue Code ("Code"). The CL Account is registered under the Act as a unit investment trust. The CL Account is composed of five "series" (Series M, B, G, T, and P), and the assets of each series are invested in shares of one of the following diversified, open-end management investment companies ("Funds") registered under the Act: The Money Market Series of Security First Trust, the Bond Series of Security First Trust, the Growth and Income Series of Security First Trust, T. Rowe Price Growth Stock Fund, and T. Rowe Price Prime Reserve Fund, Inc., corresponding respectively to the aformentioned series.

5. It is proposed that variable annuity contracts funded in the CL Account for employees of the State of Florida and certain other Florida county and local governmental agencies (the "Contracts") be reinsured by security First. A registration statement under the Securities Act of 1933 on Form N-4 relating to the offer to reinsure and the assumption reinsurance of the Contracts has been filed with the SEC (File No. 33-28623).

6. First Financial is the principal underwriter for the CL Account contracts. First Financial is also the principal underwriter for the SFL Account contracts.

7. Security First and Capitol Life have entered into an agreement pursuant to which the Contracts issued by the CL Account will be reinsured by Security First. On the effective date of the agreement, all Fund shares and other assets held by Capitol Life in the CL Account attributable to the Contracts will be transferred to Security First and will be allocated to the SFL Account. Thereafter, Security First will be responsible for all obligations, including pre-existing claims, under the Contracts, and the state of Florida and the other Florida county and local governmental agencies will look solely to Security First for the performance of such obligations. The CL Account will continue to fund group variable annuity contracts including those issued in connection with plans qualifying under sections 401, 403(b), 408, and 457 of the

Code. Only the Florida Section 457 contracts from the CL Account will be reinsured by Security First.

8. In effect, the only change resulting from the assumption reinsurance of the Contracts is a change in the insurance company responsible for the performance of contractual obligations. Security First has substantial assets and retained earnings to assure the performance of its obligations under the Contracts.

9. The application states that the only reason the Applicants may not rely on Rule 11a-2 under the Act is because that rule requires that an exchange be made by separate accounts having the same or affiliated insurance company depositors or sponsors. Security First and Capitol are not affiliated insurance companies; therefore, Rule 11a-2 is unavailable for the exchange offer associated with their reinsurance proposal. However, Applicants represent that the terms of their exchange offer meet all other conditions of Rule 11a-2, including the conditions concerning administrative fees and sales loads.

10. The agreement as to each of the Contracts will not become effective without the approval of the assumption reinsurance proposal by the State of Florida and each of the Florida county or local governmental agenices. In connection with the reinsurance proposal, each of the Contract owners (the State of Florida and certain of its county governments) have been given the right to choose whether they will accept the transfer to Security First, or remain with Capitol in accordance with its existing agreement.

11. No change in any terms of the Contracts, including the charges provided for thereunder, will be made by Security First in connection with its reinsurance of the Contracts. No charges, including sales or administrative charges, will be imposed upon the transfer of the Contracts to Security First. The aggregate value of accumulation units credited to an individual's account will not be changed as a result of the Contracts' reinsurance by Security First. In view of the fact that Fund shares held by the CL Account will be transferred to Security First and the SFL Account on the date the assumption reinsurance is effective, no interrruption of investment performance is anticipated.

12. No charge, including sales or administrative charges, will be assessed by Security First or any other person in connection with the assumption reinsurance of the Contracts. The costs and expenses Security First incurs in connection with the assumption reinsurance transaction will be borne by its general account and will not affect the interests of Contract owners or participants.

13. The application states that because each Contract owner will not have to accept Security First's assumption of its Contract, in that it will be given the right to remain with Capitol, the proposed assumption reinsurance arrangement may be deemed to be an offer of exchange of Contracts issued by the SFL Account for Contracts issued by the CL Account to which Section 11 is applicable.

14. No charge will be imposed in connection with the assumption reinsurance, and none of the terms of the Contracts will change upon their being reinsured. The Contract owner will have the same opportunity as it currently has to invest in the same underlying Funds, and no interruption in its investment in such Funds is anticipated. In addition, the Account value at the time of the reinsurance of the contracts will be the same value that would have existed if the reinsurance has not taken place.

15. The application states that, for the above-stated reasons, the offer of exchange involved in the proposed assumption reinsurance arrangement should be approved under Section 11 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19209 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17105/File No. 812-7319]

Security First Life Insurance Co., et al.

Date: August 10, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for amended order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Security First Life Insurance Company ("Security First"), Security First Life Separate Account A (the "SFL Account") and Security First Financial, Inc. ("First Financial").

Relevant 1940 Act Sections: Exemptions requested pursuant to section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) thereof.

Summary of Application: Applicants seek an amended order to permit the deduction of mortality and expense risk charges in connection with the issuance of certain group annuity contracts issued by the Capitol Life Insurance Company and proposed to be reinsured by Security First Life Insurance Company.

Filing Dates: The Application was filed on May 11, 1989 and amended on July 19, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 4, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Routier and Johnson, P.C., 1725 K Street, NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2622, or Acting Assistant Director Clifford E. Kirsch, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. By prior application, Applicants sought an order pursuant to section 6(c) of the Act for exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) to allow Security First to deduct from the SFL Account the mortality and expense risk charge equal to .89% on an annual basis imposed under certain group annuity contracts. On May 28, 1982, the Commission issued an Order granting the requested relief (Investment Company Act Release No. 12450). By Order dated December 4, 1986 (Investment Company Act Release No. 15453), the Order issued in 1982 was amended to raise the mortality and expense risk charge to 1.25% on an annual basis and to include certain individual payment deferred annuity contracts in the relief previously granted pursuant to sections 26(a)(2)(C) and 27(c)(2).

2. The purpose of the application is to amend the most recent amended Order of December 4, 1986 to include additional group flexible payment

annuity contracts ("Contracts") in the exemptions from section 26(a)(2)(C) and 27(c)(2) previously granted. The Contracts are group flexible payment deferred annuity contracts which are identical in terms to variable annuity contracts issued by Capitol Life Separate Account A and The Capitol Life Insurance Company ("Capitol Life"). The variable annuity contracts issued by the Capitol Life Separate Account A are the subject of an exemptive order pursuant to Section 6(c) issued on August 28, 1981 (Investment Company Act Release No. 11923) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to allow the imposition of the mortality and expense risk charge of .89% on an annual basis imposed under the Capitol Life contracts. Certain Capitol Life contracts are proposed to be reinsured by Security First Life pursuant to a registration statement filed on Form N-4 under the Securities Act of 1933 ("1933 Act") (File No. 33-28623). All terms of the Capitol Life Contracts will remain the same, including the level of the mortality and expense risk charge.

3. Security First is a stock life insurance company organized under the laws of the state of Delaware.

4. The SFL Account, a separate account of Security First, issues certain group variable annuity contracts. The Separate Account is registered under the Act as a unit investment trust.

5. The SFL Account consists of five Series: Series M, B, G, T and P, which respectively invest solely in the shares of the Money Market Series of Security First Trust, the Bond Series of Security First Trust, the Growth and Income Series of Security First Trust, T. Rowe Price Growth Stock Fund, Inc. and T. Rowe Price Prime Reserve Fund, Inc. ("Funds"). Each of the funds is an open-end diversified management investment company registered under the Act.

6. The Contracts are designed for issuance to plans qualifying for special tax treatment under sections 401, 408 and 403(b) of the Internal Revenue Code ("Code") or section 457 deferred compensation plans. Purchase payments under the Contracts are made to the general account of Security First, and then transferred to the SFL Account. The minimum monthly purchase payment is $20, with an annual minimum premium of $240. Certain charges and deductions will be made to the Contract value.

7. No deduction for sales charges will be made from purchase payments received under the Contracts; however, a sales charge may be imposed upon transfers to the Separate Account. If elected by the participant, a portion of the resulting general account values may be transferred to the Separate Account to provide variable annuity benefits. Each transfer of amounts from the general account to the Separate Account is treated as a surrender from the general account, and as such is subject to the following charge (which may be deemed a sales charge):

7% on payments surrendered in calendar year of payment.

6% on payments surrendered in calendar year following the payment.

5% on payments surrendered in 2nd calendar year following the payment.

4% on payments surrendered in 3rd calendar year following the payment.

3% on payments surrendered in 4th calendar year following the payments.

0% on payments surrendered in 5th and subsequent years following year of payment.

If the sales charge imposed upon surrenders from the general account is insufficient to cover the costs of distributing the Contracts, the deficiency will be met from Security First Life's general account, which may include amounts derived from the mortality and expense risk charge. If a participant elects to apply his general account and Separate Account values to provide either fixed or variable annuity payments under any available annuity option, Security First will recompute the general account value of his interest in the Contract to restore any sales charge imposed upon transfers to the Separate Account (including interest that would have accumulated at rates that are used to determine the general account annuity values, but excluding any premium taxes that may have been deducted) imposed on the amounts previously transferred from the general account to the Separate Account.

8. Subject to restrictions that may be imposed by the Code, a participant may make partial or complete surrenders from the general account or the SFL Account Series cash values. Surrenders from the general account will be subject to the sales charge discussed above, as well as the $10 fixed surrender charge.

9. At the end of each Contract or certificate year, or on the date that an individual's account is cancelled as a result of a complete redemption (should such redemption occur prior to the end of such year), Security First has the right to deduct an administrative charge equal to $27.50, plus $2.50 for each Series for which there are accumulation units included in the value of that individual's account. Thus, the annual administrative charge will range from a minimum of $30.00 to a maximum of $40.00. The administrative charge is designed to cover the actual costs of administering the Contracts.

10. In addition, a daily deduction not to exceed .00244% (equivalent to .89% annually) is assessed against the deducted from the assets of each Separate Account Series. This deduction is Security First's fee for providing a minimum death benefit and accepting the mortality and expense risks under the Contracts. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Security First. Conversely, if the charge is more than sufficient to cover costs, any excess will be a profit to Security First.

11. Applicants represent that the mortality risk is assumed by virtue of annuity rates contained in the Contracts; the annuity rates cannot be changed after issuance of the certificates. If the mortality risk charge or the administrative charge plus the expense risk charge is insufficient to cover actual costs, Security First Life will bear the loss. To the extent that the charges exceed actual costs, Security First Life, at its discretion, may use the excess to offset losses when the charges are insufficient to cover expenses.

12. Applicants assert that the mortality and expense risk charge of .89% is reasonable in relation to the risks assumed by Security First Life under the Contracts, is consistent with the protection of investors insofar as it is designed to be competitive while not exposing Security First to undue risk of loss, and falls within the range of similar charges imposed under competitive variable annuity products. Applicants represent that the mortality and expense risk charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. Applicants further represent that Security First will maintain at its home office a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, Security First's comparative survey.

13. Applicants acknowledge that any profit realized from the mortality and expense risk charge may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Security First has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the

Separate Account and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security First at its administrative offices and will be made available to the Commission.

14. Security First also represents that the Separate Account will only invest in management investment companies that undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19210 Filed 8-15-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster Loan Areas #2372 and #2374)

New Jersey; Declaration of Disaster Loan Area; (And Contiguous Counties in the State of Pennsylvania)

Burlington County and the contiguous counties of Camden, Atlantic, Ocean, Monmouth and Mercer in the State of New Jersey and the contiguous counties of Bucks and Philadelphia in the State of Pennsylvania, constitute a disaster area as a result of damages from severe rain storms and flooding which occurred on July 5th and 6th, 1989. Applications for loans for physical damage may be filed until close of business on October 9, 1989, and for economic injury until the close of business on May 8, 1990, at the following address: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The numbers assigned to this disaster are 237306 for physical damage and 681500 for economic injury for the State of New Jersey, and 237406 and 681600 for the State of Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: August 8, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-19164 Filed 8-15-89; 8:45 am]

BILLING CODE 8025-01-M

LRF Capital L.P.; Filing of an Application for a License to Operate as a Small Business Investment Co.

[Application No. 01/01-0347]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by LRF Capital, L.P., 189 Wells Avenue, Newton, Massachusetts 02159, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.,C. *et. seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

	Direct percent of ownership
General partner:	
LRF Capital Corp., 189 Wells Avenue, Newton, Massachusetts 02159	10.0
Limited partners:	
LRF Investments, Inc., 189 Wells Avenue, Newton, Massachusetts 02159	60.0
JJJ Investment Company, 189 Wells Avenue, Newton, Massachusetts 02159	30.0

LRF Capital, L.P. will be managed by LRF Investments, Inc. The officers and directors of LRF Investments are:

Name	Percentage of ownership
Joseph M. Linsey, 180 Wells Avenue, Newton, Massachusetts 02159	37.5
Alfred S. Ross, 180 Wells Avenue, Newton, Massachusetts 02159	37.5
Joseph J. Freeman, 180 Wells Avenue, Newton, Massachusetts 02159	25.0

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Newton, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Date: August 9, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-19165 Filed 8-15-89; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-68]

Request for Comments on Determination Under Section 304 of the Trade Act of 1974, as Amended, Relating to Argentina's Policies and Practices With Respect To Providing Adequate and Effective Intellectual Property Rights Protection for Pharmaceuticals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for written comments on determinations under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

EFFECTIVE DATE: August 14, 1989.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness

Act of 1988, the United States Trade Representative ("USTR") is required to determine on or before September 23, 1989, whether the Argentina practices at issue are unreasonable and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(B)(ii) or 301(b)(1), 19 U.S.C. 2411(a)(1)(B)(ii) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative is also considering appropriate action (subject to the specific direction, if any, of the President) in response to Argentina's practices. The USTR welcomes written comments regarding such determinations with respect to the subject Argentine government practices.

