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Wednesday
September 11, 1991

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: September 26, at 9:00 am
WHERE: Denver Federal Center, Building 20
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Conference Room B1409, Denver, CO
RESERVATIONS: Federal Information Center
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WASHINGTON, DC

WHEN: September 30, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240

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Presidential Documents

Title 3—

The President

Proclamation 6332 of September 9, 1991

National Historically Black Colleges Week, 1991 and 1992

By the President of the United States of America

A Proclamation

For more than 100 years, our Nation's historically Black colleges and universities have provided rewarding educational opportunities for millions of Black Americans. These institutions have opened the doors of achievement to generations of students who otherwise might not have been able to enjoy the benefits of a higher education. Our entire Nation is richer as a result—graduates of historically Black colleges and universities have made substantial contributions to our country in virtually every field of endeavor.

The U.S. Department of Education reports that historically Black colleges and universities have provided undergraduate training for three-fourths of all Black Americans holding a doctorate degree, three-fourths of all Black officers in the Armed Forces, and four-fifths of all Black Americans who serve as Federal judges.

Historically Black colleges and universities also lead in awarding baccalaureate degrees to minority men and women in the life sciences, the physical sciences, mathematics, and engineering. Because our National Education Goals include making America's elementary and secondary school students first in the world in math and science, the role of these institutions in promoting high standards for entering students, as well, is more significant than ever.

Committed to excellence as well as to opportunity, our Nation's historically Black colleges and universities embody the kind of proud, determined spirit that is essential to achieving our National Education Goals. Recognizing their potential for leadership as we implement AMERICA 2000, our strategy to bring about a renaissance in American education, I am calling on the office that is responsible for the White House Initiative on Historically Black Colleges and Universities to play an integral part in assisting this Administration in its education efforts. I have also asked the Secretary of Education to continue to encourage and to assist historically Black colleges and universities in their vital mission.

In recognition of their exemplary goals and achievements, the Congress, by Senate Joint Resolution 40, has designated the week beginning September 8, 1991, and the week beginning September 6, 1992, as "National Historically Black Colleges Week" and authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks beginning September 8, 1991, and September 6, 1992, as National Historically Black Colleges Week. I invite all Americans to observe those weeks with appropriate programs, ceremonies, and activities, thereby demonstrating our appreciation of and support for these important educational institutions.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of Sept., in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-22042
Filed 9-9-91; 4:50 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[FV-91-298FR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1991–92 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Lemon Administrative Committee (Committee), which is responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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 final rule on small entities.

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

There are approximately 70 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons 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 Committee consists of handlers, producers, and a non-industry member. 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 budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. 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 recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 4, 1991, and unanimously recommended 1991–92 marketing order expenditures of $825,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1990–91 marketing year budgeted expenditures were $970,000 and the assessment rate was $0.05 per carton. Assessment income for 1991–92 is estimated to total $765,000 based on anticipated fresh domestic shipments of 17,000,000 cartons of lemons. The remaining $60,000 in the expenses will be covered by reserve funds ($40,000) and interest income ($20,000).

Major budget categories for 1991–92 are $209,500 for field and compliance expenses, $217,500 for administrative and office salaries, and $118,000 for Committee member expenses. Comparable expenditures for the 1990–91 fiscal year are expected to be $267,000, $241,300, and $122,000, respectively.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs 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.

A proposed rule concerning this action was published in the **Federal Register** on July 8, 1991 [56 FR 30878]. Comments on the proposed rule were invited from interested persons until July 18, 1991. One comment was received from Sequoia Orange Company, Inc. (Sequoia), in opposition to the proposed rule.

Sequoia commented that the Committee's expenses should be significantly reduced because volume

regulation should not have to be implemented for the 1991–92 lemon crop year. According to Sequoia, in the absence of such regulation, the Committee should not have to meet as often throughout the season. Thus, its administrative expenses should be reduced. Sequoia also stated that since the 1991–92 lemon crop is relatively small because of last December's freeze, the Committee's budget should reflect substantial reductions in other administrative, compliance, and field expenses.

At this time, it is uncertain as to whether volume regulation will be implemented for the 1991–92 lemon crop. Thus, it is uncertain as to how often the Committee may deem it appropriate to meet during the season. In any event, meeting to consider volume regulation is not the only function of the Committee. The collecting of information and industry reports still occurs in the absence of volume regulation.

Although the Committee may not meet every week, it still needs to maintain reports, a data base, information, field personnel, and general staff. Thus, the Committee needs an appropriate budget for such ongoing operations.

In addition, the Committee's budget is reduced from last year's budget by $145,000 to reflect probable changes in the crop caused by last year's freeze.

Sequoia also commented that the proposed assessment rate puts an additional burden on handlers, particularly small handlers, who are experiencing financial hardship because of last December's freeze. Sequoia believes that small handlers may be disproportionately burdened by the 1991–92 assessment rate. However, as previously mentioned, handlers will be assessed on the appropriate number of cartons handled, and the assessment rate of $.045 per carton is the same for all handlers. Thus, no handler should be disproportionately burdened.

Finally, Sequoia alleged that there is no factual basis for the finding that the costs concerning this final action would be significantly offset by the benefits derived from the operation of the marketing order. Sequoia appears to make this allegation on the assumptions that the principle function of the marketing order is weekly volume regulation and that there will not be a regulation this season.

However, as previously stated, all determinations have not been made regarding volume regulation. Furthermore, consideration and recommendation of volume regulation is not the only function of the Committee. The collecting of information and industry reports still occur in the absence of volume regulation. This information is collected by the Committee, compiled and distributed to all handlers in the industry to provide them with data that will be useful in making their individual marketing decisions. The information collection includes data such as weekly shipments (quantity and sizes) to various markets such as fresh domestic, export, and charitable institutions. This information is also necessary for the committee in its analysis of crop and market conditions to determine whether volume regulation should be recommended to the Secretary. In determining to promulgate the lemon marketing order, the Secretary necessarily concluded that the benefits of the order outweighed the expenses involved.

The remainder of the comment by Sequoia relates to volume regulation issues which are being addressed in a separate rulemaking proceeding.

Therefore, for the reasons stated, the above comment in opposition to the proposed rule is denied.

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

The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also 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 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is revised as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

[*This section will not be published in the annual Code of Federal Regulations.*]

2. A new section 910.229 is added to read as follows:

§ 910.229 Expenses and assessment rate.

Expenses of $825,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1991–92 fiscal year ending on July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: September 4, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–21826 Filed 9–10–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 915

[Docket No. FV-91-271FR]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with appropriate corrections, an interim final rule which changed the maturity requirements in effect on a continuous basis for avocados grown in Florida. The interim final rule relaxed the maturity requirements for the Booth 8 variety of avocados, based on recent maturity test results for that variety. In addition, the interim final rule made calendar date adjustments in the shipping schedules for several varieties of avocados to synchronize them with the 1991 and 1992 calendar years. These changes were unanimously recommended by the Avocado Administrative Committee (committee), which administers the marketing order locally. The corrections appearing in this final rule alters some of the shipping schedule dates to reflect the original recommendations of the committee. The maturity requirements are designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Flordia). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The committee met on March 13, 1991, and unanimously recommended the maturity changes for Florida avocados. The committee meets prior to and during each season to review the avocado handling requirements, effective on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule was issued on May 15, 1991, and published in the **Federal Register** (56 FR 23005, May 20, 1991), with comment period ending on June 19, 1991. The interim final rule relaxed the maturity requirements specified in table 1 of paragraph (a) (2) of §§ 915.322 (7 CFR part 915) for the Booth 8 variety of Florida grown avocados, based on recent maturity test results. In addition, the interim final rule adjusted the calendar dates in the shipping schedules for several avocado varieties specified in § 915.332 to synchronize those dates with the 1991 and 1992 years. The committee filed a comment to the interim final rule pointing out several inadvertent errors in the shipping schedule dates for some varieties. As a result, this final rule: (1) Changes the Dr. Dupuis #2 variety shipping period ending date from the 3rd Sunday of July to the 2nd Sunday of July; (2) changes the Simmonds variety shipping period ending date from the 5th Sunday of July to the 4th Sunday of July; (3) changes the Pollock variety shipping period ending date from the 5th Sunday of July to the 4th Sunday of July; (4) changes the Hardee variety shipping period ending date from the 4th Sunday of July to the 3rd Sunday of July; (5) changes the Choquette variety shipping period beginning date from the 3rd Monday of October to the 2nd Monday of October; (6) changes the Lula variety shipping period beginning date from the 3rd Monday of October to the 2nd Monday of October, and the shipping period ending date from the 4th Sunday of September to the 4th Sunday of October; and (7) changes the Booth 3 variety shipping period beginning date from the 3rd Monday of October to the 2nd Monday of October. These corrections reflect the original recommendations of the committee.

The maturity requirements for Florida avocados are in effect on a continuous basis. Such requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

The Florida avocado shipping season began in late May this year and it is expected to continue until next March or April. The heaviest shipments normally occur from July through December.

A minimum grade requirement of U.S. No. 2, currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR part 915), remains in effect unchanged by this action.

The maturity requirements for avocados imported into the United States specified in § 944.31 (7 CFR 944.31) were temporarily suspended by a final rule issued May 15, 1991, and published in the **Federal Register** on May 20, 1991. Those requirements specified that minimum weights and diameters for avocados imported into the United States from northern hemisphere countries be the same as the requirements for Florida grown avocados. The suspension was necessary to provide the U.S. Trade Representative (USTR) adequate time to review contemplated changes in the import requirements. These maturity import requirements are to be reinstated under a separate rule following USTR concurrence.

Grade requirements for avocados imported into the United States specified in § 944.28 (7 CFR part 944) remain in effect unchanged. Such requirements specify that all avocados imported into the United States must grade at least U.S. No. 2, as specified in § 15.306. The avocado import requirements are effective under section 8e of the Act (7 U.S.C. 608e–1).

Handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the marketing order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gifts in individually addressed containers. Also, avocados utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need for this rule with the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure the continued shipment of mature avocados to fresh markets. The committee considers that the maturity requirements are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available

information, it is found that finalizing the interim final rule, as published in the **Federal Register** (56 FR 23005, May 20, 1991), with the corrections herein specified, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, for good cause, it is impracticable, unnecessary, and contrary to the public interest to give further notice and opportunity for comment, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final rule maintains handling requirements currently in effect for Florida avocados, with appropriate corrections incorporated; (2) Florida avocado handlers are aware of these handling requirements, which were recommended by the committee at a public meeting and they will need no additional time to continue complying with such requirements; (3) the interim final rule provided a 30-day comment period and the comment received pertained only to inadvertent errors which are corrected by this final rule; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

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

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. Accordingly, the interim final rule amending the provisions of § 915.332, which was published in the **Federal Register** (56 FR 23005, May 20, 1991), is adopted as a final rule with the following changes. In section 915.332, table I in paragraph (a)(2) is amended by revising the following entries to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
* * * *	*	*	*	
Dr. Dupuis #2	4th Mon May	2nd Sun June	16	3-7/16
	2nd Mon June	5th Sun June	14	3-5/16
	1st Mon July	2nd Sun July	12	3-2/16
* * * *	*	*	*	
Simmonds	3rd Mon June	5th Sun June	16	3-9/16
	1st Mon July	2nd Sun July	14	3-7/16
	3rd Mon July	4th Sun July	12	3-1/16
Pollock	3rd Mon June	5th Sun June	18	3-11/16
	1st Mon July	2nd Sun July	16	3-7/16
	3rd Mon July	4th Sun July	14	3-4/16
* * * *	*	*	*	
Hardee	4th Mon June	5th Sun June	16	3-2/16
	1st Mon July	1st Sun July	14	2-14/16
	2nd Mon July	3rd Sun July	12	
* * * *	*	*	*	
Choquette	4th Mon Sept	2nd Sun Oct	28	4-4/16
	2nd Mon Oct	4th Sun Oct	24	4-1/16
	4th Mon Oct	2nd Sun Nov	20	3-14/16
* * * *	*	*	*	
Lula	5th Mon Sept	2nd Sun Oct	18	3-11/16
	2nd Mon Oct	4th Sun Oct	14	3-6/16
	4th Mon Oct	2nd Sun Nov	12	3-3/16
* * * *	*	*	*	
Booth 3	1st Mon Oct	2nd Sun Oct	16	3-8/16
	2nd Mon Oct	4th Sun Oct	14	3-6/16
* * * *	*	*	*	

* * * * *

Dated: September 4, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-21827 Filed 9-10-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1124

[DA-91-006]

Milk in the Pacific Northwest Marketing Area; Temporary Revision of Supply Plant Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action continues to ease the supply plant shipping requirement so that only 20 percent of the producer milk physically received must be shipped to a bottling plant in order to qualify the supply plant for pooling under the Pacific Northwest order during the months of September 1991 through February 1992. Without this action the requirement would revert to 30 percent, beginning with September. An earlier action made the 20 percent requirement effective for January through August 1991. This action will prevent the uneconomic movements of milk by a cooperative association that represents producers regularly associated with the market.

EFFECTIVE DATE: September 11, 1991.

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: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Supply Plant Delivery Requirements: Issued July 9, 1991; published July 15, 1991 (56 FR 32130).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. The action reduces the regulatory impact of the order on certain milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

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

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674, and the provisions of § 1124.7(c) of the Pacific Northwest milk order.

Notice of proposed rulemaking was published in the **Federal Register** (56 FR 32130) concerning the temporary easing of supply plant shipping requirements for the months of September 1991 through February 1992. The public was afforded an opportunity to comment on the proposed notice by submitting written data, views and arguments. One letter of opposition signed by thirteen dairy farmers was received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant delivery requirement set forth in § 1124.7(b) should continue to be 20 percent of the total quantity of producer milk that is physically received at such a plant.

In order for a supply plant to maintain its pool status, the Pacific Northwest order normally requires such plant to ship to pool distributing plants a minimum of 30 percent of the total quantity of milk physically received at the supply plant. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments. The shipping requirement was previously revised to 20 percent during January through August 1991.

The Tillamook County Creamery Association (TCAA), a cooperative association that represents a number of the market's producers, requested that the currently effective percentage (20 percent) of milk that a supply plant must ship to a distributing (bottling) plant in order for the supply plant to maintain pool plant status be continued. This action will be effective from September 1991 through February 1992.

An analysis of market data confirms the changing supply/demand situation as related by TCCA in support of its request for the continuation of the 20 percent shipping requirement. Over the first seven months of 1991, Class I use, as measured by the pounds of producer milk assigned to Class I, increased by approximately 1.5 percent. By comparison, the receipts of producer milk increased approximately 1.9 percent. It is therefore reasonable to conclude that fluid bottling plants will continue to be adequately supplied under the lower supply plant shipping requirements. This action should help avoid uneconomical and unnecessary movements of milk just to keep the milk pooled.

One letter of opposition to the proposed temporary revision of supply plant delivery requirements was received. This letter, signed by thirteen dairymen, requested that the action be denied. The letter expresses concern that the lower shipping standard will allow more milk to be pooled for Class III uses. These dairymen thus are concerned about the impact of this action on their blend price.

There is no evidence that this action will result in additional milk supplies being pooled on the Pacific Northwest market. Moreover, TCCA would probably continue to pool its milk without the reduction. But this would necessitate uneconomical and unnecessary movements of milk between plants in order to maintain the delivery percentages under the order.

The thirteen producers who opposed this action also requested that "* * * consideration be given towards increasing the base requirement to a minimum of 50 percent utilization in Class I." However, it must be noted that the order does not provide authority for such a change to be made without a hearing to consider proposed amendments to the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1991 through February 1992;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1124

Milk.

It is therefore ordered, that § 1124.7(b) of the Pacific Northwest milk order is hereby amended for the months of September 1991 through January 1992.

1. The authority citation for 7 CFR part 1124 continues to read as follow:

Authority: (Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1124.7 [Amended]

2. In the introductory text of paragraph § 1124.7(b), the provision "30 percent" is revised to "20 percent" for the months of September 1991 through February 1992.

Signed at Washington, DC, on: September 4, 1991.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 91-21828 Filed 9-10-91; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207 and 221

Securities Credit Transactions; Regulations G and U

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is adopting an interpretation to Regulations G and U (12 CFR parts 207 and 221) to indicate circumstances under which lenders and banks who acquire a regulated loan by transfer (i.e. purchase of a loan

participation) and have other purpose credit with the borrower need not aggregate the two credits under the single-credit rule.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation (202) 452-2781. For the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452-3544.

SUPPLEMENTARY INFORMATION: On May 16, 1991, the Board proposed amendments to permit the transfer of a regulated bank loan (or a portion thereof) to a Regulation G lender or the transfer of a Regulation G loan to a bank, provided that the amount of credit is not increased, the collateral is not changed, and the transfer is not made to evade the Board's margin regulations. The amendments were published for public comment on May 21, 1991 (56 FR 23252). Ten comments were received; all supported the proposed amendments without modification.

In addition, some of the commenters requested relief from the "single-credit rule" in Regulations G and U as it relates to loan participations, claiming that the proposed amendments address only part of the problems associated with transfers of regulated loans between lenders. The Board is issuing this interpretation to respond to these comments.

List of Subjects in 12 CFR

Part 207

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

Part 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), the Board is amending 12 CFR parts 207 and 221 (Regulation U) as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. The authority citation for part 207 continues to read as follows:

Authority: Secs. 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

2. Section 207.113 is added to read as follows:

§ 207.113 Application of the single-credit rule to loan participations.

(a) Amendments to parts 207 and 220, effective October 11, 1991, amended § 207.3(l) of Regulation G and § 221.3(i) of Regulation U of this chapter to permit transfers of loans between different types of lenders. In connection with that rulemaking, comments were received asking the Board to consider the application of the single-credit rule to the purchase of loan participations by lenders and banks who have other outstanding purpose credit with the same borrower.

(b) The single-credit rule (§ 207.3(g) of Regulation G and § 221.3(d) of Regulation U of this chapter), provides in part that "[a]ll purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part." If a lender or bank extends purpose credit to a borrower and then purchases a participation in a loan to the same borrower that represents purpose credit secured by margin stock, the single-credit rule requires the aggregation of the two credits. If the borrower pays off one of the two loans, the participating lender or bank is prohibited under the withdrawal and substitutions provision (§ 207.3(i) of Regulation G and § 221.3(f) of Regulation U of this chapter) from allowing the lead lender or bank to release the pro rata share of the collateral pledged for that participation unless the other loan is secured by collateral with sufficient maximum loan value. In addition, the lead lender or bank cannot allow any withdrawals of collateral during the course of the loan without contacting each participant to check on the status of any unrelated purpose credit to that borrower. These administrative burdens discourage the syndication and transfer of purpose loans.

(c) A version of the single-credit rule was incorporated in Regulation U when it was first issued in 1936. The rule assumed a direct relationship between the borrower and the bank. The modern practice of syndication or subsequent resale of participations severs the direct relationship between the borrower and the lender and presents difficulties, as described above, in the further administration of the loans for compliance with the margin regulations.

(d) The Board is of the view that as long as the lead lender or bank has control of the collateral, monitors the entire syndicated loan on a stand-alone basis, and does not allow withdrawals or substitutions unless sufficient collateral remains, participating lenders and banks need not aggregate participations with other unrelated purpose credit they have with the borrower under the single-credit rule.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

1. The authority citation for part 221 continues to read as follows:

Authority: Secs. 3, 7, 8, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, and 78w).

2. Section 221.124 is added to read as follows:

§ 221.124 Application of the single-credit rule to loan participations.

For text of this interpretation, see § 207.113 of this chapter.

By order of the Board of Governors of the Federal Reserve System, September 4, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-21589 Filed 9-10-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-131-AD; Amendment 39-8031; AD 91-19-04]

Airworthiness Directives; Boeing of Canada, de Havilland Division, Model DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-300 series airplanes, which currently requires repetitive external and internal inspections to detect fuel leaks in the wing dry bay. Such leaking, if not corrected, could result in the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike. This amendment adds airplanes to the applicability and revises the reference source for service information to accomplish the terminating action. This

amendment is prompted by a subsequent review of the service information, which revealed that additional airplanes may be subject to the unsafe condition, and that the referenced source for service information to accomplish the terminating action needs to be revised.

DATES: Effective September 26, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Propulsion Branch, ANE-174, telephone (516) 791-7421. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On August 1, 1991, the FAA issued AD 91-12-51, Amendment 39-7076 (56 FR 38338, August 13, 1991), to require repetitive external and internal inspections to detect fuel leaks in the wing dry bay of certain Model DHC-8-300 series airplanes. That action was prompted by fuel leaking into the dry bays inboard of the wing fuel tanks. This condition, if not corrected, could result in the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

Since issuance of that AD, Transport Canada, which is the airworthiness authority of Canada, has advised the FAA that additional airplanes may be subject to the addressed unsafe condition, and that the service information referenced in that AD regarding accomplishment of the terminating repair must be revised. Transport Canada issued Airworthiness Directive CF-91-15R1, dated June 20, 1991, addressing these subjects.

Boeing of Canada, Ltd., de Havilland Division, has issued Alert Service Bulletin A8-28-16, Revision B, dated June 24, 1991, which describes procedures to perform repetitive visual inspections of the dry bay area, and repair, if necessary. This revision of the service bulletin includes additional airplanes in the effectivity section, and revises the description of the terminating repair.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 91-12-51 by amending the applicability to include additional airplane serial numbers; changing the service information reference which describes the optional terminating action; and referencing the latest revision of service bulletin as the appropriate source of service information for performing the required repetitive visual inspections of the dry bay area, and repair, if necessary.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-7076 and by adding the following new airworthiness directive:

91-19-04. **Boeing of Canada, LTD., de Havilland Division:** Amendment 39-8031. Docket No. 91-NM-131-AD. Supersedes AD 91-12-51.

Applicability: Model DHC-8-300 series airplanes; Serial Numbers 202, 210, 216, 221, 224, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 257, 259, 261, 262, 264, 266, 267, 269, 271, 272, 274, 276, and 278; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike, accomplish the following:

(a) For those airplanes listed in de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, accomplish the following:

(1) Within 24 hours after August 26, 1991 (the effective date of AD 91-12-51, Amendment 39-7076), and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after August 26, 1991 (the effective date of AD 91-12-51, Amendment 39-7076), and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after August 26, 1991 (the effective date of AD 91-12-51, Amendment 39-7076), unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (a)(2) of this AD; perform an internal visual inspection of the

wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (a)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action for the repetitive internal visual inspections required by paragraph (a)(3)(i) of this AD.

(b) For those airplanes listed in de Havilland Alert Service Bulletin A8-28-16, Revision B, dated June 24, 1991, that are not subject to paragraph (a) of this AD, accomplish the following:

(1) Within 24 hours after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after the effective date of this AD, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after the effective date of this AD, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (b)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (b)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action for the repetitive internal visual inspections required by paragraph (b)(3)(i) of this AD.

(c) Accomplishment of the repair described in the paragraph III.E. of the Accomplishment Instructions of de Havilland Alert Service Bulletin A8-28-16, Revision B, dated June 24, 1991, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The inspection and repair requirements shall be done in accordance with de Havilland Alert Service Bulletin A8-28-16, Revision B, dated June 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment supersedes Amendment 39-7076, AD 91-12-51.

This amendment (39-8031, AD 91-9-04) becomes effective September 26, 1991.

Issued in Renton, Washington, on August 28, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21776 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-179-AD; Amendment 39-8032; AD 91-19-05]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires a one-time visual inspection for crossed wiring in the engine fire extinguishing systems, and correction of any discrepancies, if necessary. This amendment is prompted by recent reports of loose wiring connections and crossed wiring in the engine fire extinguishing systems. This condition, if not corrected, could result in the loss of fire extinguishment capability.

DATES: Effective September 26, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation

Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes. There have been four recent reports of loose wiring connections and crossed wiring in the engine fire extinguishing systems on Model BAe 125 series airplanes. These conditions could result in the failure of an engine fire extinguisher system to discharge, or to discharge into the wrong engine when activated. This condition, if not corrected, could result in the loss of fire extinguishment capability.

British Aerospace has issued Service Bulletin 26-31, dated February 25, 1991, which describes procedures to perform a one-time visual inspection of the engine fire extinguisher electrical systems for crossed wiring, improperly identified or unidentified wiring and wiring supports, missing wiring supports, and loose or improperly locked electrical connectors; and the correction of any discrepancies, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a one-time visual inspection of the engine fire extinguisher electrical systems for crossed wiring, improperly identified or unidentified wiring and wiring supports, missing wiring supports, and loose or improperly locked electrical connectors; and the correction of any discrepancies, if necessary; in accordance with the service bulletin previously described.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-19-05. **British Aerospace:** Amendment 39-8032. Docket No. 91-NM-179-AD.

Applicability: Model BAe 125-800A, Model HS.125-700A, and Model DH/BH/HS 125 series airplanes retrofitted with Garrett engines which are pre-mod 253274A; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of fire extinguishment capability, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection of the engine fire extinguisher system wiring to detect crossed wiring, improperly identified or unidentified wiring and wiring supports, missing wiring supports, and loose or improperly locked electrical connectors, in accordance with British Aerospace Service Bulletin 26-31, dated February 25, 1991.