DATES: Written comments from interested persons are due by noon on September 12, 1989, at the Office of the U.S. Trade Representative, Executive Office of the President, Room 223, 600 17th Street, NW., Washington, DC 20506.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director of Brazil and Southern Cone Affairs, Office of the United States Trade Representative, at (202) 395-5190, or Catherine Field, Associate General Counsel, Office of the United States Trade Representative, at (202) 395-3432.

SUPPLEMENTARY INFORMATION: On August 10, 1988, the Pharmaceutical Manufacturers Association (PMA) filed a petition under section 302 of the Trade Act of 1974, as amended, requesting USTR to initiate an investigation of Argentina's acts, policies and practices related to the denial of product patent protection for pharmaceuticals and pharmaceutical product registration practices which PMA believes are unreasonable and burden or restrict U.S. commerce.

In addition to the complaint concerning Argentina's denial of the product patent protection for pharmaceuticals, PMA's petition complains about the following matters: (1) A provision in the Argentina patent law providing that patents lapse, i.e. protection ends, if the invention is not worked in Argentina within two years after grant of the patent; (2) lack of injunctive relief for patent infringement and inadequate monetary fines; (3) failure to shift the burden of proof that a particular process does not infringe a process patent; and (4) a combination of regulations on pharmaceutical registration that allegedly discriminate against U.S. firms that invent pharmaceuticals and permit copiers to enter the market before the inventor in some cases and market pharmaceuticals at prices that do not reflect the cost of developing and marketing the pharmaceutical.

On September 23, 1988, the U.S. Trade Representative initiated an investigation of the Argentina government's policies and practices related to providing adequate and effective intellectual property protection for pharmaceuticals. USTR requested consultations with the Government of Argentina as required by section 303(a) of the Omnibus Trade and Competitiveness Act of 1988. Bilateral consultations were held with Argentina during the course of the investigation. Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether such practices of the Government of Argentina are unreasonable and burden or restrict U.S. commerce. The USTR is also considering appropriate action (subject to the specific direction, if any, of the President) in response to Argentina's practices.

Public Comment

The public is invited to comment on: (1) Whether the Argentina policies and practices at issue are actionable under section 301; (2) the burden or restriction on U.S. commerce caused by Argentina's practices; and (3) appropriate action to be taken in response to Argentina's practices. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR. All written submissions must be filed in accordance with 15 CFR Part 2006.8. Submissions are to be submitted in twenty (20) copies, in English, by noon on September 12, 1989 to Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

Joshua B. Bolten,

General Counsel.

[FR Doc. 89-19373 Filed 8-15-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Milwaukee and Waukesha Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Milwaukee and Waukesha Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905. Telephone (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the highway and street network in the northwestern portion of Milwaukee County. Specifically, improvements are being considered for the Zoo Freeway (USH 45) from Lilly Road to Florist Avenue, the Fond du Lac Freeway (STH 145) from Lilly Road to North 99th Street, West Good Hope Road from Lilly Road to North 99th Street, North 107th Street from Appleton Avenue to Greenwood Terrace, Bradley Road from 91st Street through 124th Street to Leon Road, North 124th Street from West Good Hope Road to West Brown Deer Road, the proposed Metro Centre and Park Place Roads, relocated 114th Street from Mill Road to Metro Centre, and relocated 115th Street from Appleton Avenue to 124th Street at Fond du Lac Avenue.

The proposed action is considered necessary to provide for existing and future projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) widening the existing two-lane roads to four-lane divided sections (with and without parking); (3) widening the existing two-lane roads to four-lane undivided sections (with and without parking). Alternatives 2 and 3 also include access to the proposed Metro Centre development and improvements to the existing highway access ramps. Design variations of grade and alinement will be incorporated into and studied with the various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings will be held in Milwaukee County during 1989 and 1990. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public

hearing. A formal scoping meeting is not planned at this time.

To ensure that a full range of issues related to this proposed action are addressed, and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 7, 1989.

Frank M. Mayer,

Division Administrator Madison, Wisconsin.

[FR Doc. 89-19197 Filed 8-15-89; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

In the **Federal Register** issue of Thursday, July 27, 1989, page 31279, notice was published of upcoming meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. The schedules and agendas for the meetings given in that notice have been revised. The present notice sets forth the revised schedules and agendas. Each meeting will be in Room 4234-4238, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

On September 12, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Determining the Extent of Corrosion on Gas Pipelines (54 FR 27091, June 27, 1989)
- Gas Gathering Line Definition
- Pipeline Inventory
- Gas Detection and Monitoring in Compressor Station Buildings.

In addition, the committee will informally discuss an Advance Notice of Proposed Rulemaking regarding transportation of hydrogen sulfide by gas pipelines (54 FR 24361, June 7, 1989) and studies in progress regarding the use of internal inspection and flow restriction devices (54 FR 20945 and 20948, May 15, 1989).

On September 13, 1989, at 9:00 a.m., the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet jointly. The joint meeting will adjourn at noon. The Administrator of the Research and Special Programs Administration will lead a general discussion of the following topics and of suggestions from committee members to enhance the pipeline safety program:

- Roles of pipeline advisory committees
- Electric resistance weld report
- Regulatory issues regarding customer-owned gas service lines, terminal tanks, and hazardous liquid pipelines operating at 20 percent or less of the specified minimum yield strength
- H.R. 2417 and H.R. 2430
- Hydrostatic testing certain hazardous liquid pipelines.

On September 14, 1989, at 9:00 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

- Transportation of Carbon Dioxide by Pipeline
- Operation and Maintenance Procedures for Pipelines
- Pipeline Inventory.

In addition, the committee will informally discuss studies in progress regarding the use of internal inspection and flow restriction devices (54 FR 20945 and 20948, May 15, 1989).

Each meeeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subjects. Due to the limited time available, each person who wants to make an oral statement must notify Linda Craver, Room 8417, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-1640, not later than September 8, 1989, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the committees before or after any meeting.

(Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463)).

Dated: August 11, 1989.

Cesar De Leon,

Executive Director of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 89-19198 Filed 8-15-89; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Monday, August 21, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Consideration of request by Citicorp, New York, New York, for relief from conditions imposed on tandem operations between Citicorp's savings association subsidiaries and its other subsidiaries. (Proposed earlier for public comment; Docket No. R-0663)

Discussion Agenda

2. Consideration of issues under the Primary Dealers Act of 1988. (Proposed earlier for public comment; Docket No. R-0658)
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 14, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-19338 Filed 8-14-89; 11:03 am.]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Monday, August 21, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-19339 Filed 8-14-89; 11:03 am]
BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 21, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment performance.
4. Review of loan subsystem audit report.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: August 14, 1989.

Francis X. Cavanaugh,
Executive Director Federal Retirement Thrift Investment Board.

[FR Doc. 89-19300 Filed 8-14-89; 10:37 am]
BILLING CODE 6760-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-28

TIME AND DATE: Thursday, August 24, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints
5. Inv. No. 731-TA-424 (F) (Martial Arts Uniforms from Taiwan)—briefing and vote.
6. Inv. No. 701-TA-297 (F) and 731-TA-422 (F) (New Steel Rails from Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 9, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-19297 Filed 8-14-89; 10:34 a.m.]
BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-29

TIME AND DATE: Monday, August 28, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 701-TA-298 (F) (Fresh, Chilled, or Frozen Pork from Canada)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 10, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-19298 Filed 8-14-89; 10:34 a.m.]
BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-30

TIME AND DATE: Wednesday, August 30, 1989 at 3:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratification
4. Petitions and Complaints
5. Inv. No. 701-TA-300 (P) and 731-TA-438 (P) (Limousines from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 10, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19299 Filed 8-14-89; 10:34 a.m.]

BILLING CODE 7020-02-M

RESOLUTION TRUST CORPORATION

Agency Meeting

[0003-RTC]

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:12 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) Delegations of authority with respect to RTC matters; (2) matters relating to the resolution of certain depository institutions placed in conversatorship under the joint regulatory oversight program; and (3) matters regarding RTC's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that RTC business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: August 10, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 89-19398 Filed 8-14-89; 3:24 p.m.]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

[0002-RTC]

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that its organizational meeting held at 2:01 p.m. on Wednesday, August 9, 1989, the Board of Directors of the Resolution Trust Corporation ("RTC") met in open session to consider the following matters:

Bylaws and a corporate seal for the RTC.

Resolutions with respect to the following:

a. Establishing the organizational structure of the RTC.

b. Directing the negotiation of the procedures pursuant to which the RTC will reimburse the Federal Deposit Insurance Corporation ("FDIC") for the FDIC's costs and expenses in managing the RTC.

c. Authorizing the establishment of an account with the Federal Reserve Bank of New York for the purpose of transacting the business of the RTC.

d. Adopting, the RTC employees, pending the adoption of final regulations implementing section 21A(p) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the ethical standards of conduct prescribed by Part 336 of Title 12 of the Code of Federal Regulations for employees of the FDIC.

At that same meeting, the Board also recognized officers of the RTC assigned by the FDIC as exclusive manager and designated C.C. Hope, Jr., as the RTC's Board's liaison with the RTC Oversight Board.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that RTC business required its consideration of the matters on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Amphitheater of the RTC Building located at 801 17th Street, NW., Washington, DC.

Dated: August 10, 1989.

Resolution Trust Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 89-19399 Filed 8-14-89; 3:24 p m.]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 157
Wednesday, August 16, 1989

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

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Tablets and Chewable Cubes

Correction

In rule document 89-18310 beginning on page 32336 in the issue of Monday, August 7, 1989, make the following correction:

On page 32337, in the first column, the **EFFECTIVE DATE** should read "August 7, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Division

29 CFR Parts 524, 525, and 529

RIN 1215-AA34

Employment of Workers With Disabilities Under Special Certificates

Correction

In rule document 89-18668 beginning on page 32920 in the issue of Thursday, August 10, 1989, make the following corrections:

1. On page 32920, in the first column, under **SUMMARY**, in the second complete paragraph, in the ninth line, "support" should read "supportive".

2. On the same page, in the third column, in the first complete paragraph, in the last line, "provisions" was misspelled.

3. On page 32922, in the first column, in the seventh line from the bottom, 'personnal" should read "personal".

4. On the same page, in the 3rd column, under *Section 525.6 Compensable Time*, in the 2nd complete paragraph, in the 15th line, "education" was misspelled; and in the 16th line, "The" should read "These".

5. On page 32923, in the first column, the heading "*Section 525.7 Application for Certification*" should read "*Section 525.7 Application for Certificates*".

6. On page 32926, in the second column, under *Section 525.20 Relation to Other Laws*, in the second complete paragraph, in the second line, "adopted" should read "adopt".

7. On the same page, in the third column, in the third complete paragraph, in the sixth line, "state" should read "states".

BILLING CODE 1505-01-D

federal register

Wednesday
August 16, 1989

Part II

Department of Education

Grants to Institutions To Encourage Minority Participation in Graduate Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.202]

Grants to Institutions To Encourage Minority Participation in Graduate Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Currently funded grantees are eligible to apply for new awards under this competition.

Purpose of Program: To provide grants to enable institutions of higher education to make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups that are traditionally underrepresented in graduate education in order to provide those students with effective preparation for graduate study.

Deadline for Transmittal of Applications: October 9, 1989.

Deadline for Intergovernmental Review: December 8, 1989.

Available Funds: $3,594,000.

Estimated Range of Awards: $29,150–$120,000.

Estimated Average Size of Awards: $79,866.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: 6 weeks to 1 Year.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized by Part A of Title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (20 U.S.C. 1134–1134b). Grants under this program are designed to enable institutions of higher education to identify, recruit, and make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups which are traditionally underrepresented in graduate education; in order to provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. The program of study must consist of summer research internships augmented by seminars and other educational experiences. All funds received under this program must be used for direct fellowship aid. Fellowships should provide an opportunity for fellows to spend from six to ten weeks during the summer on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

Note: For guidance purposes only, the Secretary suggests that applicants consider "minority" to mean American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander, or other ethnic groups, that have traditionally been underrepresented in graduate education.

Eligibility: (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended (HEA), is eligible to apply for a grant to conduct a fellowship program.

(b) An individual is eligible to apply for a fellowship if the individual—

(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that has traditionally been underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section of the notice.

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Part A of Title IX of the HEA, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Part A of Title IX of the HEA.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Part A of Title IX of the HEA, including consideration of—

(i) The needs addressed by the project:

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (28 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: The Part A of Title IX of the HEA requires that fellowship awards be made to talented students from minority groups traditionally underrepresented in graduate education.

(4) *Quality of key personnel.* (7 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director [if one is to be used];

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Note: The Part A of Title IX of the HEA provides that all funds received under this program be used for direct fellowship aid.

(c) *Additional considerations required by the statute.* (1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) (Rev. 4–88) and instructions.

Part II: Budget Information Form and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget form, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages or less (on one side only).

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, or Mrs. Barbara J. Harvey, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5338, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 732–4393 or 732–4863, respectively.

Program Authority: 20 U.S.C. 1134–1134b.

Dated: August 8, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

Appendix

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the purpose of the program, description of the program and the Selection Criteria the Secretary uses to evaluate applications. Applicants should address the selection criteria in the order the criteria are listed in this application notice.

The narrative should encompass each function or activity for which funds are being requested.

1. Begin with a one-page Abstract; that is, a summary of the proposed project.

2. Include information regarding (a) the program of study to take the form of summer research internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program.

3. Application should include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given.

4. Applications should include information regarding the number of students you propose to recruit to participate in the program from each minority group that is "traditionally underrepresented" in graduate education.

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average four 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. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0603, Washington, DC 20503.

(Information collection approved under OMB control number 1840-0603. Expiration date: March, 1990)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code)

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1 Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

— "New" means a new assistance award.

— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11 Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

FORM APPROVED: 5/89
OMB NO.: 1840-0603
EXPIRATION DATE: 3/90

PART II
BUDGET INFORMATION

GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION PROGRAM

AWARDS MADE TO INSTITUTIONS UNDER THIS PROGRAM MUST BE USED EXCLUSIVELY TO PROVIDE DIRECT FELLOWSHIP AID. INCLUDE BELOW THE BREAKDOWN OF FEDERAL FUNDS REQUESTED FOR STUDENT EXPENSES:

	TOTAL COSTS
STUDENTS COST:*	
A. ROOM AND BOARD	
B. TRANSPORTATION	
C. TUITION	
D. OTHER APPLICABLE EXPENSES	
TOTAL FEDERAL REQUEST	
TOTAL NUMBER OF FELLOWSHIPS REQUESTED	
NUMBER OF WEEKS OF SEMINAR/INSTITUTE	

LIST ACADEMIC AREA or AREAS:

BEGINNING AND END DATES OF STUDENTS' FELLOWSHIP ACTIVITIES

INSTRUCTION:

* CALCULATE EACH STUDENT'S NEED-BASED STIPEND FOR APPLICABLE EXPENSES, INCLUDING ROOM AND BOARD, TRANSPORTATION AND TUITION FOR COURSES FOR WHICH CREDIT IS GIVEN, FOLLOWING THE PROCEDURES USED BY THE APPLICANT'S STUDENT FINANCIAL AID OFFICE. THE STUDENTS' NEED SHOULD BE CALCULATED PURSUANT TO PART F OF TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED.

INDICATE WITHIN THE TOTAL COST OF THE STUDENTS COST THE AMOUNTS CHARGED FOR EACH OF THE SPECIFIC CATEGORIES LISTED ABOVE.

B. TRANSPORTATION COSTS MAY INCLUDE THE COST OF ONE ROUND-TRIP FROM THE STUDENT'S RESIDENCE TO CAMPUS AND RETURN, IF APPLICABLE, AND OTHER TRAVEL REQUIRED AS PART OF THE PROGRAM OF STUDY.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. Howeve failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "prima covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposa being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regard Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneou A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possess by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0004

Certification Regarding Drug-Free Workplace Requirements

Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate) PR/Award Number or Project Name

Printed Name

Signature Date

ED 80-0005

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August 16, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Personal Protective Equipment for General Industry; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-060]

RIN 1218-AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise portions of the general industry safety standards addressing personal protective equipment. The standards proposed for revision regulate the design, selection, and use of personal protective equipment (eye, face, head and foot protection).

The existing personal protective equipment (PPE) standards (29 CFR part 1910) apply to all general industry places of employment. Many of these standards are design restrictive, and/or outdated, and must be supplemented by administrative action to permit the use of more recently developed PPE which provide equivalent or better protection. In addition, the existing standards do not always provide clear requirements for the selection and use of PPE.

OSHA would delete, where appropriate, existing specification provisions and use performance-oriented provisions to address hazards to the eyes, face, head and foot. The Agency would also update the general industry PPE standards, where appropriate, to provide clearer requirements and guidance for the selection and use of PPE. The proposal would also add non-mandatory appendices A and B to this subpart to address PPE for eye, face, head, and foot hazards.

DATES: Comments on this proposed rulemaking and requests for a hearing must be postmarked by October 16, 1989.

ADDRESS: Written comments and requests for hearing should be sent to the Docket Officer, Docket No. S-060, U.S. Department of Labor, Room N-2634, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Division of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1910.132 through 1910.140 of subpart I, Personal Protective Equipment, were adopted by OSHA in 1971 from established Federal standards and national consensus standards under section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655(a)). Subpart I covers the use of personal protective equipment (PPE), in general, and contains specific requirements and criteria for eye and face protection, respiratory protection, head protection, foot protection, and electrical protective devices. OSHA believes that the existing standards for PPE in subpart I are outdated. The Agency is addressing the need to update the regulation of respiratory protection and electrical protective devices in separate rulemakings. The present rulemaking is intended to update the requirements for eye, face, head and foot protective devices. The existing standards reflect the knowledge and practices regarding PPE as they existed in the late 1960's through early 1970's. They specify very restrictive design criteria (thus limiting the use of new technology), and contain gaps in coverage.

OSHA is concerned that restraints on innovation make it more difficult for employers either to increase acceptance of PPE or to provide more protective PPE. Indeed, recognizing this likelihood, the Agency has already established a process under which OSHA has accepted, on a case-by-case basis, the use of eye protection which, while not designed to satisfy the existing standards, has been demonstrated through testing to provide equivalent or superior worker protection. However, the Agency believes that this process cannot keep pace with the development of improved PPE. Therefore, OSHA is concerned that, unless the PPE standards are revised to be more performance-oriented, employers and product manufacturers will be discouraged from improving their equipment and providing improved protection to workers.

Since 1971, the American National Standards Institute (ANSI) has revised its consensus standards for head, foot, and eye and face protection. OSHA proposes to use the most recent revisions of these standards as part of the basis for its rulemaking. For instance, OSHA has based its proposed revision of the requirements for foot protection on ANSI Z41-1983, Personnel Protection—Protective Footwear. This ANSI Standard, unlike the existing OSHA foot protection standard, covers foot protection for women as well as for men. This proposed change would address a serious gap in coverage under the existing standards. In addition, OSHA has obtained injury data and technical reports which show that injuries are occurring to employees who are not wearing PPE, as well as to some employees who are wearing PPE. This would indicate that significant improvements in PPE design and acceptance are needed. OSHA believes that the record developed in the course of this rulemaking will enable the Agency to promulgate revised standards for PPE that are more clearly written, more comprehensive, and more accurately reflect available technololgy. OSHA expects that compliance with the proposed revisions will substantially reduce the risks to workers from the pertinent hazards.

II. Hazards Involved

OSHA has determined that workers in a wide range of occupations are exposed to a significant risk of death or serious injury from being struck by various objects in the workplace. OSHA's accident data indicate that a significant portion of all work related injuries and fatalities involve workers being struck in the eyes, face, head or feet by foreign objects. Among the references which document this problem are the Bureau of Labor Statistics (BLS) work injury reports on eye, face, head and foot injuries; the BLS Supplementary Data System Information, the National Safety Council *Accident Facts*; the National Institute for Occupational Safety and Health (NIOSH) studies of accident data; and, articles in trade journals and safety magazines (References 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22). While these sources differ as to the number and kind of injuries, they are consistent in pointing out the high incidences and severity of these accidents, and provide clear evidence of a significant risk to workers.

In 1981, disabling occupational injuries and illnesses to the head, eyes, face, and feet account for over 14 percent of the disabling occupational injuries reported through the Bureau of Labor Statistics Supplementary Data System. The BLS estimated that these disability injuries included 116,000 eye injuries, 40,000 face injuries, 46,800 head injuries, and 156,400 foot and toe injuries (Reference 5).

The 1988 edition of *Accident Facts* estimated that, in 1987, there were 70,000 eye injuries, 70,000 head and face injuries, and 110,000 foot and toe injuries. Those injuries constituted 13.8 percent of the estimated 1,800,000 total disabling work injuries for 1987 (Reference 15).

The Injury Surveillance Branch, Division of Safety Research, National Institute for Occupational Safety and

Health (NIOSH), relying on data received through the U.S. Consumer Product Safety Commission, National Electronic Injury Surveillance System, reported 333,272 occupational eye injuries for 1985 (Reference 8). The National Society to Prevent Blindness estimates that 2,500 eye injuries occur in the workplace every working day, and that the cost to employers is $130 million per year (including medical costs and wage compensation) (Reference 9).

A BLS Supplementary Data System (SDS) tabulation (all industries) of 18 states reported that in 1983 37,379 injuries to the eyes, 16,366 injuries to the face, 13,844 injuries to the head, and 59,970 injuries to the feet were recorded as worker compensation cases. OSHA notes that each state has its own requirements for the minimum number of days (ranging from one to eight days) that a worker must be disabled before an injury gives rise to a worker compensation case. OSHA believes that this factor accounts for the apparent minor discrepancy between the 1983 BLS data and the other estimates for eye injuries. These injuries represent 12.7 percent of the total injuries reported (999,703) (Reference 10).

OSHA has used the Bureau of Labor Statistics Work Injury Reports (WIR) on eye, face, foot and head injuries in determining what sorts of PPE-related injuries workers experience (References 11, 12, 13, 14). (See injury tables, below. These tables are based on BLS surveys of injured workers, and do not reflect the universe of non-injured workers.)

EYE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-August 1979]

Item	All workers (100%)		Workers wearing eye protection (41%)	
	No.	Percent	No.	Percent
Total	1,052	100	435	100
Flying or falling object struck worker	727	69	355	82
Struck non-moving object	21	2	5	1
Liquid or chemical injured worker	216	21	59	14
Occurred in another way	88	8	16	4

(Workers not wearing eye protection=59 percent).

NOTE: This table does not reflect workers whose eye protection prevented injuries.

FACE INJURIES BY TYPE OF ACCIDENT, SELECTED STATES

[July-November 1979]

Item	No. of workers	Percent of workers
Total	774	100
Flying or falling objects struck worker	344	44
Struck non-moving object	48	6
Liquid or chemical injured worker	35	5
Swinging object struck face	154	20
Object or tool was pulled into face	114	15
Powered tool kicked back into face	33	4
Occurred in other way	46	6

NOTE: This table does not reflect workers whose face protection prevented injuries.

FOOT INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

July-August 1979

Item	All workers (100%)		Workers wearing safety shoes (23%)	
	Number	Percent	Number	Percent
Total	1,251	100	283	100
Stepped on sharp object	194	16	24	8
Struck by falling object	721	58	191	67
Object rolled onto or over foot	168	13	36	13
Squeezed between	59	5	13	5
Struck foot against object	28	2	3	1
Occurred in another way	81	6	16	6

Note: This table does not reflect workers whose foot protection prevented injuries.

HEAD INJURIES BY DESCRIPTION OF ACCIDENT, SELECTED STATES

July-September 1979

Item	All workers (100%)		Workers wearing hard hats (16%)	
	Number	Percent	Number	Percent
Total	1,033	100	170	100
Head struck non-moving object	299	29	21	12
Swinging object struck	198	19	44	26
Falling object struck head	371	36	62	36
Flying object struck head	120	12	34	20
Occurred in another way	45	4	9	5

Note: This table does not reflect workers whose head protection prevented injuries.

A Work Injury Report (WIR) on eye injuries conducted by the BLS shows that three-fifths of the injured workers surveyed (1,052) were not wearing eye protection. Where injured workers were wearing eye protection, in 94 percent of the incidents, the harm was caused by materials which went around or under the protector (Reference 11).

Similar results are reported in the BLS WIR on face injuries. Virtually all of the injured workers (774) had not worn face protection. Of the nine workers in the survey who were wearing face protection, five were injured by materials which went around or under the protector, and in three cases the protector was knocked off the worker by the impact of the object which caused the injury. The typical face injury was caused by flying or falling blunt metal objects (Reference 12).

The BLS WIR on head injuries shows that 84 percent of the injured workers studied (1,033) were not wearing head protection. Where workers were wearing PPE, almost 70 percent received blows to an unprotected part of the head. Over one-third of the accidents resulted from falling objects striking the head. Three-tenths of the accidents occurred when workers struck a nonmoving object and one-fifth occurred when a swinging object such as a steel bar, struck the head (Reference 13).

Regarding foot injuries, the BLS WIR indicates that fewer than one-fourth of the injured workers (1,251) were wearing safety shoes or boots at the time of the accident. Nearly three-fifths of the accidents resulted from falling objects striking the foot. Stepping on a sharp object, such as a nail, caused 16 percent of the injuries, and another 13 percent occurred when an object rolled over the foot (Reference 14).

These BLS work injury reports on eye, face, head, and foot injuries (Report Numbers 597, 604, 605, and 626) identify two major factors concerning these types of injuries. Personal protective equipment is not being worn the vast majority of the time, and when the protective equipment is worn, it does not fully protect the worker. For instance, objects go around the protector or strike an area for which the protector does not provide protection.

OSHA believes that the proposal will address the problems identified in the BLS reports by allowing new innovative designs through the use of performance-oriented language, by providing information for selecting the proper protection, and by improving the protection afforded by the equipment. (For example, the current OSHA foot protection standard does not address penetration resistance through the sole of a safety shoe, nor protection of areas of the foot other than the toe. OSHA intends through its new standards, to gain an improvement in worker acceptance of wearing protective equipment by allowing better and more comfortable designs not presently permitted by the current standards, and by providing information on selecting the proper equipment for the job.