(b) If any discrepancy is found during the inspection required by paragraph (a) of this AD, prior to further flight, correct it in accordance with the instructions in British Aerospace Service Bulletin 26-31, dated February 25, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection and correction requirements shall be done in accordance with British Aerospace Service Bulletin 26-31, dated February 25, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8032, AD 91-19-05) becomes effective September 26, 1991.

Issued in Renton, Washington, on August 28, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21777 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-68-AD; Amendment 39-8033; AD 91-19-06]

Airworthiness Directives; I.A.M. Rinaldo Piaggio, S.p.A. Model Avante P180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to I.A.M. Rinaldo Piaggio, S.p.A. Model Avante P-180 airplanes. This action requires an endoscope inspection of the No. 1 spar of the vertical stabilizer attachment for cracks, modification if found cracked, repetitive endoscope inspections until modified, and eventual mandatory modification. Manufacturing flaws have been discovered that could cause longitudinal cracks in the vertical stabilizer attachment of the affected airplanes. The actions specified by this AD are

intended to prevent movement or separation of the vertical stabilizer caused by failure of the No. 1 spar attachment, which could result in loss of control of the airplane.

DATES: *Effective* October 10, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 10, 1991. Comments for inclusion in the Rules Docket must be received on or before November 15, 1991.

ADDRESSES: Piaggio Avante P180 Service Bulletin 80–0008, Revision No. 1, dated June 26, 1991, that is discussed in this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4, 16154 Genoa, Italy. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–68–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2716; or Mr. Michael Dahl, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain I.A.M. Rinaldo Piaggio, S.p.A. Model Avante P180 airplanes. The RAI reports that the manufacturer has detected possible flaws in the composite material used to make the vertical stabilizer in the reinforcement zone of the attachment to the fuselage. The referenced composite material was used in the manufacturing of the empennage area of 10 of the affected airplanes, serial numbers 1004, 1006, 1007, and 1009 through 1015. This condition could cause longitudinal cracks in the vertical stabilizer attachment of the affected airplanes.

The manufacturer (I.A.M. Rinaldo Piaggio, S.p.A.) has issued Piaggio Avante P180 Service Bulletin 80–0008, Revision No. 1, dated June 26, 1991, which specifies procedures for performing endoscope inspections on the No. 1 spar of the vertical stabilizer attachment for cracks, repairing the No. 1 spar of the vertical stabilizer spar attachment if found cracked, and modifying the No. 1 spar of the vertical stabilizer spar attachment through the installation of a reinforcement kit. The RAI has classified this service bulletin as mandatory and is considering airworthiness directive action to assure the continued airworthiness of these airplanes. Pursuant to a bilateral airworthiness agreement, the RAI has kept the FAA fully informed of the above situation.

The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since this condition exists on certain I.A.M. Rinaldo Piaggio, S.p.A. Model Avante P180 airplanes of the same type design, an airworthiness directive is being issued that specifies actions that will prevent movement or separation of the vertical stabilizer caused by failure of the No. 1 spar attachment, which could result in loss of control of the airplane. The action requires repetitive endoscope inspections of the No. 1 spar of the vertical stabilizer attachment for cracks, immediate modification if found cracked, and if not found cracked mandatory modification within 500 hours time-in-service. The inspections and modification must be done in accordance with the Accomplishment Instructions of Piaggio Avante P180 Service Bulletin 80–0008, Revision No. 1, dated June 26, 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

AD 91-19-06 I.A.M. Rinaldo Piaggio S.P.A: Amendment 39-8033; Docket No. 91-CE-68-AD.

Applicability: Model Avante P180 airplanes (serial numbers 1004, 1006, 1007, and 1009 through 1015), certificated in any category. Compliance: Required as indicated, unless already accomplished.

To prevent movement or separation of the vertical stabilizer caused by failure of the No. 1 spar attachment, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS until the modification described in paragraphs (a) (2) and (b) of this AD is accomplished, perform an endoscope inspection of the No. 1 spar of the vertical stabilizer attachment for cracks in accordance with the paragraphs (1) through (3) of part A of 2. Accomplishment Instructions in Piaggio Avante P180 Service Bulletin 80-0008, Revision No. 1, dated June 26, 1991.

(1) If no cracks are found, prior to further flight, remove the endoscope, install an inspection plastic plug, return the airplane to service, and accomplish the repetitive inspection requirements.

Note: The modification described in paragraphs (a) (2) and (b) of this AD may be accomplished as terminating action for the inspection requirements of this AD provided that no cracks are found per the inspections required in paragraph (a) of this AD.

(2) If cracks are found, prior to further flight, modify the No. 1 spar of the vertical stabilizer spar attachment and install a reinforcement kit in accordance with paragraphs (1) through (15) of part B of 2. Accomplishment Instructions in Piaggio Avante P180 Service Bulletin 80-0008, Revision No. 1, dated June 26, 1991.

(b) Within the next 500 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (a) (2) of this AD, modify the vertical stabilizer spar attachment and install a reinforcement kit in accordance with paragraphs (4) through (15) of part B of 2. Accomplishment Instructions in Piaggio Avante P180 Service Bulletin 80-0008, Revision No. 1, dated June 26, 1991.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) The inspections and modification required by this AD shall be done in accordance with Piaggio Avante P180 Service Bulletin 80-0008, Revision No. 1, dated June 26, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4, 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW; room 8401, Washington, DC. This amendment becomes effective on October 10, 1991.

Issued in Kansas City, Missouri, on August 28, 1991.

Norman R. Vetter,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21778 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-92-AD; Amendment 39-8015; AD 91-18-13]

Airworthiness Directives; Short Brothers, PLC, Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3-30 series airplanes, and certain Model SD3-60 series airplanes, which currently requires changing the power source for the pitot/static heaters from the shedding busbars to the associated main busbars. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure. This action requires installation of a revised modification for changing the subject power source on certain airplanes, clarifies the accomplishment procedures to ensure that proper methods are used to install the modification, and adds a related change to the FAA-approved Airplane Flight Manual (AFM). This amendment is prompted by the development of a revised modification kit necessary for installation in certain airplanes, and revised procedures to address the differences in busbar installations among the affected airplanes.

DATES: Effective October 16, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1991.

ADDRESSES: The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding an AD 91-04-06, Amendment 39-6897 (56 FR 5752, February 13, 1991), applicable to all Short Brothers, PLC, Model SD3-30 series airplanes, and certain Model SD3-60 series airplanes, to require installation of a revised modification for changing the subject power source on certain airplanes, clarification of the accomplishment procedures to ensure that proper methods are used to install the modification, and a related change to the FAA-approved Airplane Flight Manual (AFM), was published in the **Federal Register** on May 8, 1991 (56 FR 21346).

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

The commenter supported the rule.

The final rule has been revised to clarify the references to the required AFM Amendment Documents specified in paragraphs A., B., C., D., and E.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required modification kit will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6897 and by adding the following new airworthiness directive:

91-18-13. **Short Brothers, PLC:** Amendment 39-8015. Docket No. 91-NM-92-AD. Supersedes AD 91-04-06.

Applicability: Model SD3-30 series airplanes, as listed in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990; and Model SD3-60 series airplanes, as listed in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of power to the pitot/static heaters and subsequent incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure, accomplish the following:

A. For Model SD3-30 series airplanes, Serial Numbers SH3002 through SH3072: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting AFM Amendment Document No. SBH 3.3 (ref. change P/15) or SBH 3.6 (ref. change P/11), as applicable.

B. For Model SD3-30 series airplanes, Serial Numbers SH3073 and subsequent: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting AFM Amendment Document No. SBH 3.3 (ref. change P/15) or SBH 3.6 (ref. change P/11), as applicable.

C. For Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3619: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the part A of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Sections of the FAA-approved AFM by inserting AFM Amendment Document No. SB 4.3 (ref. change P/18), SB 4.6 (ref. change P/11), or SB 4.8 (ref. change P/8), as applicable.

D. For Model SD3-60 series airplanes, Serial Numbers SH3620 through SH3676: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the part B of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting AFM Amendment Document No. SB 4.3 (ref. change P/18), SB 4.6 (ref. change P/11), or SB 4.8 (ref. change P/8), as applicable.

E. For Model SD3-60 series airplanes, Serial Numbers SH3677 through SH3762: Within 180 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the part C of the Accomplishment Instructions in Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. Following accomplishment of this modification, revise the Emergency and Normal Procedures Sections of the FAA-approved AFM by inserting AFM Amendment Document No. SB 4.3 (ref. change P/18), SB 4.6 (ref. change P/11), or SB 4.8 (ref. change P/8), as applicable.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. The modification requirement shall be done in accordance with Short Brothers Service Bulletin SD330-24-25, Revision 2, dated November 29, 1990, and Short Brothers Service Bulletin SD360-24-18, Revision 3, dated November 29, 1990. The revisions to the Airplane Flight Manual (AFM) shall be done in accordance with the following list of AFM Amendment Documents and related effective pages:

AFM amendment document No.	Page No.	Section No.
SBH 3.3	17	3
	37	4
SBH 3.6	17	3
	43	4
SB. 4.3	15	3
	43	4
SB. 4.6	15	3
	43	4
SB. 4.8	15	3
	43	4

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39-6897, AD 91-04-06.

This amendment (39-8015, AD 91-18-13) becomes effective October 16, 1991.

Issued in Renton, Washington, on August 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21779 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 93

[Docket No. 26339]

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting.

SUMMARY: On August 14, 1991, the FAA issued an amendment to the High Density Traffic Airport Rule to permit current holders of commuter slots at O'Hare International Airport to use up to 25% of their commuter slots for operations with aircraft having a certificated maximum passenger capacity of up to 110 seats. On August 29, 1991, the FAA issued a notice announcing a meeting on September 5, 1991, to conduct a lottery to allocate commuter slot times at which an operator holding commuter slots may use those slots with the larger aircraft (56 FR 43692, September 4, 1991). This notice announces the postponement of that meeting until September 13, 1991.

DATES: The meeting will be held on Friday, September 13, 1991. The lottery will begin at 1 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, Conference Room 8A–C, 800 Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Airspace and Air Traffic Law Branch, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3491.

Issued in Washington, DC on September 5, 1991.

David L. Bennett,

Acting Deputy Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 91–21785 Filed 9–10–91; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions, 16 CFR part 1000, as published at 56 FR 30495, July 3, 1991, to correct two inadvertent omissions. The July 3 rule described the Office of Planning and Evaluation at § 1000.22, but omitted it from the list of organizations reporting to the Executive Director, § 1000.12(b), and from the list of organizations supervised by the Executive Director, § 1000.19.

DATES: September 11, 1991.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–492–6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, part 1000 is amended as follows:

1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Section 1000.12 is amended by revising paragraph (b) to read as follows:

§ 1000.12 Organizational structure.

* * * * *

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of the Budget;

(2) Office of Hazard Identification and Reduction;

(3) Office of Information and Public Affairs;

(4) Office of Compliance and Enforcement;

(5) Office of Planning and Evaluation;

(6) Directorate for Administration;

(7) Directorate for Field Operations.

* * * * *

§ 1000.19 Office of the Executive Director.

3. Section 1000.19 is amended by revising the second sentence to read as follows:

* * * The Executive Director has direct line authority over the following directorates and offices: the Directorate for Administration and the Directorate for Field Operations; the Office of the Budget, the Office of Hazard Identification and Reduction, the Office of Information and Public Affairs, the Office of Compliance and Enforcement, and the Office of Planning and Evaluation. * * *

Dated: September 4, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–21673 Filed 9–10–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Cyanea superba, an Hawaiian Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Cyanea superba* (no common name), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This plant is known only from two small populations located on the island of Oahu, Hawaii. Both populations are vulnerable to any substantial habitat alteration and face clear and present threats from fire, feral pigs, and aggressive, exotic plant infestations on and near the sites where they occur. This rule implements the protection and recovery provisions afforded by the Act for this plant.

EFFECTIVE DATE: October 11, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 607, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea superba was first collected on Oahu in 1817 by Adelbert Chamisso, botanist with the Romanzoff Expedition, and was placed by him in the genus *Lobelia* (Chamisso 1833). No information on the collecting locality was given other than the island. Asa Gray (1861) later transferred the species to the endemic genus *Cyanea*. Dr. Hillebrand

collected the species prior to 1870 in the "Gulches of Makaleha on Mt. Kaala," Waianae Mountains, Oahu. He collected it again in 1870, and there were no further documented sightings of the taxon until its rediscovery in the Waianea Mountains in 1971. Presently it is known from 2 small populations totaling fewer than 20 individual plants. A recently reported third population appears to be based on a misidentification (Hawaii National Area Reserves System 1988; John Obata and Steven Perlman, Hawaii Plant Conservation Center, and David Smith, Hawaii Division of Forestry and Wildlife, pers. comms., 1990).

A second subspecies (eventually named *Cyanea superba* subsp. *regina*) was discovered on the lower slopes of the Niu and Wailupe Valleys in the Koolau Mountains, Oahu, by William Hillebrand, Dr. Hillebrand's son, and J.M. Lydgate sometime prior to 1871. The vegetation of this area has since been destroyed by grazing cattle, and the subspecies has not been collected since 1932.

Cyanea superba is a perennial plant in the bellflower family (Campanulaceae) and is geographically isolated and morphologically very different from its closest relatives. It grows to 6 meters (m) (20 feet (ft)) tall, and has a terminal rosette of large leaves each 50 to 100 centimeters (cm) long and 10 to 20 cm wide (20 to 40 inches (in) by 4 to 8 in) atop a simple, unbranched trunk. Its numerous white or creamish flowers are in pendent inflorescences hanging 20 to 35 cm (8 to 14 in) below the leaves (Lammers 1990).

Cyanea superba grows in the understory on sloping terrain on a well drained, rocky substrate between 535 and 700 m (1,760 and 2,200 ft) in elevation. The understory is heavily shaded by canopy species including *Aleurites moluccana* (kukui) and *Pisonia brunoniana* (papala kepau), but is open. The open, shaded understory provides an environment conducive to invasion by aggressive exotic species (Obata and Smith 1981). One population is on State land in Pahole Gulch, while the other grows on Federal property in Kahanahaiki Valley, Waianae Mountains, Oahu, Hawaii.

Probably the greatest immediate threat to the survival of this species is the degradation of its habitat due to the introduction of alien plants and animals. The potential of destruction by wildfires generated in a nearby military firing range and damage directly to the plants and their habitat by feral pigs also are major threats. The plants are confined to 2 small areas of 167 and 56 square (sq) m (1,800 and 600 sq ft). The restricted range of this plant makes it vulnerable to even small, local, environmental disturbances, and a single incident could destroy a significant percentage of the known individuals. Additionally, the limited gene pool may depress reproductive vigor.

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Cyanea superba* was considered to be endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Cyanea superba*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 20, 1990 (55 FR 6183). In these notices, *Cyanea superba* was treated as a Category 1 Candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. On July 17, 1990, the Service published in the **Federal Register** (55 FR 29072) a proposal to list *Cyanea superba* as endangered. This proposal was based primarily on a status survey by John Obata (Obata and Smith 1981), information supplied by the Hawaii Heritage Program (1989), the Hawaii Natural Area Reserves System (1988) report, and the observations of botanists and naturalists. The Service now determines *Cyanea superba* to be an endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the July 17, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the final listing decision. The public comment period ended on September 17, 1990. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the The Honolulu Advertiser on August 1, 1990, which invited general public comment. No comments were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cyanea superba* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea superba* (Cham.) A. Gray (no common name) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Cyanea superba* is currently known from 2 small populations comprising less than 20 plants and covering a total of 223 sq m (2,400 sq ft) in the county of Honolulu, island of Oahu, Hawaii. Its previous range is unknown due to inadequate information by early collectors. The restricted range of the species makes it vulnerable to habitat alteration. Wildfires, feral pig activity, and aggressive exotic weed invasions all threaten its continued existence (Obata and Smith 1981). Fresh "ground rooting" by pigs was noted around the *C. superba* plants at both populations in March and April, 1990 (D. Smith, pers. comm., 1990). Furthermore, pigs were seen among the *C. superba* plants at the Kahanahaiki population in April, 1990, and just below the Pahole population in March, 1990 (D. Smith, pers. comm., 1990). While both populations have since been fenced (D. Smith, pers. comm., 1990), such protection may not exclude pigs completely. In this species' steep habitat, erosion caused by the ground-disturbing activities of feral pigs or humans is a potential threat (D. Smith, pers. comm., 1990). In addition, partially fallen trees directly upslope of the Kahanahaiki population as of April, 1990, threatened to fall or slide onto the population (D. Smith, pers. comm., 1990). Crowding by exotics occurs principally from invasion by *Psidium cattleianum* (strawberry guava) and *Schinus terebinthifolius* (Christmas berry) (Obata and Smith 1981). Fire spreading from the adjacent Makua artillery range impact area could potentially threaten this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but unrestricted scientific collecting or excessive visits resulting from increased publicity could seriously affect the species. Human-caused erosion on the steep slopes is a particular concern (D. Smith, pers. comm., 1990). Also pigs are likely to follow human trails to the population (D. Smith, pers. comm., 1990).

C. *Disease or predation.* Due to its extreme rarity, little is known about this species or its predators. No obvious damage by disease or pests is evident. Uprooting and possible consumption by feral pigs is a threat to these two very small colonies, despite their having been fenced recently. Pigs may have been responsible for knocking over one *Cyanea* plant in April, 1990 (D. Smith, pers. comm., 1990). The type description of the species mentions damage to the flowers by unknown insect larvae (Obata and Smith 1981).

D. *The inadequacy of existing regulatory mechanisms.* One population of species is found within a State forest reserve. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter * * *." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of this plant will therefore reinforce and supplement the protection available to the species under State law. The Federal Act also will offer additional protection to the species, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the populations increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy a significant percentage of the known extant individual plants. Over the past 12 years, the Pahole population declined sharply from 50 to as few as 10 individuals (Hawaii Heritage Program 1989; D. Smith, pers. comm., 1990). When last surveyed in April, 1990, 12 plants were counted (Patricia Welton, University of Hawaii, pers. comm., 1990). While the Kahanahaiki population has fluctuated between 7 and 19 individuals over the past 14 years, only 6 plants were seen when it was surveyed in November, 1990 (Hawaii Heritage Program 1989; J. Obata, S. Perlman, and D. Smith, pers. comms., 1990). Furthermore, the population structure at Kahanahaiki (all plants are over 6 ft. tall) indicates that successful regeneration is not taking place (D. Smith, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cyanea superba* as endangered. Only 2 populations with a total of less than 20 individuals remain in the wild, and these face threats of fires, pig damage, competition from non-native plants, and general habitat degradation. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Critical habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required when critical habitat is designated would increase the degree of threat to this species from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants.

All involved parties and major landowners have been notified of the general location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. The only known Federal activity within the current known habitat of these plants involves the use of portions of the Makua Military Reservation as a buffer zone adjacent to impact areas used as ordnance training sites by the U.S. Army. Firebreaks have been constructed between the impact area and the buffer zone to minimize potential impacts from any fires that may be generated during the ordnance training exercises (Herve Messier, U.S. Army, Ft. Shafter, Hawaii, pers. comm., 1990).

As mentioned in factor B in "Summary of Factors Affecting the Species," the plants grow on steep slopes and visits to the area by individuals could result in severe erosion problems, an additional threat to the species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

One population of *Cyanea superba* is located on the Makua Military Reservation under the jurisdiction of the U.S. Army. The military uses portions of this area for ordnance training of its troops and provides a buffer zone adjacent to the impact area. Entry into the buffer area is forbidden to prevent injury from stray or unexploded shells or other devices (H. Messier, pers. comm., 1990). *Cyanea superba* is present only in the buffer zone and, therefore, is not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (H. Messier, pers. comm., 1990). If the species is listed as endangered, the Department of Defense would be required to enter into consultation with the Service before undertaking, funding, or permitting any action that may affect the plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Cyanea superba*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, or damage or destroy listed plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few, if any, trade permits would ever be sought or issued for this plant, because the species is not common in cultivation nor in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432–ARLSQ, Arlington, Virginia 22203–3507 (703/358–2104; FTS 921–2104; FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chamisso, L.A. von. 1833. Lobeliaceae: in Chamisso, L.A. von, and D.F.L. von Schlechtendal, De plantis in expeditione speculatoria Romanoffiana observatis. Linnaea 8:201–223.

Gray, A. 1861. Notes on Lobeliaceae, Goodeniaceae, &c. of the collection of the U.S. South Pacific Exploring Expedition. Proc. Amer. Acad. Arts 5:146–152.

Hawaii Heritage Program. 1989. Element Occurrence Records for *Cyanea superba*, PDCAM042C1.004, PDCAM042C1.006, and PDCAM042C1.009, dated June 8–9, 1989, Honolulu. Unpubl. 5 pp.

Hawaii Natural Area Reserves System. 1988. Plant survey of the Pahole Natural Area Reserve. Rep. no. 2, May 1988. Division of Forestry and Wildlife, Department of Land and Natural Resources, Honolulu, Hawaii. Unpubl.

Lammers, T.G. 1990. Campanulaceae: in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawaii. University of Hawaii Press and Bishop Museum Press, Honolulu, pp. 420–489.

Obata, J.K., and C.W. Smith. 1981. Unpublished status survey of *Cyanea superba*. U.S. Fish and Wildlife Service, Honolulu. Unpubl. 31 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Campanulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Campanulaceae—Bellflower family:						
*	*	*	*	*	*	*
Cyanea superba	None	U.S.A. (HI)	E	434	NA	NA
*	*	*	*	*	*	*

Dated: August 20, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-21799 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

RIN: 1018-AB60

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service (Service) is correcting errors in the rule prescribing the early open season dates, season length, and daily bag and possession limits for dove and pigeon seasons for the Navajo Indian Reservation, that appeared in the **Federal Register** on August 30, 1991 (56 FR 43542).

DATES: This rule takes effect on September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634-Arlington Square, Washington, DC 20240 (703/358-1773).

SUPPLEMENTARY INFORMATION: In the August 30, 1991, **Federal Register** (56 FR 43542), the Service published a final early season rule prescribing the open season dates and length, daily bag and possession limits, and general conditions for hunters for 7 Federal Indiana reservations and ceded lands. For the Navajo Indian Reservation, the rule contained errors in the entry for the dove season and omitted information on the band-tailed pigeon season. These errors are described below and corrected by this notice.

Public comment received on the proposed rule (56 FR 42097) was discussed in the August 30, 1991, early season final rule (56 FR 43542). The corrections made herein are not considered substantive in nature. That is, the corrections do not deviate from the request for regulations presented in the proposed rule, and discussed and anticipated to be approved by the Service. Also, the proposed seasons are not controversial so far as there have been no submitted comments or objections.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Early Season published in the Friday, August 30, 1991, **Federal Register** (56 FR 43542).

§ 20.110 [Corrected]

1. On page 43545, § 20.110, under paragraph (d) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers) the species, season dates and bag and possession limit text should read as follows:

Band-tailed Pigeons.

Season Dates: Open September 1, close September 30, 1991.

Daily Bag and Possession Limits: The daily bag limit is 5 and the possession limit is 10.

Mourning and White-winged Doves.

Season Dates. Open September 1, close September 30, 1991.

Daily Bag and Possession Limits. The daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 of the daily bag may be white-winged doves. Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

The "General Conditions" paragraph is correct as originally published.

Dated: September 3, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-21520 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

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

ACTION: Notice of catch limit increase in the General category.

SUMMARY: NMFS issues this notice to adjust the catch limit for giant Atlantic bluefin tuna in the General category from one to two fish per vessel per day. The regulations governing this fishery allow this adjustment during the fishing season based on a review of specified criteria. The intent of this action is to provide handgear fishermen an additional opportunity to harvest the quota.

EFFECTIVE DATE: September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 through 971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at CFR part 285.

Section 285.24(a) provides that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may adjust the daily catch limit to a maximum of three giant Atlantic bluefin tuna per vessel per day based on a review of dealer reports, landing trends, availability of the species on the fishing grounds, and any other relevant factors, in order to provide for maximum utilization of the quota. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 235 short tons (st) (213 metric tons (mt)) through August 28, 1991, and on the average weekly catch rate of 37 st (34 mt) per week for the period July 20 through August 9, 1991, that the quota for the General category will not be harvested under the

prevailing catch constraints. Normally, poor weather and sea conditions cause catches to drop significantly in mid- to late September. Therefore, the catch limit of one giant Atlantic bluefin tuna per vessel per day will be increased on the effective date of this notice to two per vessel per day in order to provide for the maximum opportunity to utilize the General category quota of 650 st (590 mt) set forth in § 285.22(a).

This daily catch limit will remain in effect for the remainder of 1991 or until the quota for the General category is harvested or until further adjustment is warranted.

Notice of this action will be mailed to all Atlantic bluefin dealers and vessel owners holding a valid permit for this category.

Other Matters

This action is taken under the authority of 50 CFR 285.24 and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

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

Dated: September 6, 1991.