III. Summary and Explanation of the Proposal

OSHA proposes to revise subpart I of 29 CFR part 1910 to replace, where appropriate, existing specification provisions with performance-oriented criteria for eye, face, foot and head protection. OSHA would update the design requirements for PPE by revising the standards so they reference the current edition of the pertinent ANSI standards. Requirements for PPE selection, care, use and training would appear in the body of the revised standard. As noted above, the proposed standard includes criteria for women's protective footwear, so that all protective footwear is covered. In addition, protection for the sole of the foot would be required when there is a risk of objects piercing the sole. Such protection is not provided in the current OSHA PPE standards. Provisions have been added which address the selection of PPE, defective and damaged equipment, reissued equipment, and training.

The requirements of proposed subpart I, like those of current subpart I, would apply to all general industry places of employment. The proposal would add several general requirements to § 1910.132; would revise §§ 1910.133, 1910.135 and 1910.136; would reserve §§ 1910.138, 1910.139, and 1910.140; and would add appendices A and B to subpart I.

The proposed format of part 1910, subpart I, would contain the following sections:

1910.132—General requirements
1910.133—Eye and face protection
1910.134—Respiratory protection
1910.135—Head protection
1910.136—Foot protection
1910.137—Electrical protective devices
1910.138—Incorporation by reference [reserved]
1910.139—[Reserved]
1910.140—[Reserved]

Appendix A—References for further information

Appendix B—Compliance guidelines for hazard assessment and personal protective equipment selection

The provisions of the current subpart I standards, §§ 1910.132 through 1910.140, would be revised, deleted or retained as set forth in the following table:

Current standard	Proposed standard
§ 1910.132(a)	§ 1910.132(a)*
§ 1910.132(b)	§ 1910.132(b)*
§ 1910.132(c)	§ 1910.132(c)*
§ 1910.133(a)(1)	§ 1910.133(a)(1)
§ 1910.133(a)(2)(i)	§ 1910.133(b)
§ 1910.133(a)(2)(ii)	§ 1910.133(a)(2)
§ 1910.133(a)(2)(iii)	§ 1910.133(a)(2)
§ 1910.133(a)(2)(iv)	§ 1910.133(b)
§ 1910.133(a)(2)(v)	§ 1910.133(f)
§ 1910.133(a)(2)(vi)	§ 1910.133(f)
§ 1910.133(a)(2)(vii)	§ 1910.133(e)
§ 1910.133(a)(3)(i)	§ 1910.133(a)(4)
§ 1910.133(a)(3)(ii)	§ 1910.133(a)(4)
§ 1910.133(a)(3)(iii)	§ 1910.133(a)(4)
§ 1910.133(a)(4)	§ 1910.133(b)(1)
§ 1910.133(a)(5)	§ 1910.132(g)
§ 1910.133(a)(6)	§ 1910.133(b)
§ 1910.134	§ 1910.134*
§ 1910.135	§ 1910.135(b)
§ 1910.136	§ 1910.136(b)
§ 1910.137	§ 1910.137*
§ 1910.138	None (reserved)
§ 1910.139	None (reserved)
§ 1910.140	None (reserved)

*The current requirements for these paragraphs and sections are not proposed for revision in this proposal and will remain unchanged by this rulemaking.

In addition to these sections, OSHA proposes to add non-mandatory appendices A and B, which provide references for further information for compliance assistance, and information for hazard assessment and PPE selection, respectively.

As discussed previously, the existing PPE standards reference obsolete national consensus standards. In their place, OSHA has referenced the current national consensus standards in the proposed standard. In the years since the Agency promulgated part 1910, OSHA's general policy has been to use its rulemaking proceedings to delete any references to national consensus standards and to incorporate, where appropriate, the pertinent regulatory text into the OSHA standards. OSHA has set this policy because the Agency believes that the compliance burden is most reasonable when employers and employees have all of the requirements which apply to them in the body of the OSHA standards as published by the Agency, without having to track down referenced documents. However, OSHA notes that in the case of PPE design requirements, neither employers nor employees are directly concerned with the detailed design requirements or test methods. They are concerned only that the equipment satisfies the pertinent OSHA Standards. OSHA further notes that it is universal practice for PPE manufacturers to determine (usually by testing) that their equipment meets the ANSI design requirements and, then, to

advertise and mark their products as meeting the applicable standard.

OSHA has determined that compliance with the design requirements in the current editions of the national consensus standards for head, foot, eye and face protection would provide a proper level of protection. Therefore, OSHA proposes to incorporate by reference those standards for the PPE design requirements since, as discussed previously, these requirements are not normally used by employers or employees, but rather by manufacturers of PPE. The provisions affected by these incorporations by reference, §§ 1910.133(a)(6), 1910.135, and 1910.136, are discussed in more detail below. OSHA proposes to include the provisions that address PPE selection, care, use and training with the revised regulatory text.

In the early 1970's, the National Institute for Occupational Safety and Health tested various types of personal protective equipment and found that a number of them did not meet the OSHA Standards (by failing to meet the design and test requirements in the referenced American National Standards). This identified a possible need for third-party certification similar to that required in the OSHA Standards for respirators (NIOSH Certification), and electrical equipment (UL listing). More recently, the Safety Equipment Institute has met with OSHA to explain the benefits of their third-party certification program, and has encouraged OSHA to consider a requirement for certification of PPE.

There are advantages and disadvantages to third-party certification. The main disadvantage is that it could result in substantial costs to manufacturers since they would normally have to contract for services from a recognized testing laboratory. However, one advantage is that PPE which is advertised as meeting certain criteria would be tested (and certified) to ensure that the PPE does, in fact, meet that criteria.

Another advantage is that third-party certification would include a follow-up inspection service to periodically test PPE to ensure continued compliance with specified criteria.

OSHA requests comments and information on whether or not OSHA should include a requirement in the PPE standards that employers obtain third-party certification that their PPE meets the applicable OSHA requirements. While the current OSHA standards do not require certification, there are several certification programs currently in place (such as those administered by the Safety Equipment Institute and the Footwear Industries of America) which are being utilized by equipment manufacturers. Is certification of PPE necessary to ensure that head, foot, eye and face PPE meets OSHA standards? What would be the costs and benefits of certification, if such a requirement were added?

In accordance with paragraph 6(b)(8) of the OSH Act (29 U.S.C. 655), the Agency has reviewed the various national consensus standards that cover working conditions addressed in this proposal. OSHA has incorporated appropriate provisions from those national consensus standards as part of this proposal. OSHA believes that the proposed standard will better effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this proposal, because this proposal is more comprehensive, provides greater flexibility in its requirements for safety, and provides for public participation and comment.

The revision of these general industry PPE Standards will be coordinated with efforts to revise parallel provisions in the Shipyard Employment and Construction Standards so that consistent coverage of hazards which are encountered in these industry sectors can be provided.

The following discussion provides a more detailed explanation of the proposed provisions related to personal protective equipment.

Section 1910.132 General Requirements

Existing paragraphs (a) through (c) of § 1910.132 are not proposed for revision in this rulemaking. Existing paragraph (a) requires that protective equipment be provided, used and maintained in sanitary and reliable condition, as necessary, to protect employees from workplace hazards. Existing paragraph (b) requires that, where employees provide their own equipment, the employer assure the adequacy, including the proper maintenance and sanitation, of such equipment. Existing paragraph (c) requires that all personal protective equipment be of safe design and construction for the work to be performed.

Proposed paragraph (d) of § 1910.132 would be added to address the selection of personal protective equipment (PPE). The current standards do not contain a similar provision. This proposed provision would require employers to select the PPE for their employees based on an assessment of the hazards in the workplace and the hazards which employees are likely to encounter. Because OSHA is aware that some employees are responsible for obtaining their own PPE, the proposed provision requires employers to inform their employees of the selection decisions and ensure, regardless of who obtains it, that the correct PPE is, in fact, obtained. This provision is based on current § 1910.133(a)(1), which covers eye and face protection, but the provision has been expanded so that it covers selection of all personal protective equipment.

Proposed paragraph (e), a new requirement, prohibits the use of defective or damaged PPE. This provision is based, in part, on § 1910.133(a)(2)(vii) of the existing standard, which states that protectors should be kept clean and in good repair. Under the proposed paragraph, this requirement would cover all PPE.

Proposed paragraph (f) is a new requirement that would require employees to be trained in the proper use of their personal protective equipment. This paragraph is based on existing § 1910.134(b)(3) that requires training for respirator use and has been expanded to cover all PPE. OSHA proposes this requirement because the Bureau of Labor Statistics Work Injury Reports indicated that a significant number of the employees injured had not received training in the proper use of PPE (References 11, 12, 13, and 14).

Section 1910.133 Eye and Face Protection

Under proposed paragraph (a)(1), employers must ensure that employees use appropriate eye and face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, chemical gases or vapors, or potentially injurious light radiation. The only significant difference between proposed paragraph (a)(1) and existing paragraph (a)(1) is that the term "liquids" would be replaced by the terms "molten metal" and "liquid chemicals" in the list of hazards for which eye and face protection are required. OSHA believes it is appropriate to specify that molten metal is covered to prevent confusion over whether or not molten metal is a "liquid."

Also, proposed paragraph (a)(1) replaces the general requirement for "suitable" eye protection with the requirement that eye protection used by employees provide both front and side protection from flying objects. OSHA notes, for example, that eye protection with side shields or molded wrap-around lenses and frames, would satisfy this requirement. The proposed revision

is based on the Bureau of Labor Statistics Work Injury Report on eye injuries which identified that in cases where eye protection was used, 94 percent of the incidents occurred when an object (or chemical) went around the protection (Reference 11). OSHA requests comments on the need for this revision, including information on the extent to which employers are already providing eye protection which satisfies the proposed requirement and any additional costs which would be involved in obtaining eye protection which meets the proposed requirement.

Existing § 1910.133 is based on ANSI Z87.1–1968, section 4. Existing paragraph (a)(1) of § 1910.133 contains a general provision to require eye and face protection where such use could prevent probable injuries. This provision is so general that it is difficult to determine what is required. Therefore, we are proposing to make §1910.133(a)(1) more specific to better clarify when eye and face protection are required. Existing § 1910.133(a)(1) also requires that suitable eye and face protection be made conveniently available; and, that unprotected persons not be knowingly subjected to hazards. These two provisions are being deleted from proposed § 1910.133(a)(1) since they are already addressed elsewhere in this proposed standard (existing § 1910.132(a) and proposed § 1910.132(d)).

Proposed paragraph (a)(2), requires that eye and face protective equipment fit employees properly. The proposed requirement is based on existing § 1910.133 (a)(2)(ii) and (a)(2)(iii), as well as on ANSI Z87.1–1989, section 7.4. OSHA believes that the proposed simplified requirement will provide employers with the appropriate guidance so they can assure good vision and proper eye protection for employees. The Agency has not retained existing paragraph (a)(2)(i) in the proposed rule, because that provision's requirement for PPE which provides "adequate protection" would be covered by proposed paragraph (a)(1).

In addition, existing § 1910.133(a)(2)(iv), which requires protectors to "be durable", is proposed to be removed since the intent of the existing provision is now covered by proposed § 1910.132(e), which prohibits defective or damaged PPE from being used, and by proposed § 1910.133(b), which covers the design requirements for eye and face protection.

Existing § 1910.133 (a)(2)(v) and (a)(2)(vi) which require protectors to "be capable of being disinfected" and "be easily cleanable," are proposed to be removed since they are redundant to duties already imposed by § 1910.132(a) of the existing standard.

Existing § 1910.133(a)(2)(vii), which recommends that protectors "be kept clean and in good repair," is proposed to be removed since it is not a mandatory requirement and does not belong in the standard. The intent of the recommendations is covered by proposed § 1910.132(e).

Proposed paragraph (a)(3) adds a new requirement—that workers who pass from well-lit to dimly-lit areas not wear protectors with tinted, or variable tinted lenses. This provision would reduce the likelihood that extreme lighting changes will temporarily impair an employee's vision, such as when a forklift operator drives a forklift from the outdoors into a poorly lit warehouse. OSHA solicits comments regarding the need for and suitability of this proposed requirement, with emphasis on the extent to which wearing tinted lenses in these situations actually adds to the recognized vision problem caused by dim lighting.

Proposed paragraph (a)(4), which is based on existing § 1910.133(a)(3), requires that employees who wear prescription lenses be protected by eye protection that incorporates the prescription in its design or by eye protection that can be worn over prescription lenses without interfering, with the prescription lenses such that vision becomes impaired, or when protection is not fully provided because of interference.

Existing § 1910.133(a)(4), which requires that "every protector shall be distinctly marked to facilitate identification only of the manufacturer," is proposed to be removed since a marking to identify the manufacturer of eye and face protection does not add or detract from the safety afforded by the protector. ANSI Z87.1–1989, which is proposed to be incorporated by reference, contains this same requirement. However, the deletion of this requirement by the proposal, would supersede this ANSI requirement.

Existing § 1910.133(a)(5), which requires that "limitations or precautions" provided by the manufacturer "be transmitted to the user and care be taken to see that such limitations and precautions are strictly observed," is proposed to be removed. The intent of the existing provision is now covered by proposed § 1910.132(f), which requires employees to be trained in the proper use of their PPE, and by proposed appendix B which provides compliance guidelines for selection of PPE.