David S. Crestin,

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

[FR Doc. 91-21822 Filed 9-6-91; 2:34 p.m.]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 910763-1212]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of closure, release of reserve, and request for comments.

SUMMARY: NOAA announces the release of the Pacific whiting reserve, and prohibits further processing at sea in 1991. This action is necessary to preserve adequate deliveries to shore-based processors and to achieve the allocations adopted for 1991.

EFFECTIVE DATE: September 6, 1991, at 2359 hours (local time). Comments will be accepted through September 26, 1991.

ADDRESSES: Comments should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS) 213-514-6199.

SUPPLEMENTARY INFORMATION: 50 CFR 663.23(b)(3) provides for a 1991 allocation of the Pacific whiting resource between harvesting groups (added by a final rule at 56 FR 43718; September 4, 1991). The allocation, recommended by the Pacific Fishery Management Council (Council) at its April 1991 meeting, was designed to meet the Council's goal of maintaining a balance of harvesting and processing opportunities that will provide economic benefits to all segments of the Pacific whiting industry. Initial limits were established for 1991 of 104,000 metric tons (mt) for harvest by fishing vessels that process fish (catcher/processors), 88,000 mt for harvest by fishing vessels that do not process fish (whether delivering to shoreside processors or to motherships at sea), and a reserve of 36,000 mt to be made available to either or both group(s). In making releases from the 36,000 mt-reserve, priority is to be given to shoreside processing needs for the remainder of the year. If an initial limit is exceeded, the overage comes out of the reserve.

The regulations at 50 CFR 663.23(b)(3) state that the Regional Director, Northwest Region, NMFS, will review the progress of the fishery on September 1, and at whatever other times he determines necessary, and that the Secretary of Commerce (Secretary) will announce any reapportionments, releases from the reserve, or limits on processing in the exclusive economic zone (EEZ) (3-200 nautical miles offshore), in a separate notice in the **Federal Register**. Any Pacific whiting harvested in state ocean waters (0-3 nautical miles offshore) will be counted toward the EEZ harvest limits. Similarly, any Pacific whiting processed in state ocean waters will be counted toward the EEZ processing limits.

The best available information on August 27, 1991, indicated that approximately 87,000 mt of whiting had been harvested by fishing vessels that do not process fish, and that the 88,000 mt initial limit for that group would be exceeded by almost 5,000 mt by September 6, 1991. Catcher/processors exceeded their 104,000 mt initial limit by 13,000 mt and, on August 29, 1991, were prohibited from further taking and retention of whiting (56 FR 43718; September 4, 1991). Because amounts harvested above the initial limits are to be taken from the reserve, approximately 18,000 mt of whiting are projected to remain in the reserve when this notice becomes effective.

The late August reassessment of shore-based processing needs indicates that 27,000 to 31,000 mt are needed by shore-based processors in 1991. The best available information on August 27, 1991, indicates that almost 14,000 mt will have been delivered to shore-based processors by September 6 (the effective date of this notice), and that an additional 13,000 to 17,000 mt of the reserve is needed to provide for shore-based processing needs for the remainder of the year. Less than 1,000 to 5,000 mt of the reserve is expected to be left over. It is impractical to release this small amount (less than 2 percent of the 228,000 mt quota for whiting) for processing at sea because the data on which these projections are based are preliminary, and the bycatch of whiting taken incidentally in fisheries for other species (particularly jack mackerel and shortbelly rockfish) will also be counted against the annual Pacific whiting quota. Therefore, no additional reserve is available for processing at sea.

Secretarial Action: For the reasons stated above, the Secretary announces that the unharvested portion of the Pacific whiting reserve is released for harvest, but no further whiting may be processed at sea in 1991.

Classification

These actions are taken under the authority of, and in accordance with, 50 CFR 663.23(b)(3).

An environmental assessment/regulatory impact review (EA/RIR) was prepared for the authorizing regulations. The environmental impacts of the action taken in this notice were considered in the EA/RIR. Therefore this action is categorically excluded from the National Environmental Policy Act requirement to prepare an environmental assessment in accordance with paragraph 5a(3) of NOAA Directives Manual 02-10 because this action is within the scope of the authorizing rule and its EA/RIR.

This action is in compliance with Executive Order 12291.

The public has had the opportunity to comment on the rule that provides the authority for this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in March, April, and July, 1991, at which the rule and this action were discussed. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register** (see "**ADDRESSES**").

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: September 6, 1991.

David S. Crestin,

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

[FR Doc. 91-21821 Filed 9-6-91; 2:34 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 176
Wednesday, September 11, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-416PR]

Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1991-92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of salable, reserve, and export percentages for California almonds received by handlers during the 1991-92 almond crop year, which commenced on July 1, 1991. Based on the recommendation of the Almond Board of California (Board), the agency which locally administers the almond marketing order, and other available information, it is proposed to establish salable, reserve, and export percentages of 90 percent, 10 percent, and 0 percent, respectively. This proposed rule is authorized under the marketing order for almonds grown in California and is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in prices and supplies.

DATES: Comments must be received by October 1, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, 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: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5992.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 [7 CFR part 981], both as amended, hereinafter referred to as the order, regulating the handling of almonds 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 by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 105 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposal would require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 10 percent of the merchantable almonds they receive from growers during the 1991-92 crop year. The remaining 90 percent (the salable percentage) of the crop could be sold by handlers in any market at any time. Total 1991 crop production is expected to be 460 million kernelweight pounds. Total 1991-92 crop year supplies (1991 crop marketable production plus marketable production carried in from the 1990-91 crop year) are projected at 687 million kernelweight pounds. Domestic and export trade demand for 1991-92 is estimated at 560 million kernelweight pounds.

Reserve almonds could be released to the salable category at a later date if it is found that the salable percentage is insufficient to satisfy 1991-92 trade demand, including desirable carryover requirements for use during the 1992-93 crop year (if it appears that the 1992 crop will be insufficient to meet 1992-93 trade demand needs). Otherwise, reserve almonds could be diverted to secondary outlets that are not competitive with existing normal markets. These outlets would include almond oil, almond butter, animal feed, and other secondary outlets.

While this rule may restrict the amount of almonds which handlers may sell in normal domestic and export markets, the proposed salable and reserve percentages are intended to promote orderly marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns. Further, this proposed action could help provide market stability during the 1992-93 crop year by reserving almonds for shipment during the 1992-93 season in the event that 1992 production is below trade demand needs.

This proposal is based on a recommendation of the Board and upon other available information.

Authority to establish salable, reserve, and export percentages is provided in § 981.47 of the order. Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 90 percent, 10 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1991-92 crop year. The Board's 1991 marketable production estimate of 437 million kernelweight pounds is based on a 1991 crop estimate issued by the National Agricultural Statistics Service of 460 million kernelweight pounds, minus an estimated weight loss of 23 million

kernelweight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 560 million kernelweight pounds—190 million pounds for domestic needs and 370 million pounds for export needs. An inventory adjustment is made to account for supplies of salable almonds carried in from the 1990–91 crop year on July 1, 1991, and for supplies of salable almonds deemed desirable to be carried out on June 30, 1992, for early season shipment during the 1992–93 crop year until the 1992 crop is available for market. After adjusting for inventory, the trade demand is calculated at 393.3 million kernelweight pounds. This is the quantity of almonds from the estimated 1991 marketable production deemed necessary to meet trade demand needs. The proposed salable percentage of 90 percent would meet those needs.

The remaining 10 percent (44 million kernelweight pounds) of the 1991 crop marketable production would be withheld by handlers to meet their reserve obligations. All or part of these almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1991–92 trade demand needs, including desirable carryover requirements for use during the 1992–93 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 1992. Alternatively, all or a portion of reserve almonds would be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1991–92 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent is proposed. Therefore, reserve almonds would not be eligible for export to normal export outlets. However, handlers may ship their salable almonds in export markets.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendations follows:

MARKETING POLICY ESTIMATES—1991 CROP

[Kernelweight Basis]

	Million pounds	Percent
Estimated Production:		
1. 1991 Production	460.0	
2. Loss and Exempt—4.0%	23.0	
3. Marketable Production	437.0	
Estimated Trade Demand:		
4. Domestic	190.0	
5. Export	370.0	
6. Total	560.0	
Inventory Adjustment:		
7. Carryin 7/1/90	250.0	
8. Desirable Carryover 6/30/91	83.30	
9. Adjustment (item 8 minus item 7)	(166.7)	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9)	393.3	
11. Reserve (Item 3 minus item 10)	43.7	
12. Salable % (Item 10 divided by item 3×100)		90
13. Reserve & (100% minus item 12)		10

The "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" (Guidelines) issues by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season. This action provides an estimated 643 million kernelweight pounds of California almonds for unrestricted sales (1991 crop salable production plus carryin from 1990 crop) to meet increasing domestic and world almond consumption demands. This amount exceeds the actual 1990–91 record for delivered sales of California almonds by 20 percent. Thus, the Guidelines' goals are met.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic effect on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 20-day comment period is considered appropriate.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be revised as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

Subpart—Salable, Reserve, and Export Percentagess

2. Section 981.238 is added to read as follows:

§ 981.238 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1991.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1991, shall be 90 percent, 10 percent, and 0 percent, respectively.

Dated: September 5, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–21824 Filed 9–10–91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 987

[Docket No. FV-91-426PR]

Proposed Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 987 for the 1991–92 crop year established for that order. The proposed action is needed by the California Date Administrative Committee (committee) to incur operating expenses during the 1991–92 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by September 23, 1991.

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, D.C. 20090–6456. Comments should reference the docket number and 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 Order No. 987 [7 CFR part 987], regulating the handling of dates produced or packed in Riverside County, 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 proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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 approximately 25 handlers of California dates regulated under the date marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department, requires that the assessment rate for a particular crop year apply to all assessable dates 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 date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area 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 the committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). 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 committee met on August 14, 1991, and recommended 1991-92 crop year expenditures of $479,400 and an assessment rate of $1.40 per hundredweight of assessable dates shipped under M.O. 987. The recommended assessment rate and level of expenditures for the 1991-92 crop year are the same as last year's.

The major expenditure item this year is $429,000 for continuation of the committee's market promotion program. The industry continues to be faced with an oversupply of product dates and the committee considers this program necessary to stimulate sales. The only significant difference between the expenditures budgeted for the 1991-92 crop year and those budgeted last year is a $50,000 increase in "office overhead and special projects" which is offset by a $50,000 decrease in market development expenditures. The committee anticipates using a portion of the $100,000 budgeted for overhead and special projects to hire an executive director to manage its market promotion activities. The rest of the expenditures are for program administration and are budgeted at about last year's amounts.

Income for the 1991-92 season is expected to total $495,500. Such income consists of $490,000 in assessments based on shipments of 35,000,000 assessable pounds of dates at $1.40 per hundredweight and $5,500 in interest income. Any unexpended funds or excess assessments from the 1990-91 crop year would be placed in the committee's operating reserve. The reserve is well within the maximum amount authorized under the order.

While this proposed 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 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 10 days is appropriate because the budget and assessment rate approval for the date program needs to be expedited so that the committee has authority to incur 1991-92 crop year expenses and to collect assessments to pay those expenses. The 1991-92 crop year begins on October 1.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 987 be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

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

2. New § 987.336 is added to read as follows:

§ 987.336 Expenses and assessment rate.

Expenses of $479,400 by the California Date Administrative Committee are authorized, and an assessment rate of $1.40 per hundredweight of assessable dates is established for the crop year ending September 30, 1992. Unexpended funds from the 1990-91 crop year may be carried over as a reserve.

Dated: September 4, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-21829 Filed 9-10-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR parts 20 and 25

[PS-30-91]

RIN 1545-AP44

Treatment of Lapsing Rights and Special Valuation Rules; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the treatment of certain lapsing rights and restrictions on liquidation with respect to corporations and partnerships, and providing for adjustments and credits in computing the Federal estate or gift taxes imposed on the transfer of interest to which special valuation rules of sections 2701 or 2702 previously applied.

DATES: The public hearing will be held on Friday, November 1, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by October 18, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-30-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 2701, 2702 and 2704 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, October 18, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-21682 Filed 9-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 20 and 25

[PS-30-91]

RIN 1545-AP44

Treatment of Lapsing Rights and Special Valuation Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the treatment of certain lapsing rights and restrictions on liquidation with respect to corporations and partnerships, and providing for adjustments and credits in computing the Federal estate or gift taxes imposed on the transfer of interests to which the special valuation rules of sections 2701 or 2702 previously applied. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. The proposed regulations will provide guidance taxpayers need to comply with that Act.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for November 1, 1991, must be received by October 18, 1991. See the Notice of Public Hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear and outlines to: Internal Revenue Service, Attention: CC:CORP:T:R (PS-30-91), room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman, (202) 535-9512 (not a toll free telephone number); concerning the hearing, Carol Savage, (202) 377-9236 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in 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 on the collection of information requirements should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirements in these regulations are in section 26 CFR 25.2702-6. This information is required by the Internal Revenue Service to insure that individuals are properly credited with tax that was assessed and paid in connection with a prior transfer to which section 2702 applied. The likely respondents are individuals.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting burden: 250 hours.

Estimated burden per respondent varies from 5 minutes to 1 hour, depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of respondents: 1000.

Estimated frequency of response: One time.

Background

This document contains proposed additions to the Estate and Gift Tax Regulations (26 CFR parts 20 and 25) under sections 2701, 2702 and 2704 of the Internal Revenue Code. The proposed additions reflect additions made to the Code by section 11602 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1383.

Explanation of Provisions

Overview

The proposed regulations published in this notice represent the second installment of regulatory guidance under Chapter 14 of the Code. Proposed regulations issued on April 4, 1991, contained guidance under sections 2701, 2702 and 2703.

Chapter 14 contains valuation rules that apply to transfers to certain family members of interests in corporations or partnerships (sections 2701 and 2704(b)), transfers of interests in trusts to certain family members (section 2702), and

transfers of property subject to certain options or agreements, such as buy-sell agreements (section 2703). Section 2704(a) provides rules subjecting the lapse of certain liquidation and voting rights to estate or gift tax.

Section 2701

Generally, section 2701 applies when an interest in a corporation or partnership is transferred to a member of the transferor's family and the transferor or an applicable family member retains a certain type of interest senior to the transferred interest (an "applicable retained interest").

If section 2701 applies, the amount of an individual's gift is determined using the subtraction method of valuation. Under this method, the value of any interests senior to the transferred interest is subtracted from the value of entire entity to determine the aggregate value of the transferred interest and any other interests of the same class or a class junior to the transferred interest.

Section 2701 provides special rules for valuing any applicable retained interest held by the transferor or an applicable family member. Generally, an applicable retained interest is any interest that confers (1) a discretionary liquidation, put, call, conversion or similar right (an "extraordinary payment right"), or (2) a distribution right in a family-controlled entity, including a qualified payment right. A qualified payment right is generally a right to a fixed-rate cumulative dividend payable on a periodic basis or the partnership equivalent.

In valuing an applicable retained interest, extraordinary payment rights and distribution rights in a controlled entity (other than qualified payment rights) are valued at zero. However, if an extraordinary payment right is held in conjunction with a qualified payment right, those rights are valued on the assumption that each right will be exercised in a manner that results in the lowest total value for the retained interest. Other rights are valued as if the rights valued at zero do not exist but otherwise without regard to section 2701.

Section 2701(a)(4) imposes a minimum value on the class of junior equity. Generally, the aggregate value of the junior class must not be less than 10 percent of the sum of total equity in the entity plus debt owing to the transferor and applicable family members.

Section 2701 provides that an individual may elect to treat a payment that is not a qualified payment as a qualified payment. The section also permits an individual to elect to treat a qualified payment as though it were not a qualified payment.

Adjustments

Section 2701(e)(6) provides that the Secretary shall, by regulation, provide an appropriate adjustment where there is a subsequent transfer or inclusion in the gross estate of an applicable retained interest that was valued under the special valuation rules of section 2701. These proposed regulations implement section 2701(e)(6) by providing that the estate of the individual who made the transfer to which section 2701 previously applied (and thus incurred the additional tax) is entitled to a non-refundable credit against the estate tax. The amount of the credit is equal to the increase in the gift tax payable on the transfer that results from the application of section 2701 (the initial transfer) determined before application of the unified credit.

Computation of the credit requires that the transferor know the value of the applicable retained interest would have had for purposes of chapter 12 at the time of the initial transfer as well as the value of the interest for purposes of chapter 14. Because the chapter 12 value will have to be determined for other purposes of the Code, this requirement imposes no additional burden on the transferor.

Because the special valuation rules of section 2701 may apply to applicable retained interests held by individuals other than the transferor, a rule was considered that would allow the transferor to assign the credit to those individuals. The rule would have permitted the individual to whom the credit was assigned to claim the credit when that individual subsequently transferred the interest with an additional limitation that the credit would not exceed the amount of transfer tax incurred on the subsequent transfer. This rule was not adopted because of concerns about administrability and complexity. Comments are requested on the relative merits of the two alternatives as well as whether the adjustment should be a reduction in adjusted taxable gifts or a credit against estate tax as proposed.

Section 2702

Generally, section 2702 applies to the transfer of an interest in trust to a family member of the transferor. Section 2702 provides special valuation rules for determining the amount of the gift on the transfer. The amount of the gift is determined by subtracting the value of any interest retained by the transferor or an applicable family member from the total value of the property. If section 2702 applies, retained interests other than qualified interests are generally valued at zero. A qualified interest is (1) a right to receive at least anually a fixed amount (or a fixed percentage of the initial value of the trust); (2) a right to receive at least annually a fixed percentage of the value of the property valued annually; or (3) a noncontingent remainder if all other interests in the property are qualified interests or noncontingent remainder interests.

The zero valuation rule does not apply to a retained income interest in tangible property if the term holder's failure to exercise rights with respect to the transferred property would not substantially affect the value of the property passing to the holder of the remainder interest. In such a case, the value of the term holder's interest is the amount an unrelated party would pay for the interest.

Definition of Transfer in Trust

A transfer of property in which there are one or more term interests is a transfer of an interest in trust for purposes of section 2702. A joint purchase by members of the same family is treated as an acquisition of the entire property by the term holder followed by a transfer of the remainder interest to the individual purchasing the remainder interest. Under regulations currently proposed, the term "transfer in trust" includes transfers to a new or existing trust as well as a beneficiary's transfer of an interest in an existing trust.

Adjustments

Unlike section 2701, section 2702 does not direct the Secretary to provide adjustments on the subsequent transfer of a retained interest in trust. However, like section 2701, section 2702 presents the possibility of double taxation in certain situations. Therefore, Treasury believes it is appropriate to exercise its general regulatory authority to mitigate this possibility.

Where a retained interest is later included in the individual's gross estate, existing provisions under chapter 11 generally prevent transfer tax being imposed twice on the same value. On the other hand, double taxation is possible if a retained interest other than a qualified interest is subsequently transferred by gift or, in the case of a retained remainder interest that is not a qualified interest, is includible in the transferor's gross estate.

The proposed regulations allow an individual to reduce the individuals's aggregate taxable gifts (or adjusted taxable gifts) if the individual transfers

an interest in trust that was previously valued under section 2702 other than a qualified interest. The reduction allowed under the proposed regulations is the lesser of (1) the increase in the individual's taxable gifts resulting from the application of section 2702 or (2) the increase in the individual's taxable gifts (or gross estate) resulting from the subsequent transfer of the interest. The proposed regulations permit assignment of one-half the adjustment in cases where the transferor and the transferor's spouse have elected to treat either the original or subsequent transfer as having been made one-half by each spouse.

Section 2704

Section 2704(a) subjects the lapse of certain voting or liquidation rights with respect to a corporation or partnership (an "entity") to estate or gift tax. Section 2704(b) provides that certain restrictions on liquidation are disregarded in valuing transferred interests in an entity.

Section 2704(a)

The legislative history of section 2704(a) states that the provision is intended to prevent results similar to that in *Harrison* v. *Commissioner*, 52 T.C.M. (CCH) 1306 (1987). In *Harrison*, the decedent and two of his children each held a general and a limited partnership interest immediately before the decedent's death. Because any general partner could liquidate the partnership, each partner could obtain the full value of both his partnership interests. A general partner's right to liquidate the partnership lapsed on the death of that partner.

In determining the estate tax value of the decedent's limited partnership interest, the court concluded that the right of the decedent to liquidate the partnership (and thus readily obtain the liquidation value of the limited partnership interest) could not be taken into account because the right lapsed at death. As a result, the value for transfer tax purposes of the limited partnership interest was determined to be less than its value either in the hands of the decedent immediately before death or in the hands of his family immediately after death.

Under section 2704(a), the lapse of a voting or liquidation right to which the section applies is a transfer for estate and gift tax purposes. Section 2704(a) applies only if the holder of the lapsing right (the "holder") and members of the holder's family control the entity both before and after the lapse. If section 2704(a) applies, the amount of the holder's transfer is equal to the reduction in value of all interests in the entity owned by the holder immediately before the lapse other than a reduction in value occurring for reasons other than the lapse; *e.g.*, the loss of value attributable to the death of a key employee.

Under the proposed regulations, a voting right is a right entitling the holder to vote with respect to any matter of the entity. A liquidation right is a right entitling the holder to compel the entity to acquire all or a portion of the holder's equity interest in the entity.

The proposed regulations provide generally that a lapse of a right occurs when the right is reduced or ceases to exist. Generally, a transfer of an interest conferring a right is not a lapse of that right because the right is not reduced or eliminated. For example, the transfer of a minority interest by the controlling shareholder is not a lapse of voting rights even though the transfer results in the transferor's loss of voting control. Similarly, a transfer of stock to a voting trust is not a lapse of a voting right subject to section 2704(a).

To prevent circumvention of section 2704(a), the proposed regulations provide that a transfer of an interest by an individual that reduces that individual's aggregate voting power is a lapse of a liquidation right to the extent the transfer results in the elimination of the individual's power to compel liquidation of an interest other than the interest conferring the power.

The proposed regulations provide that if a lapsed right may be restored on the happening of a future event that is outside the control of the holder and members of the holder's family, the lapse is deemed to occur at the time the right can no longer be restored to the holder. For example, this rule will apply to the potentially temporary cessation of rights that occurs upon a general partner's becoming incompetent.

The proposed regulations provide that section 2704(a) applies to the lapse of a liquidation right only to the extent the holder and the holder's family members can, immediately after the lapse, liquidate an interest the holder could have liquidated prior to the lapse determined without regard to any restriction to which section 2704(b) applies. Although this limitation is not provided by the statute, if the family cannot recover the value lost as a result of the lapse, the lapse is not of the type to which section 2704(a) is directed. The proposed regulations also provide that the lapse of a right that was previously valued under section 2701(a) in the hands of the holder is not subject to section 2704(a).

Section 2704(b)

Section 2704(b) provides that in valuing a transfer of an interest in an equity to a family member certain restrictions on the ability to liquidate the entity (in whole or in part) are disregarded. Section 2704(b) applies only if (a) the transferor's family controls the entity immediately before the transfer and (b) either the restriction will lapse by its terms at any time after the transfer or the transferor and members of the transferor's family can remove the restriction immediately after the transfer. Under the proposed regulations, the family has the ability to remove the restriction if the family could remove the restriction under the State law that would apply to the entity but for a more restrictive rule in the governing instruments of the entity.

A commercially reasonable restriction on liquidation imposed by an unrelated party in connection with the financing of the entity's trade or business is not an applicable restriction. Thus, for example, section 2704(b) would not apply to a restriction is a loan agreement between the entity and an unrelated third-party lender that is reasonably required by the lender and reasonably agreed to by the entity. Whether parties are "related" for this purpose is generally determined under section 267(b) of the Code.

The proposed regulations provide that if a restriction is disregarded under section 2704(b), the transferred interest is valued as though the rights with respect to the interest are determined under the State law that would apply in the absence of the restriction. Thus, disregarding an applicable restriction does not arbitrarily require that an interest be valued at its liquidation value.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for November 1, 1991. See the Notice of Public Hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these regulations is Fred E. Grundeman, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR

Part 20

Estate taxes, Reporting and recordkeeping requirements.

Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR parts 20 and 25 are as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read, in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 20.0–2 is amended by removing the last sentence in paragraph (b)(5) and adding the following in its place:

§ 20.0–2 General description of tax.

* * * * *

(b) * * *

(5) * * * Sections 25.2701–5 and 25.2702–6 of this chapter contain rules that provide additional adjustments to mitigate double taxation in cases where the value of property was previously determined under the special valuation provisions of sections 2701 and 2702. For a detailed explanation of the credits against tax, see sections 2011 through 2016 and the regulations thereunder, and section 2701 and the regulations at § 25.2701 of this chapter.

* * * * *

Par. 3. Section 20.2031–2 is amended by adding a new paragraph (j) to the end thereof to read as follows:

§ 20.2031–2 Valuation of stocks and bonds.

* * * * *

(j) *Application of chapter 14.* See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a corporation and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

Par. 4. Section 20.2031–3 is amended by adding two new sentences to the end thereof to read as follows:

§ 20.2031–3 Valuation of interests in businesses.

* * * See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read, in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 6. Section 25.0–1 is amended by adding a new sentence to the end of paragraph (c)(1) and by revising paragraph (c)(2) to read as follows:

§ 25.0–1 Introduction.