Proposed paragraph (a)(5), a new provision, requires that employees potentially exposed to injurious radiant energy, such as that produced by welding, use eye protection with filter lenses which have a shade number appropriate for the work being performed. In addition, this proposed provision includes a list of the proper shade numbers for various operations. Existing § 1910.133(a)(1) requires protection from potentially injurious light radiation. OSHA has determined, however, that the proposed provision states the requirements more clearly.

In paragraph (b), OSHA proposes that the design requirements for eye and face protection comply with the provisions of ANSI Z87.1–1989, or be of a design that provides equivalent protection.

Currently, the requirements for the design of eye and face protection are found in § 1910.133(a)(6), which references the 1968 edition of ANSI Z87.1. Proposed paragraph (b) merely updates the ANSI reference for the design of eye and face protection to reflect the current (1989) edition. The design criteria contained in the 1989 edition of ANSI Z87.1 are much more performance-oriented than those in the existing OSHA standard, and can be met by eye and face protection currently in use in general industry.

The 1989 edition of ANSI Z87.1 that OSHA proposes to incorporate by reference contains design criteria for plano spectacles, as well as criteria and test methods for: Optical performance; transmittance impact, flammability; corrosive resistance for metal parts; and, cleanability.

Section 1910.135 Head Protection

Proposed paragraph (a)(1), mandates that employers require their employees wear protective helmets when they are working where there is a potential for injury to the head from falling or moving objects. This language, based on existing § 1910.132(a), has been revised to clarify when head protection is required.

Proposed paragraph (a)(2) requires that employees who are near exposed energized conductors which their heads could contact must wear helmets designed for protection from electrical shock hazards. This provision, based on existing §§ 1910.132(a) and 1910.135, would clarify when electrical protective type helmets must be worn.

Proposed paragraph (b) requires that the design of protective helmets comply with the provisions of ANSI Z89.1–1986, "Requirements for Protective Headwear for Industrial Workers," (Reference 2) or be of a design that provides equivalent protection. ANSI Z89.1–1986 covers impact resistance, penetration protection, flammability, water

absorption resistance, electrical insulation and maximum weight. The existing OSHA standard for head protection, § 1910.135, references ANSI Z89.1-1969 (Reference 26). This earlier edition, except insofar as it addresses electrical insulation for Class B helmets, sets essentially the same requirements as would apply through the proposed paragraph (b) reference to ANSI Z89.1-1986. A significant difference between the helmet provisions referenced in proposed paragraph (b) and the present OSHA requirements involves the relevant testing for helmets used for protection against live electrical conductors. The testing requirements in the 1986 ANSI standard are somewhat more stringent for "Class B" helmets than those referenced in the current OSHA standards. However, OSHA believes that helmets currently used for protection against electrical contact in general industry meet the electrical insulation requirements in ANSI Z89.1-1986. The effect of this change in testing requirements involves only a small number of employees, primarily linemen and tree trimmers, who generally wear helmets which are classified under the ANSI standard as "Class B" helmets. The Agency solicits comments and information on helmets presently used for electrical protection in general industry, and whether such helmets would comply with the proposed OSHA standards.

Currently, OSHA does not have any requirements for "bump caps" (a type of headwear that is intended to provide head protection from minor impact and protection from cuts and scrapes). Should OSHA include requirements for the use and design of "bump caps"? Are there any voluntary or consensus standards for "bump caps"? What would be the economic and safety impact if OSHA added requirements for the use and design of "bump caps"? How should OSHA target the use of bump caps to determine when or when not they are needed?

Section 1910.136 Foot Protection

Proposed paragraph (a) requires employers to ensure that their employees wear protective footwear when they are working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole. In substance, the same general requirement is contained in existing § 1910.132(a). This proposed language, however, clarifies the circumstances where foot protection would be required. The current OSHA standard for foot protection, § 1910.136, references ANSI Z41.1-1967, which has been superseded by ANSI Z41-1983. The 1967 edition of ANSI Z41.1 did not set requirements for sole puncture resistance, whereas the current ANSI Z41-1983 standard does. The Bureau of Labor Statistics' Work Injury Report (WIR) on foot injuries (Reference 14) indicates that objects piercing the sole accounted for 16 percent of foot injuries to all workers in the survey, and eight percent for those workers in the survey who were wearing safety shoes. Therefore, OSHA is proposing that footwear, in addition to protecting employees from falling or rolling objects, protect them from sole punctures. The Agency solicits comments and information on the extent to which employers or employees are arranging for the availability and use of protective footwear which meets the proposed requirement. OSHA also seeks information on any additional costs involved in obtaining foot protection which meets the proposed requirement.

In paragraph (b), OSHA proposes that the design of protective footwear comply with the provisions of ANSI Z41-1983 (Reference 3) or be of a design that provides equivalent protection. The provisions in ANSI Z41-1983 cover compression resistance, impact resistance and puncture resistance. Existing § 1910.136, through its reference to the 1967 edition, sets compression and impact requirements, which are the same as those in ANSI Z41-1983. However, as noted above, the 1967 edition applied only to men's protective footwear. ANSI Z41-1983 covers both men's and women's protective footwear, thus filling a gap in the current OSHA standard for protective footwear. OSHA believes that protective footwear which complies with the ANSI Z41.1-1967 standard would also comply with the ANSI Z41-1983 requirements for compression and impact resistance. As discussed above, puncture resistance was not covered in the ANSI Z41.1-1967 standard.

Appendices A and B to Subpart I

As discussed above, OSHA proposes to add non-mandatory appendices A and B to subpart I to provide a list of references for further information which may be useful in implementing this standard, and to provide compliance guidelines on hazard assessment and personal protective equipment selection.

IV. References

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V. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction

OSHA adopted its current standards for personal protective equipment (PPE) from National Consensus Standards under section 6(a) of the OSH Act. In the nearly two decades that have passed since these standards were developed, a number of advances have been made in PPE technology. Thus, OSHA is proposing to revise this workplace standard in order to reflect these improved means of hazard prevention.

Executive Order 12291 (46 FR 13197) requires that a regulatory impact analysis be prepared for any proposed regulation that meets the criteria for a "major rule"; that is, that would be likely to result in an annual impact on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the Regulatory Flexibility Act (5 U.S.C. 60, *et seq.*) requires an analysis of whether a regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared this Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the proposed revisions to the PPE standard. As a result of this analysis OSHA has made a preliminary determination that the proposed revision to the PPE regulations will not constitute a major rule.

Affected Industries and Current Use

Based on a preliminary report prepared by Eastern Research Group [1] OSHA has determined that virtually all industries covered by the General Industry Standards will be affected by these revisions. The extent of the impact will vary by industry depending on the hazards, the types of occupations and the current practice regarding PPE use. The U.S. Bureau of Labor Statistics (BLS) groups employment into seven major occupational categories, of which two: (1) Construction, operating, maintenance and material handling and (2) agriculture, forestry, fishing and related activities are assumed to include most of the occupations covered by this proposal. These two employment groups have been used as an estimate of the population-at-risk. Table I-1 presents estimates of the number of establishments, total employment and population-at-risk, by affected industry.

TABLE I-1.—ESTABLISHMENTS AND EMPLOYMENT OF AFFECTED INDUSTRIES

	SIC code industry	Establishments(a)	Employment(b) (000)	Employment per establishment	Population-at-risk (000)
	Agriculture (c)	163,698	441.8	2.7	390.8
078	Landscape and horticultural services	31,126	178.0	5.7	160.2
	Forestry:				
08	Forestry	1,656	16.4	9.9	14.8
	Fishing, hunting, and trapping				
09	Fishing, hunting, and trapping	1,916	8.6	4.5	0.9
09	Commercial fishing(d)	129,000	238.8	1.9	214.9
	Mining:				
13	Oil and Gas Extraction	25,042	457.4	18.3	242.4
	Manufacturing:	347,822	18,997.1	54.6	12,449.0
20	Food and kindred products	21,569	1,619.9	75.1	1,192.2
21	Tobacco products	164	59.3	361.6	42.0
22	Textile mill products	6,221	705.3	113.4	586.1
23	Apparel and other textile products	23,237	1,105.5	47.6	925.3
24	Lumber and wood products	32,271	710.5	22.0	588.3
25	Furniture and fixtures	10,812	497.1	46.0	394.2
26	Paper and allied products	6,324	674.3	106.6	499.7
27	Printing and publishing	56,137	1,457.1	26.0	649.9
28	Chemicals and allied products	12,077	1,022.6	84.7	511.3
29	Petroleum and coal products	2,328	168.8	72.5	94.7
30	Rubber and misc. plastics products	13,969	789.5	56.5	612.7
31	Leather and leather products	2,442	151.2	61.9	121.8
32	Stone, clay, and glass products	16,159	585.8	36.3	451.1
33	Primary metal industries	6,921	752.5	108.7	583.2

TABLE I-1.—ESTABLISHMENTS AND EMPLOYMENT OF AFFECTED INDUSTRIES—Continued

	SIC code industry	Establishments(a)	Employment(b) (000)	Employment per establishment	Population-at-risk (000)
34	Fabricated metal products	35,380	1,431.1	40.4	1,050.4
35	Industrial machinery and equipment	50,703	2,059.7	40.6	1,172.0
36	Electric and electronic equipment	17,392	2,123.0	122.1	1,154.9
37	Transportation equipment	9,498	2,015.1	212.2	1,229.2
38	Instruments and related equipment	8,294	706.8	85.2	344.2
39	Miscellaneous manufacturing industries	15,924	362.0	22.7	246.2
	Transportation, communication, utilities	184,197	4,150.0	22.5	2,075.2
41	Local and interurban passenger transit	14,042	281.5	20.0	198.7
42	Trucking and warehousing	89,081	1,382.2	15.5	1,031.1
47	Transportation services	33,836	283.8	8.4	35.2
48	Communication	29,513	1,278.8	43.3	359.3
49	Electric, gas and sanitary services	17,725	923.7	52.1	450.8
	Wholesale Trade	432,278	5,734.0	13.3	1,694.7
50	Durable goods	268,948	3,383.0	12.6	923.6
51	Non-durable goods	163,330	2,351.0	14.4	771.1
	Retail Trade	1,393,820	17,845.0	12.8	2,019.3
52	Building materials and garden supplies	68,517	701.1	10.2	174.6
53	General merchandise stores	35,265	2,362.9	67.0	139.4
54	Food stores	182,725	2,872.9	15.7	249.9
55	Automotive dealers and service station	200,942	1,942.7	9.7	883.9
56	Apparel and accessory stores	139,293	1,070.4	7.7	46.0
57	Furniture and home furnishings stores	98,001	770.6	7.9	174.2
58	Eating and drinking places	351,323	5,878.8	16.7	70.5
59	Miscellaneous retail	317,754	2,245.6	7.1	280.7
	Finance, insurance and real estate	485,806	6,477.1	13.3	462.8
60	Banking	52,215	1,736.0	33.2	8.7
61	Credit agencies other than banks	61,145	831.0	13.6	0.0
62	Security, commodity brokers and service	18,843	392.4	20.8	2.4
63	Insurance carriers	34,630	1,364.2	39.4	146.0
64	Insurance agents, brokers and service	96,282	580.7	6.0	0.0
65	Real estate	198,460	1,187.3	6.0	286.1
66	Combined real estate, insurance, etc.	4,973	192.2	38.6	9.8
67	Holding and other investment offices	19,258	193.3	10.0	9.9
	Services	1,706,018	22,280.5	13.1	2,639.4
70	Hotels and other lodging places	48,017	1,401.1	29.2	110.7
72	Personal services	175,171	1,104.2	6.3	297.0
73	Business services	258,387	4,781.0	18.5	693.2
75	Auto repair, services, and parking	127,636	762.1	6.0	536.5
76	Miscellaneous repair services	56,669	320.0	5.6	217.0
78	Motion pictures	18,208	226.5	12.4	28.1
79	Amusement and recreation services	60,210	915.0	15.2	129.9
80	Health services	390,223	6,550.5	16.8	229.3
81	Legal services	125,706	747.7	5.9	0.0
82	Educational services	30,093	1,428.0	47.5	91.4
83	Social services	88,096	1,457.0	16.5	131.1
84	Museums, botanical, zoological gardens	2.005	46.2	23.0	5.9
86	Membership organizations	175,977	1,262.0	7.2	125.8
89	Miscellaneous services	149,620	1,279.2	8.5	43.5

NA—Not available.
Sources: Eastern Research Group [1].
(a) U.S. Department of Commerce, Bureau of the Census, County Business Patterns, 1985.
(b) U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings.
(c) National Arborists' Assoc. and ERG estimates.
(d) National Marine Fisheries Services. 1987. Fisheries of the United States, 1986. April, ERG considered each vessel to be an establishment.

Most types of PPE have been in widespread use in most industries for many years. There are, however, very little statistical data available that would allow a determination of the number of employees who either are using PPE, or who should be wearing PPE by virtue of the hazards to which they are exposed.

OSHA's inspection data shows that approximately 3.5 percent of all planned safety inspections result in a citation under the existing PPE standard. What is not shown by these data is the degree of hazard present at these workplaces, the number of workers exposed to the hazard, or the type of PPE required.

Several Work Injury Report (WIR) published by the BLS cover a number of specific industries or types of injuries. These reports, which examine only those cases where a worker was injured, indicate that many workers are not wearing PPE or are wearing inadequate PPE. Of the approximately 22 million workers at risk, OSHA estimates that about 12.8 percent or 2.8 million workers are not wearing the appropriate PPE (See chapter II of full analysis). OSHA also estimates that relatively few firms have performed a formal hazard assessment of the potential hazards in their workplace. Also, OSHA assumes that many workers are not wearing PPE or are wearing inadequate PPE due to a lack of training regarding the importance of using this equipment.

Nonregulatory Environment

The primary objective of OSHA's proposed revisions to the PPE standard is to reduce the number of employee injuries and deaths resulting from nonuse of PPE or use of inappropriate PPE. OSHA believes that the present risk to employees is too high and that the proposed revisions will prevent a substantial number of these injuries and fatalities. OSHA examined the nonregulatory approaches for promoting

adequate levels of PPE use including (1) economic forces generated by the private market system, (2) incentives created by Workers' Compensation programs or the threat of private suits, and (3) related activities of private agencies. As a result of this review, OSHA has determined that the need for government regulation arises from the significant risk of job-related injury or death caused by the inadequate rate of optional private hazard-abatement expenditure. Private markets fail to provide enough safety and health resources due to the lack of risk information, the immobility of labor, and the externalization of part of the social costs of worker injuries and deaths. Workers' Compensation systems do not offer an adequate remedy because the premiums do not reflect specific workplace risk, and liability claims are restricted by state statutes preventing employees from suing their employers. While certain voluntary standards exist, their scope and approach fail to provide adequate protection for all workers. Thus, OSHA has determined that a federal standard is necessary.

Costs of Compliance

Under both the existing and proposed standards there are requirements to provide PPE wherever there are hazards present in the workplace. OSHA estimates that the incremental cost to comply with the revised rule would be approximately $28.3 million annually. The annualized cost of training in the proper use of PPE is expected to be $13.9 million per year and the annualized cost of the requirement to conduct a hazard assessment is estimated to be $13.8 million per year assuming a reassessment is conducted once every five years. Using alternative assumptions regarding the frequency of the reassessment of either an initial assessment followed by annual reassessments or a reassessment every ten years resulted in estimated costs of $19.4 and $9.8 million respectively.

Table I-2 presents the aggregate cost estimates by provision for each major industry group.

TABLE I-2.—SUMMARY OF AGGREGATE COMPLIANCE COSTS

Major industry group	1910.132(a)	1910.132(d)	1910.132(g)	1910.133(a)(1)	Total compliance costs		
	Provision of PPE	Hazard assessment	PPE training	Sideshields	Proposed standard	Existing standard	Incremental costs
Landscape and horticulural services, forestry, and fisheries	$1,090,011	$1,021,816	$419,036	$8,093	$2,538,957	$1,090,011	$1,448,946
Oil and gas extraction	1,660,095	169,111	91,507	4,645	1,925,359	1,660,095	265,263
Manufacturing	40,723,673	4,671,996	6,910,023	433,721	52,739,412	40,723,673	12,015,739
Transportation, communication, utilities	6,637,128	1,712,609	1,469,490	72,300	9,891,526	6,637,128	3,254,398
Wholesale trade	4,890,006	4,381,144	1,130,399	14,761	10,416,310	4,890,006	5,526,304
Retail trade	3,636,204	749,492	1,583,219	10,553	5,979,467	3,636,204	2,343,263
Finance, insurance, real estate	833,375	249,101	250,395	2,419	1,335,291	833,375	501,915
Services	5,808,593	823,291	2,036,008	13,793	8,681,686	5,808,593	2,873,093
Totals	65,279,087	13,778,560	13,890,077	560,284	93,508,008	65,279,087	28,228,921

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Assessment of Hazards and Benefits

Full compliance with the existing or proposed standards is expected to reduce the incidence of certain types of workplace injuries and fatalities. OSHA's injury analysis has focused primarily on head, eye, face, hand and foot injuries as the ones most likely to be affected by PPE use. OSHA estimates that, annually, there are approximately 411,000 non-fatal injuries that may be related to PPE use among the population of workers covered by the standard. Based on a review of the available data, OSHA estimates that approximately 82,200 could be prevented by full compliance with the existing standard and that an additional 41,000 could be prevented by full compliance with the proposed standard. In addition, OSHA estimates that 6 fatalities per year, which result from head injuries, could be prevented by full compliance with either the existing or proposed standards.

The standard has performance-oriented provisions which address eye, face, head and foot hazards and allows employers to adopt the most up-to-date PPE for use in their establishments. The flexibility to substitute new material and technologies should produce more comfortable and protective PPE. An increase in worker acceptance and use of PPE will translate into additional benefits. While the improvement in the level of benefits is difficult to quantify, the expectation is that increased use of better equipment will prevent or lessen the severity of many accidents to the eye, face, head or foot.

Economic Impact and Regulatory Flexibility Analysis

OSHA has assessed the potential economic impact of the proposed PPE standard and has made a preliminary determination that none of the major industry groups would experience a significant economic burden as a result of the proposed standard. If all of the costs are passed through to the consumer, OSHA estimates that the average price increase would be 0.001 percent, based on the ratio of compliance costs to the value of industry shipments. The maximum price increase in any industry would be 0.06 percent.

On the other hand, if all costs were absorbed by the affected firms, OSHA estimates that the maximum reduction in profits would be less than 0.03 percent. OSHA, therefore, expects that the proposed standard will not have a significant economic impact. OSHA also determined that the proposed standard would not have a significant impact on a substantial number of small firms.

References

1. Eastern Research Group. *Economic Analysis of the Revised General Industry Personal Protection Equipment Standard (CFR 1910.132 through 1910.140)* Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration under Contract No. J-9-F-0057. Arlington, MA. October 1988.

2. OSHA IMIS data covering 1985, 1986, 1987.

3. U.S. Department of Labor. Bureau of Labor Statistics. Work Injury Reports.

VI. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on

Environmental Quality (40 CFR parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions and additions to 29 CFR part 1910, Subpart I—Personal Protective Equipment, focus on the reduction of accidents or injuries by means of personal protective equipment, proper selection and use, and training. The proposal also contains language, and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to subpart B, section 11.10, of the DOL NEPA regulations.

VII. Recordkeeping

This proposal contains no recordkeeping requirements.

VIII. Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685, Oct. 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The federally proposed personal protective equipment standard is drafted so that employees in every state would be protected by general, performance-oriented standards. To the extent that there are state or regional peculiarities caused by the terrain, the climate, or other factors, states with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own state standards to address any special problems. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health related to personal protective equipment. While the individual states, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those states which have elected to participate under section 18 of the OSH Act would not be preempted by this proposed regulation, and would be able to address special, local conditions within the framework provided by this performance-oriented standard, while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal, and will be fully considered prior to promulgation of a final rule.

IX. Public Participation

Interested persons are requested to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by October 16, 1989, and submitted in quadruplicate to the Docket Office, Docket No. S-060, U.S. Department of Labor, Room N-2634, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of this proceeding.

In addition, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by October 16, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds; therefore

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments; OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

X. State Plan Standards

The 25 states and territories having OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These 25 are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

XI. List of Index Terms

29 CFR part 1910: Eye protection; Face protection; Foot protection; Footwear; Hard hats; Head protection; Incorporation by reference; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911, it is proposed to amend 29 CFR part 1910, subpart I, as set forth below.

Signed at Washington, DC, this 8th day of August 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart I of part 1910 would be revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911.

2. Section 1910.132 would be amended by adding new paragraphs (d) through (f); §§ 1910.133, 1910.135 and 1910.136 would be revised; §§ 1910.138, 1910.139 and 1910.140 would be removed; and appendices A and B would be added to subpart I of part 1910 to read as follows:

Subpart I—Personal Protective Equipment

§ 1910.132 General requirements.

* * * * *

(d) *Selection.* Based on an assessment of the workplace hazards relative to personal protective equipment (PPE), employers shall select the types of PPE which will protect employees from the particular occupational hazard(s) they are likely to encounter. Such selection decisions shall be communicated to employees and followed by them if employees obtain their own equipment.

(e) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(f) *Training.* Employees shall be trained in the proper use of their personal protective equipment.

§ 1910.133 Eye and face protection.

(a) *General requirements.* (1) Employers shall ensure that employees use appropriate eye or face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acid and caustic liquids, chemical gases or vapors, or potentially injurious light radiation. Eye protection used by employees shall provide both front and side protection from flying objects.

(2) Eye and face protection shall properly fit employees.

(3) Protectors with tinted or variable tinted lenses shall not be worn when an employee must pass from a brightly lighted area, such as outdoors, into a dimly lighted area, such as a warehouse.

(4) Employees who wear prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in their design, or shall be protected by eye protection that can be worn over prescription lenses without disturbing the proper position of the prescription or protective lenses.

(5) Employees shall use equipment with filter lenses which have a shade number appropriate for the work being performed for protection from potentially injurious light radiation. The following is a listing of appropriate shade numbers for various operations.

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operation	Shade No.
Soldering	2
Light Cutting, up to one inch	3 or 4
Medium Cutting, one to six inches	4 or 5
Heavy Cutting, over six inches	5 or 6
Light Gas Welding, up to ⅛ inch	4 or 5
Medium Gas Welding, ⅛–½ inch	5 or 6
Heavy Gas Welding, over ½ inch	6 or 8
Shielded Metal-Arc Welding	
⅛ to 5/32 inch electrodes	10
Inert-Gas Metal-Arc Welding (non-ferrous)	
1/16 to 5/32 inch electrodes	11
Inert-Gas Metal-Arc Welding (ferrous)	
1/16 to 5/32 inch electrodes	12
Shielded Metal-Arc Welding	
5/16 to ¼ inch electrodes	12
5/16 to ⅜ inch electrodes	14
Atomic Hydrogen Welding	10 to 14
Carbon Arc Welding	14

Note: If filter lenses are used in goggles worn under a helmet which has a lens, the shade number of the lens in the helmet may be reduced so that the sum of the shade numbers of the two lenses will equal the value as shown in the above listing.

(b) *Acceptable designs.* Eye and face protection shall comply with the design requirements for eye and face protection in American National Standard, ANSI Z87.1–1989, "Practice for Occupational and Educational Eye and Face Protection", which is incorporated by reference, or shall be of a design which has been demonstrated to be equally effective.

§ 1910.135 Head protection.

(a) *General requirements.* (1) Employers shall ensure that employees wear protective helmets when working in areas where there is a potential for injury to the head from falling or moving objects.

(2) Protective helmets designed to reduce electrical shock hazard shall be worn by employees where they are near exposed electrical conductors which could be contacted by the protective helmets.

(b) *Acceptable designs.* The design of protective helmets shall comply with the requirements of American National Standard, ANSI Z89.1–1986, "Requirements for Protective Headwear for Industrial Workers," which is incorporated by reference or shall be of a design which has been demonstrated to be equally effective.

§ 1910.136 Foot protection.

(a) *General requirements.* Employers shall ensure that employees wear protective footwear when working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole.

(b) *Acceptable designs.* The design of protective footwear shall comply with the requirements of American National Standard, ANSI Z41.1–1983, "Personal Protection-Protective Footwear," which is incorporated by reference or shall be of a design which has been demonstrated to be equally effective.

Appendix A to Subpart I—References for Further Information

This appendix neither adds nor detracts from requirements proposed by the standards in subpart I.

Documents 1–3 merely restate the titles of the ANSI standards which contain the requirements for the design of head, foot, eye and face protection and which are incorporated by reference in §§ 1910.133, 1910.135, and 1910.136. The remaining documents in this appendix A provide additional information which may be helpful in understanding and implementing these standards.

1. American National Standards Institute (ANSI). *American National Standard Practice for Occupational and Educational Eye and Face Protection.* (ANSI Z87.1–1989). New York, NY: ANSI, 1989.

2. American National Standards Institute (ANSI). *American National Standard Safety Requirements for Protective Headwear for Industrial Workers* (ANSI Z89.1–1986). New York, NY: ANSI, 1986.

3. American National Standards Institute (ANSI). *American National Standard for Personnel Protection-Protective Footwear.* (ANSI Z41–1983). New York, NY: ANSI, 1983.

4. Bureau of Labor Statistics (BLS). "Accidents Involving Eye Injuries." Report 597, Washington, DC: BLS, 1980.

5. Bureau of Labor Statistics (BLS). "Accidents Involving Face Injuries." Report 604, Washington, DC: BLS, 1980.

6. Bureau of Labor Statistics (BLS). "Accidents Involving Head Injuries." Report 605, Washington, DC: BLS, 1980.

7. Bureau of Labor Statistics (BLS). "Accidents Involving Foot Injuries." Report 626, Washington, DC: BLS, 1981.

8. National Safety Council. "Accident Facts", Annual edition, Chicago, IL: 1981.

9. Bureau of Labor Statistics (BLS). "Supplementary Data System (SDS) Tables of Injuries involving the eyes, face, head, and feet by Occupation and Industry," Washington, DC: BLS, for various years.

10. Bureau of Labor Statistics (BLS). "Occupational Injuries and Illnesses in the United States by Industry," Annual edition, Washington, DC: BLS.

11. National Society to Prevent Blindness. "A Guide for Controlling Eye Injuries in Industry," Chicago, IL: 1982.

12. Plummer, R.W. and Stobbe, T.J., "Recommended Use of Personal Protective Equipment in Selected Occupational Codes and Job Activities," Washington, DC: OSHA, 1984.