* * * * *

(c) *Scope of regulations*—(1) * * * Sections 25.2701–5 and 25.2702–6 contain rules that provide additional adjustments to mitigate double taxation where the value of property was previously determined under the special valuation provisions of sections 2701 and 2702.

(2) *Transfer.* Subchapter B of chapter 12 and chapter 14 of the Code pertain to the transfers which constitute the making of gifts and the valuation of those transfers. The regulations pursuant to subchapter B are set forth in §§ 25.2511–1 through 25.2518–3. The regulations pursuant to chapter 14 are set forth in §§ 25.2701–1 through 25.2704–3.

* * * * *

Par. 7. Section 25.2502–1 is amended by adding a new sentence to the end of paragraph (a)(3) to read as follows:

§ 25.2502–1 Rate of tax.

(a) * * *

(3) * * * See § 25.2702–6 for an adjustment to the total amount of an individual's taxable gifts where the individual's current taxable gifts include the transfer of certain interests in trust that were previously valued under the provisions of section 2702.

* * * * *

Par. 8. Section 25.2512–1 is amended by adding a sentence to the end thereof to read as follows:

§ 25.2512–1 Valuation of property in general.

* * * See section 2704(b) and the regulations at § 25.2704–2 for special valuation rules where an interest in property is subject to an applicable restriction.

Par. 9. A new § 25.2701–5 is added to read as follows:

§ 25.2701–5 Adjustments to mitigate double taxation.

(a) *In general.* If an applicable retained interest is valued under section 2701, the estate of the individual whose taxable gifts are determined by reference to such valuation (the initial transferor) is entitled to a non-refundable credit against the Federal estate tax. The amount of the credit is determined under paragraph (b) of this section.

(b) *Amount of credit*—(1) *In general.* The amount of the credit is the amount of gift tax payable (before application of section 2505) with respect to the transfer to which section 2701 applied (the "initial transfer") multiplied by a fraction the numerator of which is the amount by which taxable gifts were increased as a result of the application of section 2701 and the denominator of which is the amount of the initial transfer determined under section 2701.

(2) *Multiple gifts.* For purposes of this paragraph (b), the amount of gift tax payable with respect to the initial transfer is the total Federal gift tax payable for the year in which the transfer occurred reduced by the total Federal gift tax that would be payable in that year without regard to the transfer (in both cases determined before application of section 2505).

(3) *Gift splitting of initial transfer.* If the initial transfer is treated as made one-half by the initial transferor's spouse under section 2513, each spouse is treated as the initial transferor with respect to one-half of the transfer.

(c) *Application of the credit.* The credit provided under paragraph (a) of this section is allowable after the computation of the estate tax under

section 2001 but before the application of the unified credit under section 2010. The amount of the credit is limited to the amount of tax imposed by section 2001.

(d) *Example.* Prior to January 1, 1991, A owned all the preferred and common stock in X corporation. On January 1, 1991, A transferred the common stock to A's child (the initial transfer). At the time of the initial transfer the fair market value of the common stock was $1,010,000. However, because of the application of section 2701, A's taxable gifts for 1991 were increased by $1,500,000 to $2,500,000. A had not made a transfer subject to gift tax prior to the initial transfer and A made no other transfers before January 1, 1993. The gift tax payable with respect to A's 1991 transfers was $1,025,800 of which A paid $833,000 after application of the unified credit. A died in 1996. A's estate is entitled to a non-refundable credit against the Federal estate tax of $615,480 ($1,025,800 (the gift tax payable on the initial transfer) multiplied by .60 ($1,500,000 (the amount of the section 2701 increase) / $2,500,000 (A's initial taxable gift determined under section 2701)).

Par. 10. New § 25.2702–6 is added to read as follows:

§ 25.2702–6 Reduction in taxable gifts.

(a) *Transfers of retained interests in trust*—(1) *Inter vivos transfers.* If an individual subsequently transfers by gift an interest in trust previously valued under § 25.2702–2(b) (1) or (3) in the hands of that individual, the individual is entitled to a reduction in aggregate taxable gifts. The amount of the reduction is determined under paragraph (b) of this section. Thus, for example, if an individual transferred property to an irrevocable trust, retaining an interest in the trust that was valued at zero under § 25.2702–2(b)(1), and the individual later transfers the retained interest by gift, the individual is entitled to reduce aggregate taxable gifts on the subsequent transfer. For purposes of this section, aggregate taxable gifts means the aggregate sum of the individual's taxable gifts for the calendar year determined under section 2502(a)(1).

(2) *Testamentary transfers.* If a remainder interest in trust previously valued under § 25.2702–2(b)(1) in the hands of an individual is included in the individual's gross estate, the individual's estate is entitled to a reduction in the individual's adjusted taxable gifts in computing the Federal estate tax payable under section 2001. The amount of the reduction is determined under paragraph (b) of this section.

(3) *Gift splitting*—(i) *Initial transfer.* If the transfer to which section 2702 applied is treated as made one-half by the transferor's spouse under section 2513, the reduction in aggregate taxable gifts (or adjusted taxable gifts) to which the transferring spouse (or the transferring spouse's estate) would be entitled under paragraph (a) (1) or (2) of this section if section 2513 did not apply is allocated one-half to the consenting spouse and one-half to the transferor spouse (or their respective estates). Either spouse (or the spouse's executor) may assign the right to the reduction to the other spouse by attaching the assignment to a Form 709 filed by the spouse (or the executor of the spouse) making the assignment at any time before the date that is 3 years after the date of the spouse's death.

(ii) *Subsequent transfer.* If an individual who is entitled to a reduction in aggregate taxable gifts (or adjusted taxable gifts) subsequently transfers the interest in a split gift, the individual may assign one-half of the amount of the reduction to the consenting spouse. The assignment must be attached to the Form 709 on which the consenting spouse reports the split gift.

(b) *Amount of reduction*—(1) *In general.* The amount of the reduction in aggregate taxable gifts (or adjusted taxable gifts) is the lesser of—

(i) The increase in the individual's taxable gifts resulting from the interest being valued at the time of the initial transfer under § 25.2702–2(b) (1) or (3); or

(ii) The increase in the individual's taxable gifts (or gross estate) resulting from the subsequent transfer of the interest.

(2) *Treatment of annual exclusion.* For purposes of determining the amount under paragraph (b)(1)(ii) of this section, the exclusion under section 2503(b) applies first to transfers in that year other than the transfer of the interest previously valued under § 25.2702–2(b)(1) or (3).

(c) *Examples.* The rules of this section are illustrated by the following examples.

Example 1. In 1992, X transferred property to an irrevocable trust, retaining the right to receive the trust income for life. On the death of X, the trust is to terminate and the trust corpus is to be paid to X's child, C. Assume that X's income interest had a value of $40,000 at the time of the transfer; however, because X's retained interest was not a qualified interest, it was valued at zero under § 25.2702–2(b)(1) for purposes of determining the amount of X's gift. X's taxable gifts in 1992 were therefore increased by $40,000. In 1993, X transfers the income interest to C for no consideration. X makes no other gifts to C that year. Assume that on the date of the subsequent transfer, the income interest has a value of $30,000. X is entitled to a reduction in aggregate taxable gifts of $20,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($30,000 minus $10,000 annual exclusion).

Example 2. The facts are the same as in *Example 1*, except that the value of the income interest on the subsequent transfer to X's child is $10,000. X is not entitled to reduce aggregate taxable gifts by any amount because X's taxable gifts were not increased as a result of the subsequent transfer of the income interest to X's child.

Example 3. The facts are the same as in *Example 1*, except that in 1993, 4 months after X transferred the income interest to C, X transferred $5,000 cash to C. In determining the increase in taxable gifts occurring on the subsequent transfer, the annual exclusion under section 2503(b) is first applied to the cash gift. X is entitled to a reduction in aggregate taxable gifts of $25,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($25,000 ($30,000+$5,000−$10,000) annual exclusion).

Example 4. The facts are the same as in *Example 1*, except that the value of the income interest on the subsequent transfer to C is $55,000. X is entitled to reduce aggregate taxable gifts by $40,000, the lesser of the amount by which X's taxable gifts were increased as a result of the income interest being valued at zero on the initial transfer ($40,000) or the amount by which X's taxable gifts are increased as a result of the subsequent transfer of the income interest ($55,000 minus $10,000 annual exclusion=$45,000).

Example 5. The facts are the same as in *Example 4*, except that X and X's spouse, S, split the gift of the remainder interest under section 2513. One-half of the right to a reduction in aggregate taxable gifts on a subsequent transfer of the retained interest is allocated to each of X and S. X and S also split the subsequent gift to C. Each is entitled to reduce adjusted taxable gifts by $17,500, the lesser of their portion of the increase in taxable gifts on the initial transfer by reason of the application of section 2702 ($20,000) and their portion of the increase in taxable gifts on the subsequent transfer of the retained interest ($27,500–$10,000 annual exclusion).

Example 6. The facts are the same as in *Example 5*, except that S dies while X still holds the income interest. No portion of the income interest is includable in S's estate. The executor may assign S's right to a reduction to X by attaching an assignment to a Form 709 which may be filed at any time within the 3-year period beginning on the date of S's death.

Example 7. T transfers property to an irrevocable trust retaining the power to direct the distribution of trust income for 10 years among T's descendants in whatever shares T deems appropriate. On the expiration of the 10-year period, the trust corpus is to be paid in equal shares to T's children then living. T's transfer of the remainder interest is a completed gift. Because T's retained interest

is not a qualified interest, it is valued at zero under § 25.2702-2(b)(1) and the amount of T's gift is the fair market value of the property transferred to the trust. The distribution of income each year is not a transfer of a retained interest in trust. Therefore, T is not entitled to reduce aggregate taxable gifts as a result of the distributions of income from the trust.

Example 8. The facts are the same as in *Example 7*, except that after 3 years T exercises the right to direct the distribution of trust income by assigning the right to the income for the balance of the term to T's child, C. The exercise is a transfer of a retained interest in trust for purposes of this section. T is entitled to reduce aggregate taxable gifts by the lesser of the increase in taxable gifts resulting from the application of section 2702 to the initial transfer or the increase in taxable gifts resulting from the exercise of the retained right.

Par. 11. New §§ 25.2704-1 through 25.2704-3 are added to read as follows:

§ 25.2704-1 Lapse of certain rights.

(a) *Lapse treated as transfer.* The lapse of a voting right or a liquidation right created after October 8, 1990, in a corporation or partnership (an "entity") is a transfer by the individual holding the right immediately prior to its lapse (the "holder") but only if the entity is controlled by the holder and members of the holder's family immediately before and after the lapse. The amount of the transfer is determined under paragraph (f) of this section. For the definition of control see § 25.2701-2(b)(5). For the definition of member of the family see § 25.2702-2(a)(1). If the lapse of a voting right or a liquidation right occurs during the holder's lifetime, the lapse is a transfer by gift. If the lapse occurs at the holder's death, the lapse is a transfer includable in the holder's gross estate.

(b) *Definitions*—(1) *Voting right.* A voting right is a right to vote with respect to any matter of the entity. Thus, for example, the right of a shareholder to vote only with respect to the election of corporate directors is a voting right. In the case of a partnership, the right of a general partner to participate in partnership management is a voting right.

(2) *Liquidation right.* A liquidation right is a right to compel the entity to acquire all or a portion of the holder's equity interest in the entity. A right is a liquidation right even though its exercise would not result in the complete liquidation of the entity. For purposes of this section, the right to compel liquidation by reason of aggregate voting power is a liquidation right only with respect to interests other than the interest conferring the power.

(c) *Source of right.* A voting right or a liquidation right may be conferred by State law, corporate charter or bylaws, an agreement, or any other means.

(d) *Lapse of right.* A lapse of a voting or liquidation right occurs at the time a presently exercisable right is restricted or eliminated. Generally, a transfer of an interest conferring a right is not a lapse of that right because the rights with respect to the interest are not restricted or eliminated. However, a transfer that reduces an individual's aggregate voting power is a lapse of a liquidation right to the extent the transfer results in the elimination of the individual's right to compel liquidation of an interest other than the interest conferring the power. If a lapsed right may be restored only upon the occurrence of a future event not within the control of the holder or members of the holder's family, the lapse is deemed to occur upon the transfer of the interest by the holder or, if earlier, the time at which the lapse becomes permanent with respect to the holder. A lapse may occur by reason of State law, a corporate charter or by-laws, agreement, or any other means.

(e) *Exceptions.* Section 2704(a) does not apply under the following circumstances.

(1) *Family cannot obtain liquidation value*—(i) *In general.* Section 2704(a) does not apply to the lapse of a liquidation right to the extent the holder (or the holder's estate) and members of the holder's family cannot immediately after the lapse liquidate an interest that the holder could have liquidated prior to the lapse.

(ii) *Ability to liquidate.* Whether an interest can be liquidated immediately after the lapse is determined under the State law generally applicable to the entity, as modified by the governing instruments of the entity, but without regard to any restriction described in section 2704(b). Thus, if, after any restriction described in section 2704(b) is disregarded, the remaining requirements for liquidation under the governing instruments are less restrictive than the State law that would apply in the absence of the governing instruments, the ability to liquidate is to that extent determined by reference to the governing instruments.

(2) *Rights previously valued under section 2701.* Section 2704(a) does not apply to the lapse of a voting or liquidation right that was previously valued in the hands of the holder under section 2701(a).

(f) *Amount of transfer.* The amount of the transfer is the excess, if any, of—

(1) The value of all interests in the entity owned by the holder immediately before the lapse (determined immediately after the lapse as if the lapsed right was nonlapsing); over

(2) The sum of—

(i) The value of the interests immediately after the lapse (determined as if all such interests were held by one individual), and

(ii) In the case of a lapse during life, the value of any consideration in money or money's worth received by the holder on account of the lapse.

(g) *Application to similar rights.* [Reserved]

(h) *Examples.* The following examples illustrate the provisions of this section.

Example 1. D owns all the preferred stock of corporation Y and D's children own all the common stock. The preferred stock has 60 percent of the total voting power and the common stock has 40 percent. Under the corporate by-laws, the voting rights of the preferred stock terminate on D's death. On D's death, D's gross estate includes an amount equal to the excess, if any, of the fair market value of the preferred stock immediately after D's death (determined as though the voting rights had not lapsed and would not lapse) and the fair market value of the preferred stock determined after the lapse of the voting rights.

Example 2. D owns all the preferred stock of corporation Y. The preferred stock and the common stock each carry 50 percent of the total voting power of Y. D's children own 40 percent of the common stock and unrelated parties own the remaining 60 percent. Under the corporate by-laws, the voting rights of the preferred stock terminate on D's death. Section 2704(a) does not apply to the lapse of D's voting rights because members of D's family do not control Y after the lapse.

Example 3. The by-laws of Corporation Y provide that the voting rights of any transferred shares of the single outstanding class of stock are reduced to ½ vote per share after the transfer but are fully restored to the transferred shares after 5 years. D, together with members of D's family, controlled Y both before and after D's death. On D's death, D's shares passed to D's children and the voting rights were reduced pursuant to the by-laws. D's gross estate includes an amount equal to the excess, if any, of the fair market value of D's stock (determined immediately after D's death as though the voting rights had not been reduced and would not be reduced) over the stock's fair market value immediately after D's death.

Example 4. D owns 84 percent of the single outstanding class of stock of V corporation. D gives one-half of D's stock in equal shares to D's three children (14 percent to each). Section 2704(a) does not apply to the transfer of D's voting rights because the voting rights with respect to the corporation are not restricted or eliminated. The voting rights are the same before and after the transfer.

Example 5. D and D's two children, A and B, are partners in partnership X. Each has a 3⅓ percent general partnership interest and a 30 percent limited partnership interest. Under State law, a general partner has the right to participate in partnership management. The partnership agreement provides that when a

general partner withdraws or dies, X must redeem the general partnership interest for its liquidation value. Also, under the agreement any general partner can liquidate the partnership. A limited partner cannot liquidate the partnership and a limited partner's capital interest will be returned only when the partnership is liquidated. A deceased limited partner's interest continues as a limited partnership interest. D dies, leaving his limited partnership interest to D's spouse. Because of a general partner's right to dissolve the partnership, a limited partnership interest has a greater fair market value when held in conjunction with a general partnership interest than when held alone. Section 2704(a) applies to the lapse of D's liquidation right because after the lapse, members of D's family could liquidate D's limited partnership interest. D's gross estate includes an amount equal to the excess of the value of all D's interests in X immediately before D's death (determined immediately after D's death but as though the liquidation right had not lapsed and would not lapse) over the fair market value of all D's interests in X immediately after D's death.

Example 6. The facts are the same as in *Example 5,* except that under the partnership agreement D is the only general partner who holds a unilateral liquidation right. Assume further that the partnership agreement contains a restriction described in section 2704(b) that prevents D's family members from liquidating D's limited partnership interest immediately after D's death. Under State law, in the absence of the limitation in the partnership agreement, D's family members could liquidate the partnership. Therefore, they are considered to have the ability to do so after the lapse and the lapse of D's liquidation right is subject to section 2704(a).

Example 7. The facts are the same as in *Example 5,* except that D transferred D's general partnership interest prior to D's death. Section 2704(a) does not apply to the transfer of D's voting rights because the voting rights with respect to the partnership are not restricted or eliminated. Similarly, the transfer of the general partnership interest is not a lapse of a liquidation right with respect to that interest. However, the transfer of the general partnership interest is a lapse of D's liquidation right with respect to the limited partnership interest.

Example 8. D owns 45 percent and D's child, C, owns 20 percent of the voting common stock of corporation Y. C gives D an irrevocable proxy to vote C's stock for 5 years after which the right reverts to C. Section 2704(a) does not apply to C on the grant of the proxy or to D on its termination. The result would be the same if C transferred C's stock to a voting trust of which D was the trustee.

Example 9. D owns all of the single class of stock of corporation Y. D recapitalizes Y, exchanging D's common stock for voting common and non-voting preferred stock. The preferred stock carries a right to put the stock for its par value at any time during the next 10 years. D transfers the common stock to D's grandchild in a transfer subject to section 2701. In determining the amount of D's gift under section 2701, D's retained put right is valued at zero. After 10 years, while D still owns the preferred stock, the put right lapses. Because the put right was previously valued in D's hands under section 2701, section 2704(a) does not apply to the lapse.

Example 10. The facts are the same as in *Example 9,* except that D dies prior to the lapse of the put right. D's child, C, owns the preferred stock when the put right lapses. Section 2704(a) applies to the lapse because the put right was not valued under section 2701 in the hands of C.

Example 11. A and A's two children are equal general and limited partners in partnership Y. Under the partnership agreement, each general partner has a right to liquidate the partnership at any time. Under State law that would apply in the absence of contrary provisions in the partnership agreement, the death or incompetency of a general partner terminates the partnership. However, the partnership agreement provides that the partnership does not terminate on the incompetence or death of a general partner, but that an incompetent partner cannot exercise rights as a general partner during any period of incompetency. A partner's full rights as general partner are restored if the partner regains competency. A becomes incompetent. The lapse of A's voting right on becoming incompetent is not subject to section 2704(a) because it may be restored to A in the future. However, if A dies while incompetent, a lapse subject to section 2704(a) is deemed to occur at that time because the lapsed right cannot thereafter be restored to A.

§ 25.2704-2 Transfers subject to applicable restrictions.

(a) *In general.* If an interest in a corporation or partnership (an "entity") is transferred to or for the benefit of a member of the transferor's family, any applicable restriction created after October 8, 1990, is disregarded in valuing the transferred interest. This section applies only if the transferor and members of the transferor's family control the entity immediately before the transfer. For the definition of control see § 25.2701-2(b) (5). For the definition of member of the family see § 25.2702-2(a)(1).

(b) *Applicable restriction defined.* An applicable restriction is a limitation on the ability to liquidate the entity (in whole or in part) that is more restrictive than the limitations that would apply under the State law generally applicable to the entity in the absence of the restriction. A restriction is an applicable restriction only to the extent that either the restriction by its terms will lapse at any time after the transfer, or the transferor (or the transferor's estate) and any members of the transferor's family can remove the restriction immediately after the transfer. Ability to remove the restriction is determined by reference to the State law that would apply but for a more restrictive rule in the governing instruments of the entity. See § 25.2704-1(e)(1)(B) for a discussion of the term "State law." An applicable restriction does not include a commercially reasonable restriction on liquidation imposed by an unrelated person providing financing to the entity for trade or business operations. An unrelated person is any person whose relationship to the transferor, the transferee or any member of the family of either is not described in section 267(b) of the Internal Revenue Code, provided that for purposes of this section the term "fiduciary of a trust" as used in section 267(b) does not include a bank as defined in section 581 of the Internal Revenue Code. A restriction imposed or required to be imposed by Federal or State law is not an applicable restriction. An option, right to use property, or agreement that is subject to section 2703 is not an applicable restriction.

(c) *Effect of disregarding an applicable restriction.* If an applicable restriction is disregarded under this section, the transferred interest subject to the restriction is valued as if the restriction does not exist and as if the rights of the transferor are determined under the State law that would apply but for the limitation.

(d) *Examples.* The following examples illustrate the provisions of this section.

Example 1. D owns a 76 percent interest and each of D's children, A and B, owns a 12 percent interest in general partnership X. The partnership agreement requires the consent of all the partners to liquidate the partnership. Under the State law that would apply in the absence of the restriction in the partnership agreement, the consent of partners owning 70 percent of the total partnership interests would be required to liquidate X. On D's death, D's partnership interest passes to D's child, C. The requirement that all the partners consent to liquidation is an applicable restriction. Because A, B and C (all members of D's family), acting together after the transfer, can remove the restriction on liquidation, D's interest is valued without regard to the restriction; *i.e.,* as though D's interest is sufficient to liquidate the partnership.

Example 2. D owns all the preferred stock in corporation X. The preferred stock carries a right to liquidate X that cannot be exercised until 1999. D's children, A and B, own all the common stock of X. The common stock is the only voting stock. In 1994, D transfers the preferred stock to D's child. The restriction on D's right to liquidate is an applicable restriction that is disregarded. Therefore, the preferred stock is valued as though the right to liquidate were presently exercisable.

Example 3. D owns 60 percent of the stock of corporation X. The corporate by-laws provide that the corporation cannot be liquidated for 10 years after which time liquidation requires approval by 60 percent of the voting interests. In the absence of the

provision in the by-laws, State law would require approval by 80 percent of the voting interests to liquidate X. D transfers the stock to a trust for the benefit of D's child, A, during the 10-year period. The 10-year restriction is an applicable restriction and is disregarded. Therefore, the value of the stock is determined as if the transferred block could currently liquidate X.

Example 4. D and D's children, A and B, are partners in limited partnership Y. Each has a 3.33 percent general partnership interest and a 30 percent limited partnership interest. Any general partner has the right to liquidate the partnership at any time. As part of a loan agreement with a lender who is related to D, each of the partners agreed that the partnership would not be liquidated without the lender's consent while any portion of the loan remains outstanding. During the term of the loan agreement, D transfers one-half of both D's partnership interests to each of A and B. Because the lender is a related party, the requirement that the lender consent to liquidation is an applicable restriction and the transfers of D's interests are valued as if such consent were not required.

Example 5. D owns all the preferred and common stock in corporation X. The preferred stock carries a right to liquidate X that cannot be exercised until 1999. In 1995, D transfers the common stock to D's child in a transfer that is subject to section 2701. The restriction on D's right to liquidate is an applicable restriction that is disregarded in determining the amount of the gift under section 2701.

§ 25.2704-3 Interaction of sections 2701(a) and 2704(a).

If sections 2701(a) and 2704(a) would apply simultaneously to the same transfer, the application of chapter 14 to such transfer is determined under the section that provides the greater increase in taxable transfers.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

(FRL-3988-7)

National Emission Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Elemental Phosphorus Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: In this notice, EPA is proposing to modify 40 CFR part 61, subpart K, the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Radionuclide Emissions from Elemental Phosphorus Plants (54 FR 51699 December 15, 1989). Under the proposal, § 61.122 would be amended to permit elemental phosphorus plants an alternative means of demonstrating compliance with the standard. Under the existing standard, an elemental phosphorus plant must insure that total emissions of polonium-210 from that facility do not exceed 2 curies per year. Under the proposed amendment, an elemental phosphorus plant will be in compliance if it limits polonium-210 emissions to 2 curies per year. However, in the alternative, the plant may demonstrate compliance by: (1) Installing a John Zink Tandem Nozzle Hydrosonic Fixed Throat Venturi Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. EPA decided to propose this modified standard for elemental phosphorus plants as part of settlement discussions between EPA and the FMC Corporation ("FMC") in *FMC Corporation* v. *U.S. Environmental Protection Agency,* Docket No. 90-1057 in the D.C. Circuit Court of Appeals, a judicial action by FMC challenging subpart K as it was originally promulgated.

DATES: Any comments concerning this proposed rule must be received by EPA at the address given below no later than October 11, 1991. In the event that a hearing is requested concerning this proposed rule, additional comments may be submitted concerning any matter discussed at the hearing and must be received by EPA at the address given below no later than October 17, 1991.