13. Plummer, R.W., Stobbe, T.J., et al. "Personal Protective Equipment and Welders," Washington, DC: OSHA, 1982.

14. Plummer, R.W., Stobbe, T.J., et al. "Collection of Data and Information on the Appropriate Personal Protective Equipment to be Used by Petrochemical Workers," Washington, DC: OSHA, 1984.

15. Plummer, R.W., Stobbe, T.J., et al. "Collection of Data and Information on the Appropriate Personal Protective Equipment to be Used by Foundry Workers," Washington, DC: OSHA, 1983.

Appendix B—Non Mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection

1. *Controlling hazards.* PPE devices alone should not be relied on to provide protection against hazards, but should be used in conjunction with guards, engineering controls, and sound manufacturing practices.

2. *Assessment and selection.* It is necessary to consider certain general guidelines for assessing the foot, head, eye and face hazard situations that exist in an occupational or educational operation or process, and to match the protective device to the particular hazard. It should be the responsibility of the safety officer to apply common sense and fundamental technical principles to accomplish these tasks. This process is somewhat subjective by nature, because of the infinite variety of situations where PPE may be required.

3. *Assessment guidelines.* In order to assess the need for PPE the following steps should be taken:

a. *Survey.* Conduct a walk-through survey of the areas in question. The purpose of the survey is to identify sources of hazards to the feet, head, eyes and face of workers and co-workers. Consideration should be given to the basic hazard categories:

(a) Impact
(b) Penetration
(c) Compression (roll-over)
(d) Chemical
(e) Heat
(f) Harmful dust
(g) Light (optical) radiation

b. *Sources.* During the walk-through survey the safety officer should observe: (a) Sources of motion; i.e., machinery or processes where any movement of tools, machine elements or particles could exist, or movement of personnel that could result in collision with stationary objects; (b) sources of high temperatures that could result in burns, eye injury or ignition of protective equipment, etc.; (c) types of chemical exposures; (d) sources of harmful dust; (e) sources of light radiation, i.e., welding, brazing, cutting, furnaces, heat treating, high intensity lights, etc.; (f) sources of falling objects or potential for dropping objects; (g) sources of sharp objects which might pierce the feet; (h) sources of rolling or pinching objects which could crush the feet; (i) layout of workplace and location of co-workers; and (j) any electrical hazards. In addition, injury/accident data should be reviewed to help identify problem areas.

c. *Organize data.* Following the walk-through survey, it is necessary to organize the data and information for use in the assessment of hazards. The objective is to prepare for an analysis of the hazards in the environment to enable proper selection of protective equipment.

d. *Analyze data.* Having gathered and organized data on a workplace, an estimate of the potential for foot, head, eye and face injuries should be made. Each of the basic hazards (paragraph 3.a.) should be reviewed and a determination made as to the type and level of risk from each of the hazards found in the area. The possibility of exposure to several hazards simultaneously should be considered.

4. *Selection guidelines.* After completion of the procedures in paragraph 3, the general procedure for selection of protective equipment is to: (a) Become familiar with the potential hazards and the type of protective equipment that is available, and what it can do; i.e., splash protection, impact protection, etc.; (b) compare the hazards associated with the environment; i.e., impact velocities, masses, projectile shape, radiation intensities, with the capabilities of the available protective equipment; (c) select the protective equipment which ensures a level of protection greater than the minimum required to protect employees from the hazards; and (d) fit the user with the protective device and give instructions on care and use of the PPE. It is very important that end users be made aware of all warning labels for and limitations of their PPE.

5. *Fitting the device.* Consideration must be given to comfort and fit. PPE that fits poorly will not afford the necessary protection. Continued wearing of the device is more likely if it fits the wearer comfortably. Protective devices are generally available in a variety of sizes. Care should be taken to ensure that the right size is selected.

Devices with adjustable features. Adjustments should be made on an individual basis for a comfortable fit that will maintain the protective device in the proper position. Particular care should be taken in fitting devices for eye protection against dust and chemical splash to ensure that the devices are sealed to the face. In addition, proper fitting of hard hats is important to ensure that the hard hat will not fall off during work operations. In some cases a chin strap may be necessary to keep the hard hat on an employee's head. (Chin straps should break at a reasonably low force, however, so as to prevent a strangulation hazard.) Where manufacturer's instructions are available, they should be followed carefully.

6. *Reassessment of hazards.* It is the responsibility of the safety officer to reassess the workplace hazard situation as necessary, by identifying and evaluating new equipment and processes, reviewing accident records, and reevaluating the suitability of previously selected PPE.

7. *Selection chart guidelines for eye and face protection.* Some occupations (not a complete list) for which eye protection should be considered are: Carpenters, electricians, machinists, mechanics and repairers, millwrights, plumbers and pipefitters, sheet metal workers and tinsmiths, assemblers, sanders, grinding machine operators, lathe and milling machine operators, sawyers, welders, laborers, chemical process operators and handlers, and timber cutting and logging workers. The following chart provides general guidance for the proper selection of eye and face protection to protect against hazards associated with the listed hazard "source" operations.

SELECTION CHART

Source	Assessment	Protection
Impact:		
Chipping, grinding, machining, masonary work, wood-working, sawing, drilling, chiseling, powered fastening, riveting, and sanding.	Flying fragments, objects, large chips, particles, sand, dirt, etc.	Spectacles with side protection, goggles, faceshields. See notes (1), (3), (5), (6), (10). For severe exposure, use faceshields.
Heat:		
Furnace operations, pouring, casting, hot dipping, and welding.	Hot sparks	Faceshields, goggles, spectacles with side protection. For severe exposure use faceshield. See notes (1), (2), (3).
	Splash from molten metals	Faceshields worn over goggles. See notes (1), (2), (3).

SELECTION CHART—Continued

Source	Assessment	Protection
	High temperature exposure	Screen faceshields, reflective faceshields. See notes (1), (2), (3).
Chemical:		
Acid and chemicals handling, degreasing plating	Splash	Goggles, eyecup and cover types. For severe exposure, use faceshield. See notes (3), (11).
	Irritating mists	Special purpose goggles.
Dust:		
Woodworking, buffing, general dusty conditions	Nuisance dust	Goggles, eyecup and cover types. See note (8).
Light Radiation:		
Welding:		
Electric arc	Optical radiation	Welding helmets or welding shields. Typical shades: 10–14. See notes (9), (12).
Gas	Optical radiation	Welding goggles or welding faceshield. Typical shades: gas welding 4–8, cutting 3–6, brazing 3–4. See note (9).
Cutting		
Torch brazing		
Torch soldering	Optical radiation	Spectacles or welding faceshield. Typical shades, 1.5–3. See notes (3), (9).
Glare	Poor vision	Spectacles with shaded or special purpose lenses, as suitable. See notes (9), (10).

Notes to Selection Chart Table

(1) Care should be taken to recognize the possibility of multiple and simultaneous exposure to a variety of hazards. Adequate protection against the highest level of each of the hazards should be provided. Protective devices do not provide unlimited protection.

(2) Operations involving heat may also involve light radiation. As required by the standard, protection from both hazards must be provided.

(3) Faceshields should only be worn over primary eye protection (spectacles or goggles).

(4) As required by the standard, filter lenses shall meet the requirements for shade designations in § 1910.133(a)(5). Tinted and shaded lenses are not filter lenses unless they are marked or identified as such.

(5) As required by the standard, persons whose vision requires the use of prescription (Rx) lenses shall wear either protective devices fitted with prescription (Rx) lenses or protective devices designed to be worn over regular prescription (Rx) eyewear.

(6) As required by the standard, wearers of contact lenses shall also be required to wear appropriate eye and face protection devices in a hazardous environment. It should be recognized that dusty and/or chemical environments may represent an addition hazard to contact lens wearers.

(7) Caution should be exercised in the use of metal frame protective devices in electrical hazard areas.

(8) Atmospheric conditions and the restricted ventilation of the protector can cause lenses to fog. Frequent cleansing may be necessary.

(9) Welding helmets or faceshields should be used only over primary eye protection (spectacles or goggles).

(10) Non-sideshield spectacles are available for frontal protection only, but are not acceptable eye protection for the sources and operations listed for "impact."

(11) Ventilation should be adequate, but well protected from splash entry. Eye and face protection should be designed and used so that it provides both adequate ventilation and protects the wearer from splash entry.

(12) Protection from light radiation is directly related to filter lens density. See note (4). Select the darkest shade that allows task performance.

8. *Selection guidelines for foot protection.* Safety shoes and boots which meet the ANSI Z41 Standard provide both impact and compression protection. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in other special situations electrical conductive or insulating safety shoes would be appropriate.

Safety shoes or boots with impact protection would be required for carrying or handling of materials such as packages, objects, parts or heavy tools, which could be dropped, and for other activities where objects might fall onto the feet. Safety shoes or boots with compression protection would be required for work activities involving skid trucks (manual material handling carts) around bulk rolls (such as paper rolls) and around heavy pipes, all of which could potentially roll over an employee's feet. Safety shoes or boots with puncture protection would be required where sharp objects such as nails, wire, tacks, screws, large staples, scrap metal etc., could be stepped on by employees causing an injury.

Some occupations (not a complete list) for which foot protection should be considered are: shipping and receiving clerks, stock clerks, carpenters, electricians, machinists, mechanics and repairers, plumbers and pipe fitters, structural metal workers, assemblers, drywall installers and lathers, packers, wrappers, craters, punch and stamping press operators, sawyers, welders, laborers, freight handlers, gardeners and groundskeepers, timber cutting and logging workers, stock handlers and warehouse laborers.

9. *Selection guidelines for head protection.* All head protection (hardhats) is designed to provide protection from impact and penetration hazards caused by falling objects. Head protection is also available which provides protection from electric shock and burn. When selecting head protection, knowledge of potential electrical hazards is important. Class A helmets, in addition to impact and penetration resistance, provide electrical protection from low-voltage conductors (they are proof tested to 2,200 volts). Class B helmets, in addition to impact and penetration resistance, provide electrical protection from high-voltage conductors (they are proof tested to 20,000 volts). Class C helmets provide only impact and penetration resistance (they are usually made of aluminum which conducts electricity), and should not be used around electrical hazards.

Where falling object hazards are present, head protection must be worn. Some examples include: working below other workers who are using tools and materials which could fall; working around or under conveyor belts which are carrying parts or materials; working below machinery or processes which might cause material or objects to fall; and working on exposed energized conductors.

Some occupations (not a complete list) for which head protection should be considered are: carpenters, electricians, linemen, mechanics and repairers, plumbers and pipefitters, assemblers, packers, wrappers, sawyers, welders, laborers, freight handlers, timber cutting and logging, stock handlers, and warehouse laborers.

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Part IV

Environmental Protection Agency

40 CFR Part 300

National Priorities for Uncontrolled Hazardous Waste Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3630-5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing an update to the National Priorities List ("NPL"). The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that that NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

This update proposes to add two new sites to the NPL, the Radium Chemical Company Site, in Woodside, Queens, New York, and the Forest Glen Mobile Home Subdivision Site in Niagara Falls, New York. Both are proposed for the NPL on the basis of § 300.66(b)(4) of the NCP (50 FR 37624, September 16, 1985). Section 300.66(b)(4) provides that, in addition to those releases identified by their Hazard Ranking System (HRS) scores as candidates for the NPL, EPA may identify for inclusion on the NPL any other release that the Agency determines is a significant threat to public health, welfare or the environment. This notice provides the public with an opportunity to comment on placing the Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site on the NPL.

This proposed rule brings the number of proposed NPL sites to 337, 74 of them in the Federal section; 889 sites are on the final NPL; 41 of them in the Federal section. Final and proposed sites now total 1,226.

DATE: Comments must be submitted on or before September 15, 1989.

ADDRESSES: Comments may be mailed, in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Addresses for the Headquarters and Region 2 dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

U.S. EPA, Region 2, Document Control Center Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA) section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking Systems ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA.

In addition to the applications of the HRS, there are two other mechanisms by which EPA prioritizes sites for the purpose of taking remedial action. Under CERCLA section 105(a)(8)(B) each State may designate a single site as its top priority, regardless of the HRS score. Under the third mechanism, included in the NCP at 40 CFR 300.66(b)(4), the Agency may address sites as which the Agency for Toxic Substances and Disease Registry (ATSDR) recommends dissociation of individuals from the release, at which EPA determines that the release poses a significant public health threat, and for which EPA anticipates that it would be more cost effective to use remedial rather than removal authorities for cleanup. The three mechanisms are described in more detail in the NPL Update Process section, Section III, of the Supplementary Information portion of this preamble.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at

least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #9 on July 14, 1989 (54 FR 29820).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 27 sites from the final NPL, most recently on May 31, 1989 (54 FR 23212), when Voortman Farm, Upper Saucon Township, Pennsylvania, was deleted.

Pursuant to the NCP at 40 CFR 300.66(b)(4), this notice proposes to add two sites to the NPL. Adding these two sites to the 335 sites previously proposed brings the total number of proposed sites to 337. The final NPL contains 889 sites, for a total of 1,226 final and proposed sites.

EPA may include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 30-day comment period for this NPL Update. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Headquarters and Region 2 public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Region 2 docket are from 8:00 a.m. to 5:00 p.m., Monday through Friday excluding Federal holidays.

The Headquarters docket for the two sites proposed in this NPL Update contain HRS score sheets, a Documentation Record describing the information used to compute the score, a list of documents referenced in the Documentation Record, the public health advisory issued by the Agency for Toxic Substances and Disease Registry, and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the sites.

The Regional docket includes all information available in the Headquarters docket, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS score for these sites. These reference documents are available only in the Region 2 docket.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add these sites to the NPL if they continue to meet requirements set out in the NCP. EPA will read all comments received on these sites, including late comments. In past rules, EPA responded even to late comments. However, given the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect, EPA will not be able to respond to all late comments received for sites in this rule. However, the Agency has routinely responded to late comments that result from EPA correspondence that provided commenters with more recent data or requested that the commenters be more specific in their comments.

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not, at that time, proposed to the NPL. Because such submissions were not set to EPA during a formal comment period on the sites of concern, they are not considered to be formal comments. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation should indicate what specific points in that documentation that it would like for EPA to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas & EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988) *cert. denied*, 109 S. Ct. 1528 (1989), during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, not does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement action will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to

determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Implementation

EPA has limited, by regulation, the expenditure of Trust Fund monies for remedial actions to those sites that have been placed on the final NPL, as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-finance response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL. Most sites are listed in the order of their HRS scores, and the Agency has recognized that the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.68(d)). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624–28, September 16, 1985), allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends dissocation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

This third mechanism was added to the NCP by rulemaking, during which the Agency explained that there are certain types of sites for which the risk may not be fully reflected in the HRS score. For example, direct contact scores are not included in calculating the total HRS score, and thus some sites involving direct contact to residents may pose a serious threat but not receive a sufficiently high score to qualify for the NPL. Similarly, where a small number of people are exposed to a hazardous substance, the site may fail to qualify for listing due to the low targets score. After accepting and responding to public comment, EPA issued a regulation that would allow the Agency to list sites where the ATSDR issues a health advisory, EPA determines that the site poses a significant health threat, and the Agency finds that it would be more cost-effective to use remedial rather than removal authority to respond to the release (50 FR at 37624–25).

The two sites proposed for the NPL today are proposed under the third mechanism for adding sites to the NPL. The specific application of the criteria for this mechanism to the Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site is discussed in Section IV of this notice.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices also may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing requirements) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Contents of This Proposed NPL Update

The Radium Chemical Company (RCC) Site, in Woodside, Queens

Borough, New York City, New York and the Forest Glen Mobile Home Subdivision Site in Niagara Falls, New York are being proposed for the NPL on the basis of section 300.66(b)(4) of the NCP (50 FR 37624, September 16, 1985). Section 300.66(b)(4) provides that, in addition to those releases identified by their HRS scores as candidates for the NPL, EPA may identify for the NPL any other release that the Agency determines is a significant threat to public health, welfare, or the environment. EPA may make such a determination when ATSDR has issued a health advisory as a consequence of the release.

Radium Chemical Company

The site consists of a one-story brick building located in a densely populated residential and commercial area of New York City. Established in Manhattan in 1913, RCC transferred operations to Woodside in the late 1950s. A separate manufacturing company, which is unrelated to the RCC operation, occupies part of the same building and shares a common wall with RCC.

Initially, RCC produced luminous paint for watch dials and instruments. Later, it manufactured radium-containing needles and other sealed medical devices, largely for cancer therapy.

In 1983, the State suspended RCC's operating license because of various disposal and safety infractions, and in 1986, the company was denied permission to resume operations. In 1987, the State ordered RCC to remove the radium and decontaminate the building. In 1987, the facility was abandoned, leaving a large number of radium-containing sealed containers at the site, some of which were suspected of releasing radium and radon gas. The amount of radium-226 at the site was estimated to be 110 curies. Also on the site were hundreds of containers of laboratory chemicals, many of which were reactive, corrosive, flammable, and/or potentially shock sensitive.

The State formally requested that EPA secure the plant and remove the radioactive materials. In July 1988, EPA undertook a limited removal action using CERCLA emergency funds. EPA provided 24-hour security and took measures to stabilize the site. In April 1989, EPA began to remove the radioactive and hazardous materials and transport them to approved disposal facilities.

Elevated levels of radiation have been measured inside certain areas of the building. On February 10, 1989, ATSDR issued an advisory warning that the RCC Site poses a significant threat to public health because of the potential for the release of radium-226.

The advisory discusses two concerns. One is that an intruder might enter the RCC Site from the adjoining manufacturing facility (as has happened in the past) and remove radioactive materials. The second concern relates to the potential for release of radioactive materials to the ambient environment as a result of physical disturbance to the building. The RCC building is located approximately 15 feet from the Brooklyn-Queens Expressway, a major highway used extensively for commercial trucking. The U.S. Department of Energy's Lawrence Livermore Laboratory has modelled scenarios involving a gasoline tanker accident on the Brooklyn-Queens Expressway in the vicinity of the site, and has determined that the estimated 27,000 people who live within 1 mile of the site could be exposed to radiation if any were released in the event of a major accident.

As a result of these concerns, ATSDR has recommended dissociation of the radioactive materials from individuals in the community. (*See* "Public Health Advisory for Radium Chemical Company, Woodside, Queens, New York," issued by the ATSDR, February 10, 1989. This advisory is included in the Superfund docket for this proposed rule.)

EPA's assessment is that the site poses a significant threat to human health and the environment, and EPA anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated March 17, 1989, from Timothy Fields, Jr., Director, Emergency Response Division to Larry Reed, Acting Director of the Hazardous Site Evaluation Division, both in the Office of Solid Waste and Emergency Response. This memorandum is available in the Superfund docket for this proposed rule. Based on this information, and the references in support of the proposal, EPA believes that the Radium Chemical Site is appropriate for the NPL pursuant to 40 CFR 300.66(b)(4).

Forest Glen Mobile Home Subdivision Site

The Forest Glen Mobile Home Subdivision Site is located in Niagara Falls, Niagara County, New York. The 21-acre site consists of 52 mobile homes and two permanent residences. Approximately 150 residents live in the area. Surface and subsurface soils at the site are contaminated with a variety of chemicals.

Prior to the 1960's the area was wooded wetland. During the 1960's the area was cleared, and in the early 1970's, the area was filled with unspecified materials. The area was developed into a mobile home community in the 1970's. Analysis of soil samples collected from the site in 1988 and 1989 identified polyaromatic hydrocarbons, aniline, phenothiazine, benzothiazine, and mercaptobenzothiazole.

On July 21, 1989, ATSDR issued a preliminary Health Assessment, and on July 31, 1989 ATSDR issued a final Health Advisory recommending the dissociation of the residents of the community from the wastes and contaminated soil at the site. The advisory was based on the concern that residents of the community may be exposed to hazardous substances as a result of dermal contact with the soil (i.e. gardening, playing), through ingestion of produce growth in the soil, or as a result of inhalation of concentrated vapors collected in poorly ventilated, confined areas such as the space under the skirt of the mobile homes. In addition, the advisory expressed concern regarding the physical stability of the disposal area beneath the site, and the potential for contamination of the public water supply.

(*See* "Public Health Advisory for the Forest Glen Mobile Home Park, Niagara Falls, New York," issued by the ATSDR, on July 31, 1989. This document is included in the Superfund docket for this proposed rule.)

EPA's assessment is that the site poses a significant threat to human health and the environment, and EPA anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the site. This finding is set out in a memorandum dated August 3, 1989, from Stephen Luftig, Director of the Region II Emergency and Remedial Response Division to Larry Reed, Acting Director of the Hazardous Site Evaluation Division. This memorandum is available in the Superfund docket for this proposed rule.

Based on this information, and the references in support of the proposal, EPA believes that the Forest Glen Mobile Home Subdivision Site is appropriate for listing on the NPL pursuant to 40 CFR 300.66(b)(4).

Table 1 following this preamble lists the two sites proposed for the NPL in this update. The entry contains the names and locations of the sites.

Each proposed site is placed by HRS score in a group corresponding to groups

of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed update has a score that falls within the range of scores covered by the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk. Since these two sites have proposed HRS scores of less than 28.50, they are included in the group of sites with the lowest HRS scores.

V. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add two new sites, and finds that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this proposed rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. The State will assume the cost for O&M after EPA's period of participation. The Radium Chemical Company Site and the Forest Glen Mobile Home Subdivision Site are both privately-owned. Therefore, using the budget projections presented above, the cost to the State of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.5 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if these sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposal to place the Radium Chemical Company Site and the Forest Glen Mobile Home Site on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL can accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at this site.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not authomatically impose costs. Proposing sites on the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatement and disposal, Water pollution control, Water supply.

Dated: August 10, 1989.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend 40 CFR Part 300 as follows:

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

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

Appendix B [Amended]

2. It is proposed to add the following two sites by group to the first table in Appendix B of Part 300:

NATIONAL PRIORITIES LIST PROPOSED UPDATE, AUGUST 1989

NPL GR [1]	EPA Reg	State	Site Name	City-County
17	02	NY	Radium Chemical Co.	Woodside.
17	02	NY	Forest Glen Mobile Home Subdivision.	Niagara Falls.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Number of Sites Proposed for listing: 2.

[FR Doc. 89-19224 Filed 8-15-89; 8:45 am]
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H.R. 2705/Pub. L. 101-76

Relating to the method by which Government contributions to the Federal employees health benefits program shall be computed for 1990 or 1991 if no Government-wide indemnity benefit plan participates in that year. (August 11, 1989; 103 Stat. 556; 2 pages) Price: $1.00

H.J. Res. 363/Pub. L. 101-77

To designate 1989 as "United States Customs Service 200th Anniversary Year." (August 11, 1989; 103 Stat. 558; 1 page) Price: $1.00

S.J. Res. 78/Pub. L. 101-78

To designate the month of November 1989 and 1990 as "National Hospice Month." (August 11, 1989; 103 Stat. 559; 1 page) Price: $1.00

S.J. Res. 126/Pub. L. 101-79

Commemorating the bicentennial of the United States Coast Guard. (August 11, 1989; 103 Stat. 560; 1 page) Price: $1.00

S.J. Res. 127/Pub. L. 101-80

Designating Labor Day weekend, September 2 through 4, 1989, as "National Drive for Life Weekend." (August 11, 1989; 103 Stat. 561; 2 pages) Price: $1.00

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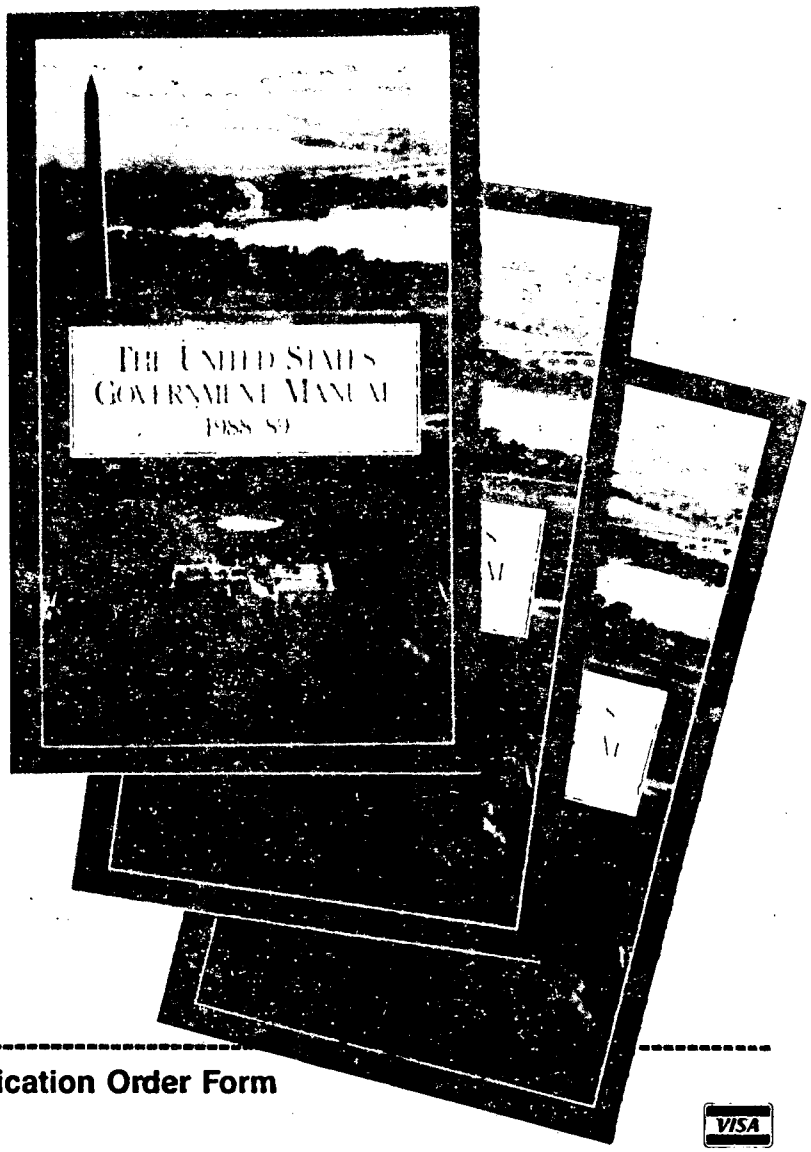

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