If EPA has received an oral or written request for a hearing by September 10, 1991, a hearing concerning this proposed rule will be held at 9 a.m. on September 17, 1991 in Pocatello, Idaho.

ADDRESSES: Comments must be submitted (in triplicate if possible) to: Central Docket (A-130), Environmental Protection Agency, Attention: Docket No. A-91-51, Washington, DC 20460. The docket for this action may be inspected between the hours of 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for document copying.

Written requests for a hearing may be submitted to: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460. Because any request for a hearing should have been received by EPA on or before September 10, 1991, the hearing should have been requested by transmitting a written request by fax (electronic facsimile) to Craig Conklin at (703) 308-8763, or by calling Craig Conklin at (703) 308-8755. A separate notice of the date and city for the hearing was published in the **Federal Register** on August 23, 1991.

If requested, the hearing will be held on the lower campus of Idaho State University in Pocatello, Idaho. It will be held in the Student Union Building theater located at 8th Avenue and East Humbolt Street beginning at 9 a.m. on September 17, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8755

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard Setting Under Section 112

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants (NESHAPs) to control radionuclide emissions to the ambient air from a number of different source categories, 40 CFR part 61. This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). The NESHAPS were promulgated pursuant to a voluntary remand granted by the U.S. Court of Appeals for the D.C. Circuit. The purpose of the remand was to enable EPA to implement the Court's earlier ruling in *NRDC, Inc.* v. *EPA,* 824 F.2d 1146 (D.C. Cir. 1987) ("the Vinyl Chloride decision"), which articulated specific legal requirements for promulgation of standards under section 112.

The Vinyl Chloride decision set forth a decision-making framework for promulgation of NESHAPs in which the Administrator makes a determination under section 112 in two steps: First, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered.

After proposing and receiving comments on several options by which

to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989). Under this approach, the Administrator established a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information, including economic costs and technical feasibility, along with all of the health-related factors previously used to determine the "safe" level, to set a standard which protects public health with an ample margin of safety.

B. The NESHAP for Elemental Phosphorus Plants

One of the source categories governed by 40 CFR part 61 is Elemental Phosphorus Plants. Subpart K of 40 CFR part 61 ("subpart K") establishes a 2 curies/year standard for emissions of polonium-210 from such facilities.

Polonium-210 and lead-210 are vaporous waste byproducts that result from the high temperature calcination of phosphate ore at elemental phosphorus plants. Because phosphate ore contains relatively high concentrations of uranium and radium, it also contains significant quantities of polonium-210 and lead-210. The high calcining temperature (1,300 °C) volatilizes the lead-210 and polonium-210 from the phosphate rock, resulting in the release of much greater quantities of these radionuclides than of the uranium, thorium, and radium radionuclides. Analyses of doses and risks from these emissions show that emissions of polonium-210 and lead-210 are the major contributors to the risk from radionuclide emissions from elemental phosphorus plants.

During the rulemaking that resulted in promulgation of the current subpart K, EPA performed a plant-by-plant risk assessment of polonium-210 releases from all eight U.S. elemental phosphorus plants. In that analysis, EPA estimated that the lifetime fatal cancer risk to the maximally exposed individual associated with radionuclide emissions from elemental phosphorus plants was approximately 5.7×10^{-4}, and that this risk could be reduced to an acceptable level by controlling emissions of polonium-210. Because a reduction in the polonium-210 emissions also results in a reduction in lead-210 emissions, it was not necessary to establish an emission limit for lead-210.

In applying the Vinyl Chloride decision methodology, EPA selected an acceptable level for emissions of polonium-210 of 2 curies per year, which corresponds to an estimated maximum lifetime risk for any individual of 1×10^{-4}. When it promulgated NESHAPs for radionuclide emissions from Department of Energy facilities, Nuclear Regulatory Commission licensees, underground uranium mines, and inactive uranium mill tailings piles, EPA noted the numerous uncertainties in establishing risk assessment parameters, modelling actual emissions, and estimating the numbers of people exposed and concluded that an estimated maximum risk as high as 3×10^{-4} could be regarded as essentially equivalent to an estimated maximum risk of 1×10^{-4} for purposes of selecting an "acceptable" emission level. In selecting an "acceptable" emission level for polonium-210 emissions from elemental phosphorus plants, EPA concluded that the uncontrolled baseline emissions were higher than the level which could be deemed acceptable, but EPA did not consider whether specific alternative emission levels between baseline levels and 2 curies might be deemed acceptable. EPA did not consider the acceptability of emission levels higher than 2 curies/year because it appeared from the available information that a level of 2 curies/year or less could be readily achieved at all facilities by proper installation and operation of available control technology. If the baseline levels were not acceptable, then EPA believed that the next logical choice for an option to be considered was one that was achievable with existing technology and which presented risks about a factor of three below the baseline. As EPA noted when it originally proposed subpart K, *see* 54 FR 9612, 9625, March 7, 1989, although risks associated radionuclide emissions exist on a continuum, the Agency selects an acceptable level by considering specific discrete alternative emission levels. The fact that EPA must choose a specific emission level as acceptable does not necessarily mean that alternatives that were not specifically considered and that present risks slightly higher than the chosen level are inherently unacceptable.

After selecting an acceptable level of 2 curies/year, EPA then determined that significantly reducing emissions of polonium-210 below a curies/year would be very costly and would result in very small incremental risk reductions. For these reasons, EPA concluded that a standard of 2 curies/year would also protect public health with an ample margin of safety.

C. Objections to Subpart K by FMC Corporation

FMC Corporation operates an elemental phosphorus plant in Pocatello, Idaho, which is the single largest source affected by subpart K. Following promulgation of subpart K, FMC Corporation petitioned for judicial review of the standard pursuant to Clean Air Act section 307(b), *FMC Corporation* v. *U.S. Environmental Protection Agency*, Docket No. 90-1057, United States Court of Appeals for the D.C. Circuit. The Circuit Court subsequently consolidated the FMC petition with ten other petitions for review of various radionuclide NESHAPs. These consolidated cases are presently being held in abeyance pending further actions by EPA.

Following publication of the radionuclide NESHAPs on December 15, 1989, EPA received over 25 separate petitions requesting that EPA reconsider some or all of the individual standards incorporated in 40 CFR part 61 pursuant to Clean Air Act section 307(d)(7)(B). In one of these petitions, FMC requested that EPA reconsider the standard for Elemental Phosphorus Plants set forth in subpart K. In its petition, FMC argued that: (1) The Notice of Proposed Rulemaking did not provide adequate notice of the provisions in the final rule, or of the EPA methodology and its application; (2) EPA failed to properly consider intermediate emission levels and the associated acceptable risk levels; (3) EPA based the final rule upon material omitted from the administrative record; (4) new epidemiologic information calls into question EPA estimates of the health risk associated with radionuclide emissions from FMC's Pocatello, Idaho facility; and (5) the rule may not have been validly promulgated because Assistant Administrator William Rosenberg did not have the authority to sign the rule.

At the time FMC submitted its petition for reconsideration, EPA was not persuaded that any of the legal or substantive arguments advanced by FMC provided any basis for reconsideration of the rule. Although EPA acknowledged that it had not considered intermediate emission levels between the baseline emission levels and 2 curies/year in selecting an acceptable risk level, it was not clear why this alleged deficiency in the Agency's analytic process would have any effect on the final standard. EPA

assumed at that time that all affected facilities, including the FMC plant in Pocatello, Idaho, could achieve compliance with the 2 curies/year standard by installation of a specific scrubber system manufactured by the John Zink Company, which had proven highly effective in reducing polonium-210 emissions at an elemental phosphorus plant operated by another company. Since EPA knew of no other technology that would achieve a level of emissions in between the baseline and 2 curies/year, EPA did not believe it was reasonable to consider an intermediate emission level as an option for the acceptable risk decision. Subsequently, on April 23, 1990, FMC submitted the results of pilot testing it had performed with the John Zink scrubber system. Based on the results of this pilot testing and on the size and operational characteristics of its Pocatello, Idaho facility, FMC argued that installation of this system at the Pocatello plant might not be sufficient to enable FMC to meet the 2 curies/year standard established by subpart K. These concerns regarding the capabilities of the available scrubber technology made FMC's prior argument that EPA should have considered intermediate emission levels in selecting an acceptable level seem more consequential.

After evaluating the results of the pilot testing of the John Zink scrubber system by FMC, EPA concluded that the pilot test results were equivocal. While it is quite probable that the 2 curies/year standard can be achieved by FMC at its Pocatello, Idaho facility following installation of the scrubber system, it is possible that the resultant reductions in emissions might not be sufficient to achieve this result. Given this uncertainty, the reluctance of FMC to make the large capital investments necessary to install and operate the scrubber system was understandable. After it became apparent to EPA that FMC would be willing to install the John Zink scrubber system at its Pocatello, Idaho facility if it could have reasonable assurance that it could thereby achieve compliance with Subpart K, EPA decided to enter into settlement discussions with FMC.

D. Settlement Discussions Between EPA and FMC Corporation

Throughout the settlement discussions between FMC and EPA, the Agency had two principal policy objectives: (1) To have FMC install the John Zink scrubber system, and to achieve the resulting reductions in the risks to human health associated with exposure to polonium-210, as rapidly as possible; and (2) to resolve in a definitive manner all pending disputes between FMC and EPA concerning subpart K. It quickly became apparent that FMC would be willing to forego further litigation concerning subpart K if FMC could be assured that installation and operation of such a scrubber system would result in compliance with subpart K. At that point, the principal task for the negotiators was to establish a set of specifications for installation and operation of the scrubber system which would assure EPA that polonium-210 emissions were being reduced to a level sufficient to provide an ample margin of safety, while still affording FMC engineers an adequate range of operational flexibility.

EPA and FMC ultimately reached agreement on the detailed specifications for the scrubber system which are set forth in today's proposed amendment of subpart K. If an elemental phosphorus plant installs and operates a John Zink scrubber system conforming to these criteria, it will be deemed to be in compliance with subpart K, even if it does not thereby achieve compliance with the underlying standard of 2 curies/year. The standard provides for some operational flexibility, but a plant must strictly adhere to the operating conditions unless it can otherwise reduce emissions to less than 2 curies/year. To insure that the standard does not unnecessarily constrain affected facilities, alternative operating conditions which can be shown to achieve an overall removal efficiency for polonium-210 equal to or greater than the operating conditions specified by the standard can be used with the prior approval of the EPA Administrator.

Once a tentative settlement agreement was reached between EPA and FMC, EPA published a notice of settlement as required by the section 113(g) of the 1990 Clean Air Act Amendments. (56 FR 32572, July 17, 1991). A status report and notice of the proposed settlement agreement was also filed and served on all parties in the pending Court of Appeals case, *FMC Corporation* v. *EPA*, Docket No. 90–1057 (D.C. Cir.), on July 19, 1991. The settlement agreement between EPA and FMC was finally approved by EPA on August 21, 1991.

Under the settlement agreement between FMC and EPA, EPA is today granting FMC's pending petition for reconsideration for the purpose of proposing this rule to modify subpart K. The proposed modifications of subpart K are set forth below. Pursuant to the provisions of the settlement agreement, FMC and EPA will now file a joint motion with the DC Circuit Court to sever FMC's petition for review from the remaining consolidated cases and to hold the FMC petition in abeyance pending conclusion of this rulemaking. FMC also will withdraw all intervention in the remaining consolidated cases and will not subsequently seek intervention in those cases.

If EPA adopts the proposed modifications of Subpart K set forth in this proposed rule as a final rule, or EPA adopts a final rule which contains provisions which are substantially similar to the proposed modifications, FMC has agreed that it will seek dismissal with prejudice of its pending petition for review of subpart K. In that event, FMC has further agreed that it will waive any right it would otherwise have to seek judicial review of the newly promulgated final rule.

II. Reconsideration of Standard

A. Analytic Methodology

In reconsidering the currently effective subpart K, EPA has utilized the analytic framework required by the Vinyl Chloride decision and has applied the policy concerning acceptable risk established by the Administrator's benzene decision. The Agency's decision to reconsider the emission standard in Subpart K should not be construed as an indication that EPA is revisiting or reconsidering the benzene policy, the level of risk determined in that policy to be presumptively safe, or any of the health based regulations issued under that policy.

B. Decision on Acceptable Risk

As stated in the original rule promulgating Subpart K, the maximum individual lifetime risk to any individual from baseline emissions is 5.7×10^{-4}. This is clearly higher than the presumptively safe level established by the Administrator's benzene decision. The estimated annual incidence from baseline emissions is 0.072 fatal cancers per year. There are an estimated 5000 people that are exposed to risk levels greater than 1×10^{-4}, and an estimated 365,000 people that are exposed to risk levels greater than 1×10^{-6}.

After examining these factors in the previous rulemaking, the Administrator determined that the risk level represented by the baseline was unacceptable. EPA then estimated that a reduction in emissions to 2 curies/year Po-210 would reduce the incidence to 0.024, or 1 case every 40 years and expose no one to a risk level greater than 1×10^{-4}. EPA did not consider emission levels between the assumed baseline of 10 curies/year and 2 curies/

year in selecting an acceptable or "safe" level. Upon reconsideration, the Agency has now performed risk estimates for five levels of emissions between 2 and 10 curies/year. These estimates are presented in Table 1, along with the risk estimates associated with a baseline emission of 10 curies/year and the current emission limit of 2 curies/year. Based upon these risk estimates and the uncertainties in establishing parameters for risk assessment and in modelling actual emissions and exposures referred to in the prior rulemaking, the Agency has concluded that an annual emission level of 4.5 Ci/y represents an acceptable level of risk. Therefore, the Agency is proposing an acceptable emission level of 4.5 curies/year of polonium-210.

C. Decision on Ample Margin of Safety

In addition to considering the health-related factors discussed above, EPA has also examined the cost and technological feasability of the various types of emission control technology available to lower polonium-210 emissions from elemental phosphorus plants, as well as the degree of certainty that the available technology will succeed in reducing polonium-210 emissions to 2 curies/year at all affected facilities, in selecting an emission level which will provide an ample margin of safety to protect public health.

TABLE 1.—ACCEPTABLE LEVEL OF RISK DECISION

	Emissions (Ci/y)						
	(2)	(3)	(4)	(4.5)	(5)	(6)	(10)
Maximum individual risk (individual)	1×10^{-4}	1.8×10^{-4}	2.3×10^{-4}	2.6×10^{-4}	2.9×10^{-4}	3.5×10^{-4}	5.8×10^{-4}
Incidence within 80 km (deaths/y)	0.024	0.037	0.044	0.048	0.052	0.06	0.091
Risk individual:							
E-2 to E-1	0	0	0	0	0	0	0
E-3 to E-2	0	0	0	0	0	0	0
E-4 to E-3	0	384	700	709	1,950	2,160	8,100
E-5 to E-4	27,000	39,000	54,000	55,000	75,000	76,000	122,000
E-6 to E-5	390,000	380,000	370,000	370,000	350,000	350,000	290,000
Less E-6	1.5M	1.4M	1.4M	1.4M	1.4M	1.4M	1.4M

Other Health Impacts: Non-fatal cancers number no more than 5% of deaths.

EPA accepts the engineering judgment by FMC that a scrubber system installed and operated as specified in this proposed rule presently represents the most practicable technology capable of reducing the polonium-210 emissions at FMC's Pocatello, Idaho elemental phosphorus plant. EPA has also concluded that proper installation and operation of one of the available emission control technologies will be sufficient to reduce emissions to below 2 curies/year at all affected facilities other than the FMC Pocatello, Idaho plant, and that it is quite probable that an emission level below 2 curies/year can be achieved at the FMC Pocatello facility as well. However, even if FMC is unable to reduce polonium-210 emissions to 2 curies/year by installing and operating the specified scrubber system in the specified manner, EPA has concluded that adherence to the specified conditions will reduce polonium-210 emissions sufficiently to provide an ample margin of safety to protect public health, as required by Section 112 of the Clean Air Act.

Based on this determination concerning ample margin of safety, EPA is proposing to amend the emission standard in subpart K to permit each affected facility to demonstrate compliance either by limiting total polonium-210 emissions to no more than 2 curies per year, or by: (1) Installing a John Zink Tandem Nozzle Hydrosonic Fixed Throat Venturi Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. This choice of compliance mechanisms will be available to all affected facilities. However, EPA anticipates that facilities other than the FMC Pocatello, Idaho plant will likely enjoy greater operational flexibility simply by meeting the 2 curies/year limitation.

III. Proposal to Amend Subpart K

A. Description of Proposal

In accordance with the above discussion, EPA proposes to amend § 61.122 of 40 CFR part 61, subpart K, to permit elemental phosphorus plants an alternative means of demonstrating compliance. As under the present standard, compliance may be demonstrated by limiting total polonium-210 emissions to no more than 2 curies/year. In the alternative, compliance may be conclusively shown by: (1) Installing a John Zink Tandem Nozzle Hydrosonic Fixed Throat Venturi Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) ensuring total emissions of polonium-210 from the plant do not exceed 4.5 curies per year. Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in (1), (2), and (3) above (and that ensure that total emissions of polonium-210 from the plant do not exceed 4.5 curies per year), may be used with prior approval of the Administrator. Facilities wishing to utilize alternative operating conditions will have to apply for such approval in writing, and the Administrator will act upon such requests within 30 days after receipt of a complete and technically sufficient application. To ensure that the operating conditions specified by the revised standard can be enforced and verified and to enhance the enforceability of the numerical limits in the standard, EPA is also proposing to amend § 61.126 to require the continuous measurement of system pressure drop when scrubbers are used, and primary and secondary current and voltage in each electric field when an electrostatic precipitator is used.

Although the alternative mechanism for demonstrating compliance with the standard which is incorporated in this proposed rule is legally available to all

elemental phosphorus plants, EPA has concluded that all of the affected facilities except for the FMC plant in Pocatello, Idaho will achieve greater operational flexibility by electing to meet the underlying 2 curies/year limitation. Since the only practical effect of this proposal will be on FMC's Pocatello facility and FMC is already installing the John Zink system at that facility, EPA does not believe that the proposed rule will provide an inappropriate competitive advantage to the John Zink system. If a large new elemental phosphorus plant were to be constructed in the future or an existing plant were to be modified or expanded so as to raise this issue, EPA would then be prepared to consider any alternative emission control technology that could be shown to offer equivalent or improved performance.

The Agency seeks public comment on all aspects of this proposal.

B. Legal Authority

At the outset, it should be noted that section 112(q)(2) of the 1990 Clean Air Act Amendments provides that section 112, as in effect prior to the 1990 Amendments, continues to govern the promulgation of any NESHAP for elemental phosphorus plants. The procedures to be utilized to modify or revise a NESHAP under the old section 112 are the same as the procedures used to promulgate the NESHAP in the first place. (Clean Air Act Sections cited in the balance of this discussion are the sections in effect prior to enactment of the 1990 Amendments.)

The revised standard set forth in this proposed rule affords facilities governed by the standard a choice between: (1) A simple quantitative emission limitation of 2 curies/year of polonium-210, and (2) an alternative quantitative emission limitation of 4.5 curies/year of polonium-210 which is supplemented by detailed and mandatory operation and maintenance requirements intended to provide additional emission reductions. On its face, section 112 appears to establish a dichotomy between "emission standards" promulgated under section 112(b) and "design, equipment, work practice, and operational standards" promulgated under section 112(e). Since any standard promulgated under section 112(e) is "treated as an emission standard" under section 112(e)(5), it appears that this dichotomy may have little ultimate practical significance. Nonetheless, the Agency believes it is necessary to consider which section(s) provide the legal authority to promulgate the proposed standard.

In those instances where a standard consists exclusively of a quantitative emission limitation, the authority to promulgate the standard is clearly provided by section 112(b). Conversely, when a standard consists exclusively of design, equipment, work practice, and/or operational requirements, such a standard must be promulgated under the authority provided by section 112(e). In the case where a standard is partially quantitative, but is supplemented by operational or work practice requirements, as in this instance, EPA believes that the better interpretation of section 112 is to construe such a "hybrid" standard as an emission standard governed by section 112(b). Nothing in section 112 compels a different conclusion. Moreover, section 302(k) expressly defines an emission standard as "including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." Finally, since the analytic framework established by the Vinyl Chloride decision authorizes EPA to determine what constitutes an "ample margin of safety" in part on the basis of technological feasibility, it would not be logical for EPA to be precluded from writing an emission standard which reflects the hybrid character of the standard setting process.

In the alternative, the proposed standard here can be viewed as an emission standard supplemented by a work practice standard promulgated under section 112(e). The Administrator may promulgate a work practice standard under section 112(e) to the extent he determines that "it is not feasible to prescribe or enforce an emission standard."

Section 112(e)(2) defines the phrase "not feasible to prescribe or enforce an emission standard" to include any situation where "the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." EPA believes that this definition clearly encompasses the factual circumstances here. Of course, the measurement methodology is presently adequate to enable EPA to "enforce" a quantitative emission limit. However, given the uncertainties for the FMC facility regarding the quantitative emission reductions which can be achieved with the available technology, as described above, EPA has determined that it is not practicable to apply measurement methodology to "prescribe" a quantitative emission limit based on the available technology.

To the extent that the work practice and operational provisions of the proposed standard are construed as promulgated under the authority of section 112(e)(1), section 112(e)(4) requires EPA to repromulgate these provisions as an emission standard whenever it becomes feasible to do so. After FMC has installed the scrubber technology specified by the proposed rule, and has operated that technology in a variety of circumstances over a period of a few (1–3) years, EPA expects that it will be practicable to prescribe a quantitative emission limit based on the capabilities of the technology.

IV. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, if promulgated, would tend to ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written

comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A-91-51.

List of Subjects for 40 CFR Part 61

Air pollution control, Radionuclides, Reporting and recordkeeping requirements.

Dated: September 6, 1991.

William K. Reilly,

Administrator.

PART 61—[AMENDED]

It is proposed to amend part 61 of chapter I of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

2. Subpart K is amended by revising § 61.122 to read as follows:

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year; except that compliance with this standard may be conclusively shown if the elemental phosphorus plant:

(a) Installs a John Zink Tandem Nozzle Hydrosonic Fixed Throat Venturi Scrubber System including four scrubber units,

(b) All four scrubber units are operated continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale,

(c) The system is used to scrub emissions from all calciners and/or nodulizing kilns at the plant, and

(d) Total emissions of polonium-210 from the plant do not exceed 4.5 curies per year.

Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in paragraphs (a), (b), and (c) of this section, may be used with prior approval of the Administrator. A facility shall apply for such approval in writing, and the Administrator shall act upon the request within 30 days after receipt of a complete and technically sufficient application.

3. Subpart K is amended by revising § 61.126 to read as follows:

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the pressure drop of the gas stream across each scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the primary and secondary current and the voltage in each electric field. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

[FR Doc. 91-21922 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 180 and 186

[PP 1E3943 and FAP 1H5605/P524; FRL-3925-1]

RIN 2070-AC18

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricutural commodity fresh tomatoes and the food commodity tomato pomace. The proposed regulations to establish maximum permissible levels for residues of the insecticide were requested pursuant to petitions submitted by Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories.

DATES: Comments, identified by the document control number [PP 1E3943 and FAP 1H5605/P524], must be received on or before October 11, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, 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. 1128 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 (H-7505C), Office of Pesticide Programs, 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: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, New Jersey 08887, submitted pesticide petition (PP) 1E3943 proposing to establish a tolerance under section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) for the insecticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a}] in or on the raw agricultural commodity tomatoes imported from Mexico at 0.01 part per million (ppm) and feed additive petition (FAP) 1H5605 proposing to amend 40 CFR 186.300 by establishing a feed additive regulation under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) for avermectin B_1 and its delta-8,9-isomer in or on tomato pomace at 0.07 ppm.

The toxicological data considered in support of these proposed tolerances were discussed in a final rule document (PP 8F3592 and FAP 8H5550/R1032)

published in the **Federal Register** of August 2, 1989 (54 FR 31838). Tolerances for residues of this insecticide on various raw agricutural commodities have been previously established as follows: cottonseed at .005 part per million (ppm), citrus whole fruit at 0.02 ppm, cattle meat and meat byproducts and milk at 0.02 ppm, citrus oil and dried citrus pulp at 0.10 ppm.

The Agency used the two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was employed to account for (1) inter- and intra-species differences, (2) pup death observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse teratology study with the isomer (NOEL = 0.06 mg/kg). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction study and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight (bwt)/day. Residue estimates used in exposure calculations were based upon processing studies, field trial data, and animal feeding studies. The current estimated dietary exposure for the overall U.S. population resulting from published and pending uses is 0.000105 mg/kg bwt/day, which represents 26 percent of the RfD. The current action will increase exposure to 0.000113 mg/kg bwt/day or 28 percent of the RfD. In the subgroup population exposed to the highest risk, nonnursing infants less than 1 year old, the current action would increase exposure to 0.000386 mg/kg bwt/day or 96 percent of the RfD. Generally speaking, the Agency has no cause for concern if anticipated residue contribution for all published and proposed tolerances is less than the RfD.

Because of developmental effects seen in animal studies, the Agency used the 1-year mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9-isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the average and highest exposures for women of child-bearing age. The MOE for the average exposure was calculated to be 732, for the individual most highly exposed, is 167. Generally speaking, MOE's greater than 100 for developmental toxicity are acceptable to the Agency.

The metabolism of the chemical in plants and livestock for this use is adequately understood. Any secondary residues occurring in meat, meat byproducts, or milk will be covered by existing tolerances for those commodities. There is no reasonable expectation of finite residues in poultry and swine commodities; therefore, no tolerances are necessary at this time. Adequate analytical methodology (HPLC—Fluorescence Methods) is available for enforcement. 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, Field Operations Division (H-7506C), 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 Hwy., Arlington, VA 22202 (703)-557-4432.

The tolerance and food additive regulation established by amending 40 CFR parts 180 and 186 will be adequate to cover residues in or on tomatoes and tomato pomace. There are currently no actions pending against the registration of this product. Based on the above information and data considered, the Agency concludes that the tolerance for avermectin B_1 and its delta-8,9-isomer on tomatoes will protect the public health and that the use of avermectin B_1 and its delta-8,9-isomer in tomato pomace under the conditions specified in the proposed regulation will be safe.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E3943 and FAP 1H5605/P524]. 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 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 29, 1991.

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. By revising § 180.449, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-1(1-methylethyl) avermectin A_{1a}] in or on the following commodities:

Commodity	Parts per million	Expiration date
Citrus, whole fruit	0.02	Mar. 31, 1993
Cattle, meat	0.02	Do.
Cattle, mbyp	0.02	Do.
Cottonseed	0.005	Do.
Milk	0.005	Do.

(b) A tolerance is established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectin containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a}] in or on the following commodity:

Commodity	Parts per million
Tomatoes, fresh	0.01

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.300, to read as follows:

§ 186.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire March 31, 1993, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodity:

Commodity	Part per million	Expiration date
Dried citrus pulp	0.10	Mar. 31, 1993.

(b) A tolerance is established for the combined residues of the insecticide avermectin B_1 and its delta 8,9-isomer [a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] in or on the following commodity:

Commodity	Parts per million
Tomato pomace	0.07

[FR Doc. 91-21639 Filed 9-10-91; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 7

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 296

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 229

Protection of Archaeological Resources; Uniform Regulations

AGENCY: Departments of the Interior and Defense; Forest Service, USDA; and Tennessee Valley Authority.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the sections in the final uniform regulations to implement recent amendments to the Archaeological Resources Protection Act of 1979 ("Act"). Principally, these changes address the lower threshold for felony violations of the Act, public awareness programs, archaeological surveys and schedules, the Secretary of the Interior's report to Congress about Federal archaeology, and improved guidance to Federal land managers about treatments of human remains and directly associated objects from archaeological sites.

DATES: Written comments will be accepted until December 10, 1991.

ADDRESSES: Comments may be mailed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, P.O. Box 37127, room 4318, 1100 L St. NW., Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon, National Park Service, Department of the Interior, Washington, DC, 202-343-4101; Lars Hanslin, Office of the Solicitor, Department of the Interior, Washington, DC 202-343-7957; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, DC, 202-382-9425; Christina Ramsey, Office of the Assistant Secretary for Acquisition and Logistics, Department of Defense, Washington, DC, 202-695-7820; or Maxwell D. Ramsey, Tennessee Valley Authority, Norris, Tennessee, 615-632-1585.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would amend the uniform regulations to implement changes mandated by 1988 amendments to the Archaeological Resources Protection Act of 1979 ("Act"; Pub. L. 96-95, as amended by Pub. L. 100-555 and Pub. L. 100-588; 93 Stat. 721, 102 Stat 2778, 102 Stat. 2983; 16 U.S.C. 470aa-mm). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The first purpose of the Act is "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands" (sec. 2(b)). On November 3, 1988, amendments were enacted which have the purpose "to improve the protection and management of archeological resources" (Pub. L. 100-555) and "to strengthen the enforcement provisions of that Act" (Pub. L. 100-588).

Section 10(a) of the Act requires the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, to promulgate uniform regulations as may be appropriate to carry out the purposes of the Act. The uniform regulations are to be promulgated after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). The uniform regulations originally were published in 48 FR 1016 on January 6, 1984. The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority now find it appropriate to amend the uniform regulations in five areas.

In addition to publication of regulations to implement the 1988 amendments to the Act, the proposed rule also is intended to provide improved guidance to Federal land managers about treatments for human remains and directly associated material remains from archaeological sites. It is timely to provide this guidance because of the concerns which have been expressed by Native Americans and others, and the need to clarify to Federal land managers the alternatives for resolving concerns which are already available to them. The Secretary of the Interior has stated that there is a need to be responsive to Native American concerns and also to take into account

the scientific, educational, and heritage values of such remains and objects.

The National Park Service has engaged in extensive discussions with a wide range of parties interested in treatments of human remains and directly associated material remains. This proposed rule facilitates the development of more widely accepted policy and guidance on this topic and does not foreclose options in the future development of more comprehensive policy and guidance documents currently underway. Additional guidance to Federal land managers in these amendments to the uniform regulations is one of the means to ensure more appropriate treatment of these remains and objects. One of the objectives of this section is to make it clear that the return to appropriate individuals and groups of human remains and associated objects encountered in an archaeological context is permissible under the existing statute.

The regulatory process for providing appropriate treatments of human remains and associated objects is a fundamental step, and one which can be taken immediately to address some of the concerns identified by Federal land managers, Indian tribes, anthropologists, archeologists, curators, and other interested groups. In addition, the Secretary of the Interior has directed the National Park Service to develop a new Department of the Interior policy statement and to revise an existing departmental guideline to ensure more sensitive treatment of human remains and funerary objects encountered in an archeological context on lands administered by Interior Department bureaus or contained in bureau collections. The revised documents also may serve as models for other public agencies and private organizations.

The five areas amended by this proposed rulemaking include: (1) The lower threshold provided for felony violations of the Act, (2) public awareness programs, (3) archaeological surveys and schedules, (4) the Secretary of the Interior's report, and (5) improved guidance to Federal land managers about treatments for human remains and directly associated material remains. These topics are covered by adding paragraphs to §§ .3, .4, .7, and .13; revising § .19; and adding new §§ .20 and .21.

(1) *Lower felony threshold.* Statutory amendments reduced the figure for distinguishing criminal penalties based upon calculations of damage to archaeological resources caused through violations of the Act. The figure was reduced from $5,000 to $500. A new paragraph in § .4 is proposed to clarify to Federal land managers the criminal penalties provided in the Act as well as incorporate the lower felony threshold in the uniform rules.

(2) *Public awareness programs.* New § .20 discusses the requirements in the Act for Federal land managers to establish programs to increase public awarness about archaeological protection. Federal land managers should incorporate these programs into other current programs where appropriate. The discussion also provides for the Secretary of the Interior to report to Congress on these programs on behalf of Federal agencies.

(3) *Archaeological surveys and schedules.* New § .21 discusses the requirements in the Act for the Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority to develop plans and schedules for surveying archaeological resources to determine their nature and extent. It also encourages other Federal land managing agencies to develop such plans and schedules. The surveys should contribute to agency planning and may be conducted to systematically cover areas where the most scientifically valuable archaeological resources are likely to exist.

(4) *The Secretary of the Interior's report.* Section .19 is proposed to be revised to enable the Secretary of the Interior to comprehensively report to Congress on behalf of Federal agencies conducting activities pursuant to the Act. This specifically addresses reporting on Federal agency public awareness programs and systems for documenting violations of the Act.

(5) *Treatments for human remains and directly associated material remains.* Improved guidance to Federal land managers on treatments for human remains and directly associated material remains is contained in paragraphs added to §§ .3, .7, and .13. The discussion provides additional procedures for notifications to Indian tribes and for developing agreements for treating human remains and directly associated material remains differently.

Finally, amendments are proposed to § .1(a) and § .3(i) to incorporate the revised legal reference to the Act.

Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that rulemaking is directed toward Federal resource management, with no economic impact on the public.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 7

Administrative practice and procedure, Historic preservation, Indian—lands, Penalties, Public lands.

36 CFR Part 296

Administrative practice and procedure, Historic preservation, Indian—lands, Penalties, Public lands.

18 CFR Part 1312

Administrative practice and procedure, Historic preservation, Indian—lands, Penalties, Public lands.

32 CFR Part 229

Administrative practice and procedure, Historic preservation, Indian—lands, Penalties, Public lands.

Amendment Proposal

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are proposing identical amendments to the uniform regulations for protection of archaeological resources and are codifying these amendments in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the amendments is set out only once at the end of this document.

Adoption of the Common Rule

The agency specific preambles adopting the text of the common rule appear below.

DEPARTMENT OF THE INTERIOR

43 CFR Part 7

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 43 CFR part 7 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (16 U.S.C. 470aa-mm)(Sec. 10(a).) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat.

3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§ 7.1 and 7.3 [Amended]

2. Sections 7.1(a), the first sentence, and 7.3(i) in 43 CFR part 7 are proposed to be revised to read as set forth at the end of this document.

§ 7.3, 7.4, 7.7, 7.13 [Amended]

3. Sections 7.3(a)(6), 7.4(c), 7.7(b)(4), and 7.13(e) in 43 CFR part 7 are proposed to be added to read as set forth at the end of this document.

4. Section 7.19 in 43 CFR part 7 is proposed to be revised to read as set forth at the end of this document.

5. Sections 7.20 and 7.21 are proposed to be added to 43 CFR part 7 to read as set forth at the end of this document.

Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 296

PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 36 CFR part 296 is revised to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (16 U.S.C. 470aa-mm)(Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§§ 296.1 and 296.3 [Amended]

2. Sections 296.1(a), the first sentence, and 296.3(i) in 43 CFR part 296 are proposed to be revised to read as set forth at the end of this document.

§§ 296.3, 296.4, 296.7 and 296.13 [Amended]

3. Sections 296.3(a)(6), 296.4(c), 296.7(b)(4), and 296.13(e) in 36 CFR part 296 are proposed to be added to read as set forth at the end of this document.

4. Section 296.19 in 43 CFR part 296 is proposed to be revised to read as set forth at the end of this document.

5. Sections 296.20 and 296.21 are proposed to be added to 36 CFR part 296 to read as set forth at the end of this document.

Dated: June 4, 1991.

George M. Leonard,

Associate Chief.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 229

PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 32 CFR part 229 is revised to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721, as amended, 102 Stat. 2778 102 Stat. 2983 (16 U.S.C. 470aa-mm)(Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§§ 229.1 and 229.3 [Amended]

2. Sections 229.1(a), the first sentence and 229.3(i) in 32 CFR part 229 are proposed to be revised to read as set forth at the end of this document.

§§ 229.3, 229.4, 229.7, and 229.13 [Amended]

3. Sections 229.3(a)(6), 229.4(c), 229.7(b)(4), and 229.13(e) in 32 CFR part 229 are proposed to be amended by adding paragraphs to read as set forth at the end of this document.

4. Section 229.19 in 32 CFR part 229 is proposed to be revised to read as set forth at the end of this document.

5. Sections 229.20 and 229.21 are proposed to be added to 32 CFR part 229 to read as set forth at the end of this document.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 18 CFR part 1312 is revised to read as follows:

Authority: Pub. L. 96-95, 93 Stat. 721, as amended, 102 Stat. 2778, 102 Stat. 2983 (16 U.S.C. 470aa-mm)(Sec. 10(a).) Related Authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

§§ 1312.1 and 1312.3 [Amended]

2. Sections 1312.1(a), the first sentence, and 1312.3(i) in 18 CFR part 1312 are proposed to be revised to read as set forth at the end of this document.

§§ 1312.3, 1312.4, 1312.7, and 1312.13 [Amended]

3. Sections 1312.3(a)(6), § 1312.4(c), § 1312.7(b)(4), and § 1312.13(e) in 18 CFR part 1312 are proposed to be added to read as set forth at the end of this document.

4. Section 1312.19 in 18 CFR part 1312 is proposed to be revised to read as set forth at the end of this document.

5. Sections 1312.20 and 1312.21 are proposed to be added to 18 CFR part 1312 to read as set forth at the end of this document.

Marvin T. Runyon,

Chairman, Tennessee Valley Authority

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

§ —.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. * * *

* * * * *

§ —.3 Definitions.

* * * * *

(a) * * *

(6) The Federal land manager may determine that particular human remains and directly associated material remains that have been excavated and/or removed from public lands are to be treated differently from other archaeological resources in accordance with § —.13(e).

* * * * *

(i) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm).

§ —.4 Prohibited acts.

* * * * *

(c) Section 6(d) of the Act establishes criminal penalties for violations of the Act and provides that any person who knowingly violates, or counsels, procures, solicits, or employs any other

person to violate any prohibition contained in section 6(a), (b), or (c) of the Act shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

§ —.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

* * * * *

(b) * * *

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification, such as discovery of human remains, need not be limited to areas identified as sites of religious or cultural importance. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager shall include a requirement in terms and conditions of permits, under § —.9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager shall notify and consult with the tribe or group as appropriate.

§ —.13 Custody of archaeological resources.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager may determine that particular human remains and directly associated material remains that have been excavated and/or removed from public lands need not be preserved and maintained in a scientific or educational institution. The Federal land manager's determination shall be made pursuant to paragraphs (e)(1) through (e)(5) of this section.

(1) The Federal land manager shall consult with official representatives of Indian tribes or groups identified or consulted with pursuant to § —.7(b) of this part and may undertake similar consultation with other appropriate interested parties, including archaeological authorities.

(2) In reaching such a determination, the Federal land manager shall consider the relationship of the Indian tribe, group, or individual with the remains; the religious or cultural importance of the remains to the Indian tribe, group, or individual; the importance of the remains as a source of information about the past; and when applicable the manner of disposition of the remains proposed by the Indian tribe, group, or individual.

(3) The Federal land manager shall document any such determination and its basis.

(4) If such a determination to give custody of remains to an Indian tribe, group, or individual is made, the manner of disposition shall be specified in a written agreement, defining appropriate terms and conditions, between the Federal land manager and the Indian tribe, group, or individual. Failure of the Indian tribe, group, or individual to comply with the terms of such agreement will result in its cancellation and return of the remains to the Federal land manager.

(5) The Federal land manager may not make such a determination regarding any remains during the time they are secured as evidence in a criminal proceeding.

§ —.19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

(b) The Secretary of the Interior shall include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under § —.20(b). Such submittal shall fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also shall include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, shall submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

§ —.20 Public Awareness Programs.

(a) Each Federal land manager shall establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.

(b) Each Federal land manager annually shall submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

§—.21 Surveys and schedules.

(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C. 470 *et seq.* Survey plans prepared under this section shall be designed to comply with the purposes of the Act regarding the protection of archaeological resources.

(b) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall prepare schedules for surveying lands under each agency's control that are likely to contain the most scientifically valuable archaeological resources pursuant to section 14(b) of the Act. Such schedules shall be developed based on objectives and information identified in survey plans described in paragraph (a) of this section and implemented systematically to cover areas where the most scientifically valuable archaeological resources are likely to exist.

(c) Guidance for the activities undertaken as part of paragraphs (a) through (b) of this section is provided by the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(d) Other Federal land managing agencies are encouraged to develop plans for surveying lands under their jurisdictions and prepare schedules for surveying to improve protection and

management of archaeological resources.

(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system shall reference a set of procedures for use by officers, employees, or agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report shall be based upon the system developed by each Federal land manager for documenting suspected violations.

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JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Chapter XXIV

Fellowship Program Requirements

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Proposed rules.

SUMMARY: These proposed regulations implement the James Madison Memorial Fellowship Act of 1986. They are intended to allow annual competitions for James Madison Fellowships to commence. The rules govern the qualifications, nominations, and applications of candidates for fellowships; the selection of fellows by the Foundation; the graduate programs fellows must pursue; the conditions attached to awards; and related requirements and expectations regarding fellowships.

DATES: Comments must be submitted in writing on or before October 11, 1991.

ADDRESSES: Send written comments to: James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653-8700.

SUPPLEMENTARY INFORMATION: Under the James Madison Memorial Fellowship Act, the James Madison Memorial Fellowship Foundation cannot begin to award fellowships unless and until $10 million is raised to support its fellowship programs or Congress provides legislative relief from this requirement. The Foundation is presently seeking legislative relief and anticipates receiving it in time to award fellowships in 1992 under these regulations proposed. Until it receives legislative relief, however, final regulations governing its fellowship programs will not become effective. Once authorization to award fellowships has been secured and final regulations become effective, the Foundation will notify interested parties through a notice in the **Federal Register**. In anticipation of securing authorization, the first fellowship competition governed by these proposed regulations will proceed.

The James Madison Memorial Fellowship Act authorizes fellowship support for graduate study by teachers of American history and social studies and by college seniors or recent college graduates who wish to become teachers of the same subject. However, in order not to exclude from consideration for James Madison Fellowships those teachers or would-be teachers whose current or future secondary school instruction, while concerning the usual subjects covered by courses in American history and social studies, may be carried on in courses entitled "government" or similar names, these proposed regulations go beyond the Act to apply to those teachers and would-be teachers who do or will offer secondary school instruction in American government.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to these proposed regulations because they will not have a significant economic impact on a substantial number of small businesses. Consequently, an Initial Regulatory Flexibility Analysis need not be performed. Section 610 of the Act provides for periodic review of rules which have or will have a significant economic impact upon a substantial number of small businesses. In accordance with this provision, comments from small entitles concerning these rules will be considered. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* in correspondence.

Sections 2400.14, 2400.21, 2400.53-54, and 2400.61-63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation will submit a copy of forms required under these sections to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 2 hours per response for an anticipated 1500 applicants.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., title 45 of the Code of Federal Regulations is amended to add a new chapter XXIV, consisting of part 2400 to read as follows:

Chapter XXIV—James Madison Memorial Fellowship Foundation

PART 2400 FELLOWSHIP PROGRAM REQUIREMENTS

Subpart A—General

2400.1 Purposes.
2400.2 Annual competition.
2400.3 Eligibility.
2400.4 Definitions.

Subpart B—Nominations and Applications

2400.10 Nominations by schools and school districts.
2400.11 Number of nominees per school and school district.
2400.12 Nominations by colleges.
2400.13 Number of nominees per college.
2400.14 Nomination and application coordinators.
2400.15 Direct applications.

Subpart C—Application Process

2400.20 Preparation of applications.
2400.21 Contents of applications.
2400.22 Application deadline.

Subpart D—Selection of Fellows

2400.30 Selection criteria.
2400.31 Selection process.

Subpart E—Graduate Study

2400.40 Institutions of graduate study.
2400.41 Degree programs.
2400.42 Approval of programs.
2400.43 Required courses of graduate study.
2400.44 Special Consideration: Junior fellows' course of study.

Subpart F—Fellowship Stipends

2400.50 Amount of stipends.
2400.51 Duration of stipends.
2400.52 Use of stipends.
2400.53 Certification for stipends.
2400.54 Payment of stipends.
2400.55 Termination of stipends.
2400.56 Repayment of stipends.

Subpart G—Special Conditions

2400.60 Other awards.
2400.61 Renewal of awards.
2400.62 Postponent of awards.
2400.63 Evidence of master's degree.

Authority: 20 U.S.C. 4501 et seq.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service high school teachers of American history, American government, and social studies and by outstanding college graduates who plan to become teachers of the same subjects; and thereby to

(2) Strengthen teaching in the nation's secondary schools about the framing and subsequent history of the United States Constitution.

(b) The Foundation may from time to time undertake other closely related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual competition to select high school teachers and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to be nominated for, apply for, and hold a James Madison Fellowship are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Full-time high school teachers of American history, American government, or social studies who:

(1) Have at least three years of prior classroom experience as secondary school teachers;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as high school teachers of American history, American government, or social studies;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school principals, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited institutions of higher education of their choice that offer master's degree programs allowing at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five years of part-time study during summers or in evening or weekend programs;

(7) Agree to attend, at the Foundation's expense, a four-week institute on the United States Constitution, if one is convened by the Foundation, normally during the summer following the commencement of their fellowships; and

(8) Sign agreements that, upon completing the education for which the fellowship is awarded, they will teach full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award.

(b) Those who aspire to become full-time secondary school teachers of American history, American government, or social studies who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time or recipients of baccalaureate degrees no more than three years prior to the commencement of a fellowship who rank or ranked in the upper third of their graduating class or hold or held equivalent academic standing at those institutions that do not maintain or announce academic rankings;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and their serious intention to enter the teaching profession as instructors of American history, American government, or social studies;

(5) Qualify for admission with graduate standing at accredited institutions of higher education of their choice that offer master's degree programs that allow at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of others forms of government;

(6) Are able to complete their proposed courses of graduate study within two years of full-time study;

(7) Agree to attend, at the Foundation's expense, a four-week institute on the United States Constitution, if one is convened by the Foundation, normally during the summer following the commencement of their fellowships; and

(8) Sign an agreement that, upon completing the education for which the fellowship is awarded, they will teach full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

Fee means a typical and usual non-refundable charge by an institution of higher education for a service, privilege, or use of property which is required for a fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree toward which the student is working, in no more time than the length of time normally taken at the institution of higher education attended by the student.

Graduate study means the courses of study beyond the baccalaureate level which lead to a master's degree.

High school means grades 9 through 12.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree no more than three years prior to the commencement of a fellowship and who seeks to become a secondary school teacher of American history, American government, or social studies for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first pre-doctoral graduate degree offered by an institution of higher education beyond the baccalaureate degree, for which a baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in an institution of higher education.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the fellow's place of registration to vote, parent's place of residence, and eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress means a junior fellow's completion of the number of courses normally expected of full-time master's degree candidates at the institution of higher education that the fellow attends, and a senior fellow's completion each year of the number of courses toward a master's degree agreed upon each year by the Foundation as constituting that fellow's part-time course of study.

Secondary school has the same meaning given that term by section 1201(d) of the Higher Education Act of 1965 (20 U.S.C. 1141(d)).

Senior means a student at the academic level recognized by the institution of higher education as being in the last year of study before receiving the baccalaureate degree.

Senior fellowship means a James Madison Fellowship granted to a high school teacher of American history, American government, or social studies for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Stipend means the amount paid to a fellow or to the educational institution that the fellow attends to cover the costs of graduate study under a fellowship.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Subpart B—Nominations and Applications

§ 2400.10 Nominations by schools and school districts.

All school districts and secondary schools in which teachers are currently employed may nominate high school teachers of American history, American government, or social studies as candidates for fellowships.

§ 2400.11 Number of nominees per school and school district.

Each independent and parochial school may nominate one high school teacher, and each school district may nominate up to three high school teachers for each annual competition.

§ 2400.12 Nominations by colleges.

All four-year colleges may nominate seniors and graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships as candidates for fellowships.

§ 2400.13 Number of nominees per college.

(a) Each college may nominate up to three seniors or graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships for each annual competition. Nominees may have legal residence in any state.

(b) If a college separately lists more than one component in the current edition of Educational Directory: Colleges and Universities, published by the United States Department of Education, each component may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 2400.14 Nomination and application coordinators.

(a) Each school, school district, and college that chooses to nominate a candidate or candidates for fellowships must provide the Foundation with the name, business address, and business telephone number of a member of its faculty or staff who will administer and coordinate the nomination process at that institution.

(b) Nomination and application coordinators, with the assistance of written materials provided by the Foundation, publicize the fellowship competitions, establish systems for determining nominees, solicit recommendations of potential nominees, determine the willingness of potential nominees to apply for fellowships, forward the names and addresses of nominees to the Foundation by a stated deadline, and counsel nominees in preparing fellowship applications.

§ 2400.15 Direct applications.

High school teachers of American history, American government, and social studies, college seniors, and those college graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships may apply directly to the Foundation for fellowships. Direct applications are administered and evaluated on the same basis as applications from nominees.

Subpart C—Application Process

§ 2400.20 Preparation of applications.

Applications, on forms mailed directly by the Foundation to nominees and those who wish to make direct application, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of applications.

Applications must include for

(a) Senior fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, or social studies;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contribution to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the courses to be taken and the prospective subject or his or her master's thesis, where applicable; that leads to a master's degree; the specific degree sought; and evidence of his or her graduate school application;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a high school teacher; and

(5) A certified college transcript.

(b) Junior fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the

college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a secondary school teacher of American history, American government, or social studies;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contribution to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the courses to be taken and the prospective subject of his or her master's thesis, where applicable, that leads to a master's degree; the specific degree sought; and evidence of his or her graduate school application;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A certified college transcript and certification of the applicant's class standing from those institutions that maintain or announce academic rankings.

§ 2400.22 Application deadline.

Applicants must submit complete applications postmarked by January 15th of each year preceding the start of the academic year for which they are applying.

Applications not submitted by this date, with all required supporting documents, will not be considered.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, or social studies at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent review committee appointed by the Foundation will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the review committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two resident applicants who meet the selection criteria in § 2400.30.

(c) The Foundation may name, from among those recommended by the review committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to commence study at the start of the following academic year.

(d) Funds permitting, the Foundation may also select, from among those recommended by the review committee, fellows at large.

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited institution of higher education in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history, political science, or government, the degree of Master of Arts in Teaching, or a related master's degree that permits a concentration in American history, American government, or social studies.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of each institution at which a Fellow is enrolled.

§ 2400.42 Approval of programs.

The Foundation must approve each fellow's program of graduate study. To be approved, the program must

(a) On a part-time or full-time basis lead to a master's degree in history, political science, or government, the degree of Master of Arts in Teaching, or a related master's degree that permits a concentration in American history, American government, or social studies;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the Constitution of the United States;

(c) Be pursued at an institution that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a fellow's successful completion of a summer institute that may be offered by the Foundation. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at an institution that encourages the fellow to enhance his or her capacities as a teacher of American history, American government, or social studies and to continue his or her career as a secondary school teacher.

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.42 must amount to at least 12 semester hours or their equivalent of study of topics directly related to the United States Constitution. More than 12 hours or their equivalent of such study is strongly encouraged.

(b) The courses that fulfill the required minimum of 12 semester hours or their equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the Federalist Papers, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of

constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled offers the option of a master's thesis in place of a course or courses, the Fellow will be strongly urged to write a thesis. In all programs in which a master's degree thesis is required or elected as an option, a Fellow must write the thesis in a subject concerning the framing, principles, or history of the United States Constitution.

§ 2400.44 Special Consideration: Junior fellows' course of study.

Applicants for junior fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history, political science, or government. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses. The Foundation will review each proposed course of study for an appropriate balance of subject matter and other courses based on the fellow's goals and background.

Subpart F—Fellowship Stipends

§ 2400.50 Amount of stipends.

Junior and senior fellowships carry a stipend of up to a maximum of $24,000 prorated over the period of fellows' graduate study.

§ 2400.51 Duration of stipends.

Stipends for junior fellowships may be payable over a period not to exceed two years of full-time graduate study, and those for senior fellowships may be payable over a period of not more than five years of part-time graduate study.

§ 2400.52 Use of stipends.

Stipends shall be used only to offset the costs of tuition, fees, books, and room and board (if any) associated with graduate study under a fellowship, although in no case shall the stipend for a junior fellowship exceed $12,000 annually. The costs allowed for a fellow's room and board will be the amount the fellow's institution reports to the Foundation as the average cost of room and board at the student's institution, given the type of housing the fellow occupies and the type of meal plan the fellow has selected. Senior fellows' room and board costs will be paid to cover the cost of room and board in instances in which a senior fellow attends a graduate institution on a residential basis which is beyond a reasonable commuting distance from the senior fellow's permanent address.

§ 2400.53 Certification for stipends.

In order to receive a fellowship stipend, a fellow must submit in writing acceptance of the terms of the fellowship, evidence of admission to an approved graduate program, and a certified statement of estimated expenses for tuition, fees, books, and room and board (if any). Junior fellows must also provide evidence of receipt of their baccalaureate degrees.

§ 2400.54 Payment of stipends.

Payment for tuition, fees, and room and board (if any) at university facilities will be remitted in care of the institution at which the fellow enrolls at the beginning of each term of enrollment. Reimbursement for books and off-campus room and board will be paid to fellows upon presentation of itemized receipts for them.

§ 2400.55 Termination of stipends.

The Foundation may suspend or terminate the payment of a stipend if a fellow fails to meet the criteria set forth in § 2400.42–2400.44 and § 2400.61, except as provided for in § 2400.62. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

§ 2400.56 Repayment of stipends.

(a) If a former fellow fails to teach American history, American government, or social studies on a full-time basis in a secondary school for at least one year for each school year for which assistance was provided under a fellowship, the former fellow shall repay all of the fellowship assistance received plus interest at the rate of 6% per annum and, if applicable, reasonable collection fees, as prescribed in section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a fellow resigns a fellowship, all fellowship funds which have not been spent or which the student may recover must be returned to the Foundation.

Subpart G—Special Conditions

§ 2400.60 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study, including stipends to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in § 2400.52 will be reduced to the extent the costs are paid from other sources.

§ 2400.61 Renewal of awards.

(a) It is the intent of the Foundation to renew junior fellowship awards annually for a period not to exceed two years, and senior fellowships for a period not to exceed five years, or until a master's degree is received, whichever comes first.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the institution at which a fellow is registered that:

(1) The fellow is not engaged in gainful employment, other than full-time teaching in the case of senior fellows, that interferes with the fellow's studies; and

(2) The fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each institution.

(c) As a condition of renewal of awards, each fellow must submit an annual report to the Foundation by July 1st. That report must indicate courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder. Fellows must also submit a final report to the Foundation following completion of their fellowships.

§ 2400.62 Postponement of awards.

Upon application to the Foundation, a fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for postponement will be required.

§ 2400.63 Evidence of master's degree.

At the conclusion of the fellowship term, each fellow must provide evidence that he or she has secured an approved master's degree as set forth in the fellow's original plan of study.

Paul A. Yost, Jr.,

President, James Madison Memorial Fellowship Foundation.

[FR Doc. 91–21580 Filed 9–10–91; 8:45 am]

BILLING CODE 6820–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 68

[CGD 90-055]

RIN 2115-AD65

Documentation of Certain Vessels for Purposes of Oil Spill Cleanup

AGENCY: Cost Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing procedures for documenting certain vessels with a limited coastwise endorsement. This rulemaking implements provisions of the Oil Pollution Act of 1990 (OPA 90) under which the United States citizenship requirements for vessel documentation are relaxed for vessels which are used to clean up and transport oil discharged into the navigable waters of the United States or the Exclusive Economic Zone. These regulations are intended to improve oil spill cleanup resources.

DATES: Comments must be received by October 28, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-055), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Ray L. Bunnell, Project Manager, Oil Pollution Act of 1990 (OPA 90) Staff, (202) 267-6778.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90-055) and the specific section of the rulemaking to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the listed address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Ray L. Bunnell, Project Manager and Pamela M. Pelcovits, Project Counsel, Oil Pollution Act of 1990 (OPA 90) Staff.

Background and Purpose

Documentation of vessels under federal law is a type of national registry which serves, in part, to establish a vessel's qualification for specific uses. Endorsements on a Certificate of Documentation, such as a recreational, fishery, or coastwise endorsement, specify how a vessel may be employed. The Coast Guard regulates the requirements for documentation and issues Certificates of Documentation and endorsements to qualified vessels. Documentation is a complex subject, covered by many statutory requirements. The following brief description explains the basis for these proposed regulations.

Under section 27 of the Merchant Marine Act, 1920, all vessels of at least 5 net tons operating in coastwise trade must be owned by U.S. citizens to be eligible for documentation. Coastwise trade is, generally speaking, the domestic transport of passengers or merchandise. In 1983, Public Law 98-89 codified the citizen ownership requirements in 46 U.S.C. 12106. In 1988, Congress enacted the Merchant Marine Act, 1920, Amendments (Pub. L. 100-329) which, in part, extended U.S. ownership requirements into vessels transporting valueless material inside the U.S. navigable waters or the Exclusive Economic Zone (EEZ). The change required vessels transporting oil recovered from the water and conducting other operations related to oil spill cleanup to be documented with a coastwise trade endorsement.

In particular, this change affected the status of vessels available to assist in and perform oil spill cleanup. In many coastal areas, oil spill response cooperatives—nonprofit entities composed of companies using the coastal waters—had been organized to train for, assist in, and carry out oil spill cleanups. Because some of these cooperatives included foreign members, they did not meet the citizenship requirements to document the vessels which they owned to carry our their work. Moreover, members who did not meet citizenship requirements could not document vessels to be turned over to the cooperatives for their use.

On August 18, 1990, Congress enacted The Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90). Section 4205 of OPA 90 amends 46 U.S.C. 12106, which contains the requirements for coastwise endorsement, to add a new paragraph (d). Under the amendment, a vessel owned by a not-for-profit oil spill response cooperative, or by members of such a cooperative but dedicated to the cooperative, may be issued a Certificate of Documentation with a coastwise endorsement if the vessel is at least 50 percent owned by an entity which meets the usual citizenship requirements established under 46 U.S.C. 12102(a). However, the use of the vessel under the endorsement is limited to training for oil spill cleanup; deployment of equipment, supplies and personnel for cleanup operations; and recovering and transporting oil discharged in a spill.

This notice of proposed rulemaking implements the OPA 90 amendment to 46 U.S.C. 12106 by setting out the procedures for special use documentation of vessels under the new citizenship requirements. The particular requirements of the regulations are discussed below.

Discussion of Regulation

Subpart 68.05 is a proposed new subpart to title 46 added to provide for the documentation and limited coastwise operation of vessels owned by not-for-profit oil spill response cooperatives and their members as required by 46 U.S.C. 12106(d). The majority of the regulations for documentation of vessels are set forth in 46 CFR part 67. The Coast Guard has decided not to include these new regulations in part 67 because they represent a very minor exception to the general pattern of documentation. While a cross reference to 46 CFR subpart 68.05 should be provided in part 67, the Coast Guard is not amending part 67 in this rulemaking because a complete revision to part 67 is being prepared at this time. The revision to part 67 will include appropriate references to

subpart 68.05. In the interim, the Coast Guard would apply the regulations in part 67 and subpart 68.05 in coordination.

Section 68.05–1 sets out the purpose and scope of this subpart, to distinguish these regulations from the other subparts in part 68 which are not directly related to 46 U.S.C. 12106(d).

Section 68.05–3 defines some terms used in this subpart. The Coast Guard is interested in comments on the definition of a not-for-profit oil spill response cooperative, since no definition is provided in OPA 90 or its legislative history. In particular, information is requested, on what determines the nonprofit status of such an entity. No definition of what constitutes "dedication" of a vessel by its owner to a not-for-profit oil spill cooperative is included in these proposed regulations, and none is provided in OPA 90. The Coast Guard is interested in whether such a definition would be useful and how to define "dedication" of a vessel.

Section 68.05–5 sets out the citizenship requirements for vessels to be documented under this subpart. It lists the citizenship requirements for different entities as established by 46 U.S.C. 12106(d). Basically, a vessel must be at least 50 percent owned by an entity which meets the minimum citizenship requirements of 46 CFR part 67 in order to qualify for documentation under subpart 68.05. The Coast Goard is interested in whether the entities listed correspond to the actual organizational structure of existing not-for-profit oil spill response cooperatives. In particular, the Coast Guard wants to know if the organizational entities set out in the section cover all the entities which are known as not-for-profit oil spill cooperatives.

Section 68.05–7 describes the U.S. build and control requirements for vessels documented under this subpart. These requirements are the same as for other vessels documented under part 67. In addition, this section meets the requirements of section 46 U.S.C. 12106(d) that a vessel which is documented under subpart 68.05 remains eligible for documentation under subpart 68.05 even if previously owned by a not-for-profit oil spill response cooperative, or its member(s), which meets the criteria of § 68.05–5.

Section 68.05–9 restricts the use of vessels documented under this subpart to oil spill cleanup activities (including training). The Coast Guard is interested in comments on its understanding that nothing in these regulations would prohibit making such vessels available to the neighboring coastal countries of Canada and Mexico, as well.

Section 68.05–11 prescribes application procedures to document a vessel under this subpart. It requires a not-for-profit oil spill response cooperative to apply for a letter of qualification prior to documenting a vessel or receiving a dedicated vessel from a member or members. Members of a not-for-profit oil spill response cooperative who own a vessel must present the letter of qualification with an application to document a vessel. Both a not-for-profit oil spill response cooperative and members who want to dedicate a vessel must each certify qualification under subpart 68.05 as part of the application process.

The Coast Guard has designed two certification documents. One is titled "Oath for Qualification of a Not-For-Profit Oil Spill Response Cooperative (46 U.S.C. 12106(d))," and the other is titled "Oath for Documentation of Vessels for Use by a Not-For-Profit Oil Spill Response Cooperative (46 U.S.C. 12106(d))." These documents are attached to this subpart as appendices A and B and must be used in making the certifications required above.

Section 68.05–13 requires a not-for-profit oil spill response cooperative or its members to notify the Commandant of a change in circumstances which terminates their qualifications under this subpart.

Regulatory Evaluation

The Coast Guard has determined that this rulemaking is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Further, the Coast Guard finds the economic impact of these proposed regulations, if adopted, to be so minimal that a Regulatory Evaluation is unnecessary.

This finding is based on the fact that the Coast Guard expects under 10 applications annually in response to these regulations. Moreover, the sole cost associated with these regulations is in the small, additional paperwork required to receive documentation to operate, on a strictly limited basis, in the restrictive coastwise trade. If the Coast Guard should receive significant comments on the costs and other impacts of these proposed regulations, it will reconsider its decision that no regulatory evaluation is necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. The definition of small entities under this act includes not-for-profit enterprises, such as the oil spill response cooperatives covered by these regulations. The impact of these regulations on not-for-profit oil spill response cooperatives and their members is intended to be beneficial by relaxing documentation standards.

Because it expects the impact of these regulations to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the regulatory Flexibility act that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the Coast Guard's information collection requirements for documentation of vessels under OMB Control Number 2115–0110.

These regulations require a not-for-profit oil spill response cooperative, or its members, to submit only additional certifications as part of the documentation process. Accordingly, the information collection requirements of these regulations are included under OMB Control Number 2115–0110. While it is expected that a small number of entities may incur a slight increase in burden hours as a result of these regulations, the Coast Guard will account for the increased burden in its periodic reports to OBM under the Paperwork Reduction Act.

Federalism

The Coast Guard has analyzed these regulations in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environmental

The Coast Guard has considered the environmental impact of this proposal and has concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. Section 2.B.2(1) of the Instruction excludes administrative actions or procedural regulations which clearly do not have any environmental impact. While these proposed regulations allow documentation, for limited purposes, of vessels used in oil spill cleanup, they are not expected to affect the numbers or availability of those vessels; and

therefore this rulemaking is appropriately included in this category. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 46 CFR Part 68

Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 46, chapter I, part 68 of the Code of Federal Regulations as follows:

PART 68—[AMENDED]

1. The authority citation for part 68 is revised to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. app. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

2. Subpart 68.05 is added to read as follows:

Subpart 68.05—Documentation of Certain Vessels for Oil Spill Cleanup

Sec.

68.05-1 Purpose and scope.
68.05-3 Definitions for purposes of this subpart.
68.05-5 Citizenship requirements for limited coastwise endorsement.
68.05-7 Vessel eligibility requirements for limited coastwise endorsement.
68.05-9 Privileges of a limited coastwise endorsement.
68.05-11 Application to document a vessel under this subpart.
68.05-13 Cessation of qualifications.

Appendix A to Subpart 68.05—Oath for Qualification of a Not-for-Profit Oil Spill Response Cooperative

Appendix B to Subpart 68.05—Oath for Documentation of Vessels for Use by a Not-for-Profit Oil Spill Response Cooperative

Subpart 68.05—Documentation of Certain Vessels for Oil Spill Cleanup

§ 68.05-1 Purpose and scope.

This subpart contains citizen ownership requirements and procedures to allow documentation of vessels which do not meet the requirements of 46 CFR part 67 for the limited purposes of training for, implementing, and supporting oil spill cleanup operations.

§ 68.05-3 Definitions for purposes of this subpart.

Certificate of Documentation means form CG-1270.

Citizen means a citizen as described in 46 CFR part 67.

Exclusive Economic Zone (EEZ) means the exclusive economic zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Not-for-profit oil spill response cooperative means a corporation, partnership, association, trust, joint venture, or other entity established under the laws of the United States, or of a state, with a nonprofit status and for the limited purposes of training for, carrying out, and supporting oil spill cleanup operations.

§ 65.05-5 Citizenship requirements for limited coastwise endorsement.

(a) Notwithstanding the citizenship requirements set out in 46 CFR part 67, a vessel owned by a not-for-profit oil spill response cooperative or by a member or members of a not-for-profit oil spill response cooperative may be issued a Certificate of Documentation with a coastwise endorsement for the limited purposes provided in § 68.05-9 if it meets the requirements of paragraphs (b) or (c) of this section.

(b) The vessel is at least 50 percent owned by one of the following entities:

(1) An individual who is a native-born, naturalized or derivative citizen of the United States; or otherwise qualifies as a United States citizen;

(2) A corporation incorporated under the laws of the United States or of a state where—

(i) The president and, if the president is not the chief executive officer, the chief executive officer, by whatever title, is a citizen;

(ii) The chairman of the board of directors is a citizen; and

(iii) No more of the directors are non-citizens than a minority of the number necessary to constitute a quorum.

(3) A partnership where all the general partners are citizens and at least 50 percent of the equity interest is owned by citizens;

(4) An association or joint venture where all the members are citizens; or

(5) A trust where all the trustees and all the beneficiaries with an enforceable interest in the trust are citizens.

(c) If the vessel is owned by a member or members of a not-for-profit oil spill response cooperative, the vessel is dedicated to the use of a not-for-profit oil spill response cooperative.

(d) A vessel which meets the criteria of this section is considered to be owned exclusively by citizens of the United States for the purposes of subsequent transfer and documentation under 46 CFR part 67.

§ 68.05-7 Vessel eligibility requirements for limited coastwise endorsement.

(a) A vessel must comply with all the requirements of 46 CFR part 67, other than citizenship requirements, in order to be eligible for documentation under this subpart.

(b) Notwithstanding 46 U.S.C. app. 883, a vessel remains eligible for documentation under this subpart even if formerly owned by a not-for-profit oil spill response cooperative or members of a not-for-profit oil spill response cooperative which meets the criteria of § 68.05-5.

§ 68.05-9 Privileges of a limited coastwise endorsement.

(a) A vessel which is documented and issued a limited coastwise endorsement under this subpart may operate on the navigable waters of the United States or in the EEZ only for the following purposes:

(1) To recover oil discharged into the water;

(2) To transport and deploy equipment, supplies, and personnel for recovering oil discharged into the water;

(3) To transport oil discharged into the water;

(4) To transport and deploy equipment, supplies, and personnel for recovering and transporting oil discharged into the water; or

(5) To conduct training exercises to prepare for performing the functions in paragraphs (a)(1) through (a)(4) of this section.

(b) A vessel which is documented and issued a limited coastwise endorsement under this subpart may qualify to operate for other purposes by meeting the applicable requirements of 46 CFR part 67.

§ 68.05-11 Application to document a vessel under this subpart.

(a) To qualify to document a vessel or to accept the dedication of a vessel by a member under this subpart, a not-for-profit oil spill response cooperative shall file with the Commandant the certificate under oath as set forth in appendix A to this subpart.

(b) Upon the filing of the certificate under paragraph (a) of this section, the Commandant will furnish the not-for-profit oil spill response cooperative with a letter of qualification, which is valid for a period of three years from the date of its issuance, unless there is a change in membership or structure of the not-for-profit oil spill response cooperative or a change in the citizenship status of any of its members requiring a report under § 68.05-13. In order to renew the letter of qualification, a new certificate

under oath must be filed with the Commandant at least 30 days before the date of expiration of the letter of qualification.

(c) A not-for-profit oil spill response cooperative seeking to document a vessel for a limited coastwise endorsement under this subpart, in addition to complying with the requirements of § 68.05–7(a), shall supply to the documentation officer where application is made, a copy of the letter of qualification issued under paragraph (b) of this section.

(d) A member or members of a not-for-profit oil spill response cooperative seeking to document a vessel shall supply to the documentation officer where application is made, a copy of the letter of qualification issued under paragraph (b) of this section to the not-for-profit oil spill response cooperative to which the vessel is dedicated. In addition, the not-for-profit oil spill response cooperative and the vessel owners shall all certify under oath that the vessel for which application is made is dedicated to the not-for-profit oil spill response cooperative. This certification must use the format and content described in appendix B to this subpart. If there is a change in the dedicated status of the vessel or its ownership a report shall be filed under § 68.05–13.

(e) The application for a Certificate of Documentation shall be filed with the documentation officer at the documentation office at the vessel's home port or the port of documentation nearest to where the vessel is located.

§ 68.05–13 Cessation of qualifications.

(a) If after filing the certificate required by § 68.05–11(a) of this subpart, a change occurs where a not-for-profit oil spill response cooperative no longer meets the criteria in § 68.05–5, then the qualification for the privileges enumerated in § 68.05–9 is terminated effective as of the date and time of the changes. The not-for-profit oil spill response cooperative shall report the change in writing to the Commandant.

(b) If after filing the certificate required by § 68.05–11(d), a change occurs where an owner of a vessel no longer meets the criteria in § 68.05–5, then the owner's qualification for the privileges enumerated in § 68.05–9 is terminated effective as of the date and time of the change. The owner(s) shall report the change in writing to the Commandant.

Appendix A to Subpart 68.05–Oath for Qualification of a Not-for-Profit Oil Spill Response Cooperative

Department of Transportation, U.S. Coast Guard

Oath for Qualification of a Not-For-Profit Oil Spill Response Cooperative (46 U.S.C. 12106(d))

Cooperative:
Name _____
Address _____
Jurisdiction where incorporated or organized _____
Affiant:
Name _____
Address _____
Cooperative _____
Title or Capacity _____

I, the affiant, swear that I am legally authorized to make this oath and hold the capacity so bestowed upon me as _____, on behalf of the cooperative _____ and its members, that it is a not-for-profit cooperative, and that it is engaged in oil spill recovery, containment, and transportation.

That all members of the cooperative, who may use the letter of qualification issued to this cooperative, are truly and correctly named, including home address and citizenship of each on the attached listing incorporated in and made a part of this oath.

Signature(s) _____

Subscribed and sworn to before me on the day and year shown.

_____
(Notary Public)
Date _____

Appendix B to Subpart 68.05–Oath for Documentation of Vessels for Use by a Not-for-Profit Oil Spill Cooperative

Department of Transportation, U.S. Coast Guard

Oath for Documentation of Vessels For Use by a Not-For-Profit Oil Spill Response Cooperative (46 U.S.C. 12106(d))

Cooperative:
Name _____
Address _____
Jurisdiction where incorporated or organized _____

We, the undersigned officers of _____, a not-for-profit oil spill response cooperative, swear that we are legally authorized to make this oath on behalf of the Cooperative _____, and its members _____, _____, _____. We _____, are the owners of the vessel _____. We further swear that the vessel _____ has been dedicated by the owners to the exclusive use of _____ cooperative for the purpose of responding to and training for response to discharges of oil into the navigable waters of the United States and the Exclusive Economic Zone, and that the nonprofit co-op has accepted the vessel.

for the Cooperative

_____
(signature, title or capacity, cooperative, address)

Vessel Owners

_____
(signature, title or capacity, company, address)

_____

Subscribed and sworn to before me on the day and year shown.

Notary Public
Date _____

Dated: September 5, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–21676 Filed 9–10–91; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[GSAR Notice 5–321]

General Services Administration Acquisition Regulation; Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 519.705–2 to designate the existing text as paragraph (a) and add paragraph (b) requiring all offerors, other than small business concerns, under negotiated solicitations for construction, repair and alteration or leases with an expected award value over the prospectus level ($1,500,000) to submit a subcontracting plan which would be negotiated concurrently with the other terms and conditions of the contract; revise section 519.708 to delete the existing text and prescribe a new provision at 552.219–72 retitled Preparation and Submission of Subcontracting Plans for use in negotiated prospectus level solicitations for construction, repair and alteration or leases; and retitle and revise section 552.219–72 to provide the text of the Preparation and Submission of Subcontracting Plans provision. Submission of subcontracting plans by all offerors, other than small business concerns will enable the contracting officer to negotiate the plan concurrently with the other parts of the offeror's proposal and ensure that subcontracting goals realistically reflect local economic conditions and the availability of small and small disadvantaged business concerns as subcontractors. Negotiating the subcontracting plan concurrently with the other parts of the offer is

intended to reduce or eliminate instances where failure to agree that an offeror's subcontracting plan offers the maximum practical utilization of small and small disadvantaged business concerns (FAR 52.219–8) affects the timeliness of contract awards. GSA is aware that the proposed change is a deviation from FAR 19.705–2(d) in that it will apply to negotiated procurements other than those using formal source selection, and will obtain a class deviation in accordance with FAR 1.404 before issuance of a final rule.

DATES: Comments are due in writing on or before October 11, 1991.

ADDRESSES: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Sts., NW., room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the GSA certifies that the rule will not have a significant impact on a substantial number of small entities, since the proposed revision, as previously explained in the Summary, will not apply to small business concerns. Accordingly, no initial regulatory flexibility analysis has been prepared. However, comments from small entities are hereby solicited and will be considered in accordance with section 610 of the Regulatory Flexibility Act.

The Preparation and Submission of Subcontracting Plans provision at 552.219–72 contains an information collection requirement over and above that approved by OMB under FAR 52.219–9 and has been submitted to OMB for approval under section 3504(h) of the Paperwork Reduction Act. Comments on the information collection requirement in 552.219–72 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "Preparation and Submission of Subcontracting Plans." The provision requires all offerors, other than small business concerns, responding to a negotiated solicitation over the prospectus level ($1,500,000) for construction, repair and alteration or leases to submit a subcontracting plan to be negotiated concurrently with other parts of the offeror's proposal. The respondents are potential GSA contractors. The contracting officer will use the information to evaluate whether or not the Government's expectation of subcontracting opportunities for small and small disadvantaged business concerns is reasonable, negotiate goals consistent with statutory requirements and acquisition objectives, and expedite the award process. The estimated annual burden for this additional collection is 2260 hours. This is based on an estimated average burden per response of 11.3 hours, a proposed frequency of one response per respondent, and an estimated number of likely respondents of 200.

List of Subjects in 48 CFR Parts 519 and 552

Government procurement.

Accordingly, it is proposed to amend 48 CFR parts 519 and 552 as follows:

1. The authority citation for 48 CFR parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 519.705–2 is revised to read as follows:

519.705-2 Determining the need for a subcontracting plan.

(a) Before making a determination under FAR 19.705–2 that no subcontracting opportunities exist on a prospective contract, which meets the dollar threshold, the contracting officer must submit the determination to the SBTA for review and comments. The SBTA shall contact the Director, Office of Small and Disadvantaged Business Utilization (AU), and consider any comments or recommendations offered.

(b) Except as provided in FAR 19.702(b), subcontracting plans are required from all offerors under negotiated solicitations for prospectus level projects ($1,500,000) for construction, repair and alteration or leases.

3. Section 519.708 is revised to read as follows:

519.708 Solicitation provisions and contract clauses.

The contracting officer shall insert the provision at 552.219–72, Preparation and Submission of Subcontracting Plans, in negotiated solicitations for prospectus level projects for construction, repair and alteration or leases.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 552.219–72 is revised to read as follows:

552.219-72 Preparation and submission of subcontracting plans.

As prescribed in 519.708, insert the following provision:

Preparation and Submission of Subcontracting Plans (XXX 1991)

(a) This solicitation requires the submission of a subcontracting plan in the format described in FAR 52.219–9 by all offerors that are not small business concerns. In preparing its subcontracting plan, the offeror shall take into consideration local economic conditions and the availability of small and small disadvantaged business concerns. The subcontracting plan should reflect the maximum utilization of small and small disadvantaged business concerns consistent with efficient contract performance (FAR 52.219–8).

(b) The subcontracting plan will be negotiated concurrently with cost, technical, and management proposals. Consequently, failure to submit the subcontracting plan and/or correct deficiencies in the plan within the time specified by the Contracting Officer shall make the offeror ineligible for award. (End of Provision)

Dated: August 28, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–21816 Filed 9–10–91; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 492]

Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission proposes to raise the revenue classification level set forth at 49 CFR Part 1201, Subpart A—*Uniform System of Accounts*, General Instruction 1–1(a) for Class I rail carriers from $50 million to $250 million (concurrently revising the revenue deflator formula from a base period of 1978 to 1991). Also, the Commission proposes to raise the revenue classification level for Class II rail carriers from $10 million to $20 million (also rebased to 1991 dollars). The purpose and intended effect of the

changes is to reduce accounting and reporting burden on railroad companies. These revisions would be effective for the 1992 reporting year.

DATES: Comments are due October 28, 1991.

ADDRESSES: An original and fifteen copies, if possible, of comments should be sent to: Ex Parte No. 492, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275-7510, (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: By petition dated December 3, 1990, Montana Rail Link, Inc. (MRL) and Wisconsin Central Ltd. (WC) request that the Commission open a rulemaking proceeding to amend the rail carrier classification regulations. After consideration, the Commission proposes to raise the revenue classification level for Class I rail carriers set forth in 49 CFR 1201, General Instruction 1-1(a) from $50 million to $250 million while concurrently revising the base year for calculating the revenue deflator formula from 1978 to 1991 (See Note A to Instruction 1-1). Also, the Commission proposes to raise the revenue classification level for Class II rail carriers from $10 million to $20 million.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that no additional burden hours per response are required to complete this collection of information. It is anticipated that the proposed changes would benefit smaller railroad companies because they would not be subject to the Commission's reporting requirements.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and 5 CFR Part 1320. Respondents may direct comments concerning the paperwork burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC (Forms 3120-), Washington, DC 20503.

Interstate Commerce Commission, ATTN: Forms Clearance Officer, room 2203, Washington, DC 20423.

List of Subjects in 49 CFR Part 1201

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: August 30, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1201 is proposed to be amended as follows:

PART 1201—RAILROAD COMPANIES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

2. In subpart A, General Instructions is proposed to be amended by revising Instruction 1-1.

General Instructions

1-1 *Classification of carriers.* (a) For purposes of accounting and reporting, carriers are grouped into the following three classes:

Class I: Carriers having annual carrier operating revenues of $250 million or more after applying the railroad revenue deflator formula shown in Note A.

Class II: Carriers having annual carrier operating revenues of less than $250 million but in excess of $20 million after applying the railroad revenue deflator formula shown in Note A.

Class III: Carriers having annual carrier operating revenues of $20 million or less after applying the railroad revenue deflator formula shown in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after the railroad revenue deflator adjustment. Upward and downward reclassification will be effected as of January 1 in the year immediately following the third consecutive year of revenue qualification.

(2) If a Class II or Class III carrier's classification is changed based on three years adjusted revenues the carrier shall complete and file the Classification Index Survey Form with the Commission by March 31 of the year following the end of the period to which it relates.

(3) Newly organized carriers shall be classified on the basis of their annual carrier operating revenues after railroad revenue deflator adjustment for the latest period of operation. If actual data are not available, new carriers shall be classified on the basis of their carrier operating revenues known and estimated for a year, (after railroad revenue deflator adjustment).

(4) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred (after railroad revenue deflator adjustment).

(5) In usual circumstances, such as partial liquidation and curtailment or elimination of contracted services, where regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(c) Class I carriers shall keep all the of the accounts of this system which are applicable to their operations. Class II and III carriers are not required to maintain the accounts of this system.

(d) All switching and terminal companies, regardless of their operating revenues will be designated Class III carriers.

(e) Unless provided for otherwise, all electric railway carriers, regardless of operating revenues, will be designated Class III carriers.

Note A: The railroad revenue deflator formula is based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. The formula is as follows:

Current Year's Revenues X (1991 Average Index/Current Year's Average Index)

Note B: See related regulations 49 CFR 1241.15 Railroad classification survey form.

* * * * *

[FR Doc. 91-21841 Filed 9-10-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Proposal to List the Mitchell's Satyr as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Mitchell's satyr (*Neonympha mitchellii mitchellii*) as an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq*). Recent heavy collecting pressure on this butterfly has resulted in the loss of several populations, and collection is believed to imminently threaten the survival of several more populations. Due to the need to immediately decrease collection of the

species by affording it the protection of the Act, the Service exercised its emergency listing authority on June 25, 1991, by publishing an emergency rule which gave this species immediate and temporary endangered status and the resulting protection under the Act. The emergency rule provided Federal protection for 240 days during which the Service must initiate the normal listing process to ensure longterm protection for the species. This proposal initiates that process and provides an opportunity for public comment and hearings (if requested). This proposal does not include the North Carolina subspecies, *N. m. francisci*, which is presumed extinct at this time.

DATES: Comments from all interested parties must be received by November 12, 1991. Public hearing requests must be received by October 28, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

N. m. mitchellii is the nominate subspecies of one of two North American species of *Neonympha*. It was described by French in 1889 from a series of ten specimens collected by J.N. Mitchell in Cass County, Michigan (French 1889). It is a member of the family Nymphalidae (over 6,400 species worldwide), subfamily Satyrinae (estimated 2,400 species).

(The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (§ 4.(15)). Therefore, although taxonomically recognized as a subspecies, *N. m. mitchellii* will be referred to as a "species" throughout the remainder of this proposal. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this proposal covers the entire species *Neonympha mitchellii*. This proposal covers only the northern subspecies *N. m. mitchellii*, and does not include the North Carolina subspecies *N. m. francisci* which is believed to be extinct.)

Mitchell's satyr is a medium sized (38-44 millimeter wingspan) butterfly with an overall rich brown coloration. A distinctive series of submarginal yellow-ringed black circular eyespots (ocelli) with silvery centers are found on the lower surfaces of both pairs of wings. The number of ocelli on the forewing varies between the sexes, with males generally having 4 (range 2-4) and females having 6 (range 5-6). The eyespots are accented by two orange bands along the posterior wing edges, as well as two fainter orange bands across the central portion of each wing. It is distinguished from its North American congener *N. areolata* by the latter's well-marked ocelli on the upper wing surfaces, as well as the lighter coloration and stronger flight of *N. areolata* (French 1889; McAlpine et al 1960; Wilsmann and Schweitzer 1991).

N. m. mitchellii is one of the most geographically restricted butterflies in North America. Historical records exist for approximately 30 locations in four States, ranging from southern Michigan and adjacent counties of northern Indiana into a single Ohio county, with several disjunct populations in New Jersey. The species has been documented from a total of 17 counties (Badger 1958; Martin 1987; Pallister 1927; Rutkowski 1968; Shuey et al 1987b; Wilsmann and Schweitzer 1991).

A second *Neonympha mitchellii* subspecies was discovered at Ft. Bragg, North Carolina in 1983 (Parshall and Kral 1989). This subspecies, *N. m. francisci*, is believed to have been collected to extinction since that time. Although additional suitable habitat probably exists on, and adjacent to, Ft. Bragg, no additional populations have been discovered (Schweitzer 1989). This proposal does not include *N. m. francisci*.

Although the species has been reported from Maryland, the lack of suitable habitat makes it more likely that those 1940's specimens were misidentified members of a *Neonympha areolatus* subspecies. Apparently suitable habitat exists in New York, Connecticut, Massachusetts, and Pennsylvania. However, searches in these States have failed to locate any *N. m. mitchellii* populations (Schweitzer 1989; Wilsmann and Schweitzer 1991).

The habitat occupied by the species consist solely of wetlands known as fens. This is an uncommon wetland habitat type characterized by calcareous soils and fed by carbonate-rich water from seeps and springs. Fens are most frequently components of larger wetland complexes. Due to the superficial resemblance of fens and bogs, the habitat of Mitchell's satyr has sometimes been erroneously described in the early literature as acid bogs (McAlpine et al 1960; Shuey 1985; Shuey et al 1987a; Wilsmann and Schweitzer 1991).

From 1985 through 1990 the Service sponsored intensive searches of over 100 sites having suitable habitat for the species throughout its range. The sites visited were either known historical locations for the species, or were chosen because of the presence of a fen. All historical locations were checked if they could be relocated and if the fen habitat still existed. Survey results indicated the species occurred at only 15 sites, two of which were not historically known. Therefore, the species has disappeared from approximately one-half of its historical locations (30). No extant populations have been found in Ohio, and the sole extant 1985 population in New Jersey is believed to have been extirpated by collectors subsequent to the survey. Additional 1991 searches in New Jersey failed to locate any additional populations (Breden, New Jersey Natural Heritage Program, 1991, pers. comm.). Thus, the species is currently believed to exist in nine counties in Indiana and Michigan. Due to the extent of these and other recent surveys it is unlikely that many additional sites will be found (Wilsmann and Schweitzer 1991; Shuey et al 1987b), although survey efforts are continuing.

A letter from Charles L. Remington, dated November 19, 1974, requested the Service work on protecting Mitchell's satyr (letter from Charles L. Remington to Dr. Paul A. Opler, U.S. Fish and Wildlife Service, dated November 19, 1974). That letter was treated as a petition to list the species as threatened or endangered. The Service subsequently found (49 FR 2485, January 20, 1984) that insufficient data was available to support listing at that time. The Service's May, 1984, Animal Notice of Review (49 FR 21664-21675) listed *Neonympha mitchellii* as a category 3C species, indicating that at that time the species was believed to be too abundant for consideration for addition to the endangered and threatened species lists. In a subsequent January 6, 1989, Animal Notice of Review (54 FR 554-579) the species was upgraded to a category 2 candidate for listing, indicating renewed concern for the species' welfare, and encouraging further studies into the status of the species. The most recent status survey (Wilsmann and Schweitzer 1991) indicates that the species has experienced significant

range reduction and should receive the protection of the Act. The Service analyzed the status survey and determined that the species should be protected from over-collection by an emergency listing as an endangered species. The emergency listing was published, and became effective, on June 25, 1991, (56 FR 28825–828) and provides protection under the Act until February 20, 1992.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.* and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Mitchell's satyr (*N. m. mitchellii*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Fen habitat is being destroyed and degraded by human activities and by natural succession. Human induced destruction of historical sites has been documented in at least three cases. One Michigan site has been destroyed by urban development. Sites in Michigan and Ohio have been lost by conversion to agriculture. Another extant population in Michigan has had a portion of its habitat destroyed by hog farming activities and all terrain vehicle use. These activities constitute ongoing threats to other sites with extant populations of *N. m. mitchellii* (Shuey et al 1987a; Schweitzer 1989; Martin 1987; Wilsmann and Schweitzer 1991).

One Michigan site is bisected by a highway which is scheduled for realignment. Mitchell's satyr habitat will be destroyed or degraded by the project as proposed. Discussions are underway with Michigan Department of Transportation officials to have the plans modified to diminish or eliminate the adverse impact on the species.

Although natural succession in fens is incompletely understood, it appears that adjacent human activities can speed succession and subsequent loss of Mitchell's satyr habitat. For example, nearby drainage ditches may alter the hydrologic regime in the fen, resulting in lowered water levels, more xeric soil conditions, and increased invasion of brush and trees into the fen. There is evidence that this is occurring at one Michigan site (Wilsmann, Michigan Natural Features Inventory, 1991, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Mitchell's satyr has long been sought by butterfly collectors, and there is evidence that collection of the species continues despite its endangered or threatened classifications under Michigan, Indiana, and New Jersey rare species laws. Subsequent to the 1985 survey of New Jersey fens it is believed that the State's last remaining *N. m. mitchellii* population was eliminated by collectors. A collector's glassine envelope was found at the site during one survey. Another New Jersey *N. m. mitchellii* site, well known to butterfly collectors, was extirpated in the 1970's by over-collection. The other subspecies of *Neonympha mitchellii, Neonympha m. francisci,* is believed to have been collected to extinction in North Carolina. (Wilsmann and Schweitzer 1991; Breden 1991, pers. comm.; Schweitzer, The Nature Conservancy, 1991, pers. comm.).

Well-worn human paths have been seen at the site of several extant populations in Michigan during late-1980's status surveys. These paths wind through *N. m. mitchellii* habitat in the manner that would be expected of knowledgeable collectors and are viewed as evidence that collections are continuing, despite the species being listed and protected by State statute. Subsequent to the June 25, 1991, emergency listing several butterfly collectors were encountered by Service Law Enforcement personnel at one well known Michigan Mitchell's satyr site, and fresh trails through prime habitat were seen at nearly every site being patrolled. At least five Michigan sites are sufficiently well known to collectors and/or have sufficiently small Mitchell's satyr populations so as to the extremely vulnerable to local extinction from overcollection during a period of one to several days (Wilsmann 1991, pers. comm.). All known *N. m. mitchellii* sites are believed vulnerable to local extinction by overcollection (Schweitzer 1991, pers. comm.).

C. *Disease or predation.* Little is known about these factors, and there are no indications at this time that they might be contributing to the decline of Mitchell's satyr.

D. *The inadequacy of existing regulatory mechanisms.* Mitchell's satyr is currently listed under State statutes as endangered in Indiana and New Jersey, threatened in Michigan, and extirpated in Ohio. The classification in Michigan has been proposed to be changed to endangered.

Either endangered or threatened status in Michigan prohibits the collection of the species without a Michigan scientific collection permit. However, the threat of State prosecution has not ended collectors' illegal activities. Michigan Department of Natural Resources officials believe the threat of Federal prosecution will be a more effective deterrent. (Weise, Michigan Department of Natural Resources, Endangered Species Program, 1991, pers. comm.; Wilsmann 1991, pers. comm.).

The Indiana endangered classification provides official recognition of species rarity, but the State's endangered species regulations do not prohibit taking listed insects unless they are also on the Federal endangered and threatened species list. Thus, the classification provides no legal deterrent to continued collection. The ability to legally collect the species under Indiana statutes results in the species being a candidate for heavy collecting pressure and extirpation in that state. (Bacone, Indiana Natural Features Inventory, 1991, pers. comm.).

New Jersey regulations provide total protection for any Mitchell's satyrs that may be rediscovered within the State (Frier-Murza, New Jersey Endangered Species Program, 1991, pers. comm.). The Ohio classification of extirpated carries with it no legal protection. However, if the species is rediscovered in the State, an emergency order can be invoked to list it as endangered and grant it full protection under State statutes (Case, Ohio Department of Natural Resources, Division of Wildlife, 1991, pers. comm.).

E. *Other natural or manmade factors affecting its continued existence.* Mitchell's satyr has only a single flight period annually, lasting approximately two weeks for an individual, and for about three weeks for a population as a whole. It exhibits relatively sedentary behavior and slow, very low level flights. Due to these characteristics the species seems to have only limited ability to colonize new habitat patches, to recolonize historical sites, or to provide significant gene flow among extant populations. Therefore, the isolation of small populations has great potential for local extinction if habitat degradation and/or collection pressure are also occurring (Wilsmann and Schweitzer 1991).

In developing this proposal the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list Mitchell's satyr as endangered. The species has experienced a severe decrease in the

number of extant populations over its historical range, as well as probable extirpation from two of the four States with historical populations. Due to its continuing appeal to a segment of butterfly collectors, as well as its narrow and well known habitat requirements, approximately one-third of the remaining populations are extremely vulnerable to overcollection and local extinction, and all populations are believed susceptible to collection-induced extirpation.

The Service concluded that conducting the normal listing process would have delayed protection of the species until after the 1991 Mitchell's satyr flight period, thus subjecting the species to an additional year of excessive collecting pressure. The resulting possible extirpations of one or more populations might have severely reduced the likelihood of species survival. Therefore, the Service listed the species as endangered on an emergency basis to provide maximum protection to all known populations during the 1991 flight period. At this time the Service is initiating the normal listing process by proposing the species for endangered status.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *N. m. mitchellii* is primarily threatened by illegal collecting. Publication of critical habitat descriptions and maps would make Mitchell's satyr more vulnerable to collection, increase the difficulty of protecting the species from illegal take, and significantly increase the likelihood of extinction. All involved parties and most landowners already have been notified of species locations and importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process, including individual landowner contacts, and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the above Twin Cities, Minnesota, address (see **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author for this proposed rule is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Insects" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Satyr, Mitchell's	Neonympha mitchellii, Mitchellii.	U.S.A. (IN, MI, NJ, OH)	NA	E	426E	NA	NA

Dated: August 20, 1991.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 91-21800 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Schwalbea americana* (American chaffseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Schwalbea americana* (American chaffseed), a perennial herb of the figwort family (Scrophulariaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Eighteen extant populations of this species are found in open pine flatwoods, savannas, and other open areas, in moist to dry acidic sandy loams or sandy peat loams in Florida, Georgia, Mississippi, New Jersey, North Carolina, and South Carolina; the species is also known historically from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia. The species is threatened by widespread habitat destruction due to development and from fire suppression, which allows invasion of vegetation that competes with it. This proposal, if made final, would extend the Federal protection and recovery provisions afforded by the Act to *Schwalbea americana*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 12, 1991. Public hearing requests must be received by October 28, 1991.

ADDRESSES: Comments and materials, and requests for public hearing concerning this proposal should be sent to the New Jersey Field Office, U.S. Fish and Wildlife Service, 927 N. Main Street, Bldg. D-1, Pleasantville, New Jersey 08232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dana M. Peters at the above address (telephone: 609/646-9310).

SUPPLEMENTARY INFORMATION:

Background

Schwalbea americana (American chaffseed), a perennial member of the figwort family (Scrophulariaceae), was described by Linnaeus in *Species Plantarum* in 1753, and named for Christian Georg Schwalbe, an eighteenth century botanical writer. Pennell (1935) recognized a southern and a northern species, *S. australis* and *S. americana* respectively. He distinguished *S. australis* by a pubescence of mostly upcurved hairs and leaves up to 1.5 cm (0.6 inches) wide, and *S. americana* by mostly recurved hairs and narrower leaves up to 1 cm (0.4 inches) wide or less. However, Fernald (1937) found characters of leaves and calyx lobes to vary over the total range so that recognition of two species was unwarranted. Following an examination of herbarium material, Musselman and Mann (1977) concurred that there was little taxonomic merit in recognizing more than a single species. Therefore, for the purposes of listing, *S. americana* and *S. australis* are considered one species (*S. americana*) and will be referred to as the monotypic genus *Schwalbea*.

Schwalbea is an erect herb with unbranched stems or branched only at

the base and grows to a height of 3 to 8 decimeters (12 to 31 inches). It is densely but minutely hairy throughout, including the flowers. The leaves are alternate, lance-shaped to elliptic, stalkless, 2 to 5 cm (1 to 2 inches) long, and entire; the upper leaves are reduced to narrow bracts. Large, purplish-yellow, tubular flowers borne singly on short stalks in the axils of the uppermost, reduced leaves (bracts) form a many-flowered, spike-like raceme. The showy flowers have a high degree of bilateral symmetry elaborated for pollination by bees (Pennell 1935). The fruit is a long and narrow capsule, enclosed in a loose-fitting sac-like structure that provides the basis for the common name, chaffseed (Musselman and Mann 1978). Flowering occurs from April to June in the South, and from June to mid-July in the North (Johnson 1988). Fruits mature from early summer in the South to October in the North. *Schwalbea* is a hemiparasite, that is, a plant that is partially dependent on its host. Like most hemiparasitic Scrophulariaceae, it is not host specific, and its rarity, therefore, is not due to its preference for a specialized host.

Characteristically, the species occurs in sandy (sandy peat, sandy loam), acidic, seasonally moist to dry soils. It is generally found in habitats described as open, moist pine flatwoods, fire-maintained savannas, ecotonal areas between peaty wetlands and xeric sandy soils, and other open grass-sedge systems. One population, however, occurs in a heavy clay soil in a hayfield. *Schwalbea* is dependent on factors such as fire, mowing, or fluctuating water tables to maintain the crucial open to partly-open conditions that it requires. The species appears to be shade intolerant. Historically, the species existed on savannas and pinelands throughout the coastal plain and on sandstone knobs and plains inland where frequent, naturally occurring fires maintained these sub-climax communities. Under these conditions, herbaceous plants such as *Schwalbea* were favored over trees and shrubs. Most of the surviving populations, and the most vigorous, are in areas that are still subject to frequent fire. These fire-maintained habitats include plantations that are prescribed burned for management of quail, an army base impact zone that burns regularly because of live artillery shelling, forest management areas that are burned to maintain habitat for wildlife including the red-cockaded woodpecker, and various other private lands that are burned to maintain open fields. Fire may be important to the species in ways that are not yet documented or understood. Two small populations, one in New Jersey (along a roadside in Lebanon State Forest) and one in Mississippi (in a hayfield on the Noxubee National Wildlife Refuge) survive in frequently mowed areas that are not burned.

As indicated by Kral (1983), *Schwalbea* occurs in species-rich plant communities where grasses, sedges, and other colorful savanna dicots are especially numerous. One South Carolina population co-occurs with two other plant species being considered for listing under the Act, *Parnassia caroliniana* and *Eulophia ecristata* (Rawinski and Cassin 1986).

In 1986 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Schwalbea* (Rawinski and Cassin 1986). More recently The Nature Conservancy's New Jersey Field Office prepared an Element Stewardship Abstract for *Schwalbea* (Johnson 1988). Based on these reports and additional input from various sources in the respective States, it is known that the species occurred historically in fifteen States including Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, and Virginia at a total of approximately seventy-eight sites. One historic record from Louisiana is considered erroneous (Annette Parker, Louisiana Heritage Program, *in litt.*, 1986).

Today, eighteen populations of the species are known in six States including:

One on the Lebanon State Forest in New Jersey (Burlington County),

One on Fort Bragg, North Carolina (Hoke County),

One on the Noxubee National Wildlife Refuge in Mississippi (Noxubee County),

Four on the Francis Marion National Forest in South Carolina (Berkeley and Charleston Counties),

Three on private land in Georgia (Baker and Dougherty Counties),

One on private land in Florida (Gadsen County), and

Seven on private land in South Carolina (Berkeley, Horry, Jasper, Sumter, and Williamsburg Counties).

It is extirpated from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia, nine of the fifteen states where it was historically reported. This plant, always considered rare, appears to have suffered a drastic decline in populations and range. The one small population in New Jersey is the only population north of North Carolina. Despite intensive searches of historic stations and potentially suitable habitat, this species remains very rare, and many historic populations are confirmed as extirpated due to habitat destruction, mostly by development (Rawinski and Cassin 1986).

Federal consideration of this plant for listing began with acceptance by the Service of *Endangered and Threatened Plants of the United States* (Ayensu and DeFilipps 1978) as a listing petition within the context of section 4 of the Act. This report recommended *Schwalbea americana* for threatened status. The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements" section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

Additional petition findings involving *Schwalbea* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50 FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). This proposal to classify *Schwalbea americana* as endangered constitutes the final required petition finding for this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Schwalbea americana* L. (American chaffseed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Schwalbea* has been and continues to be endangered by destruction and adverse alteration of its habitat. Since discovery of this species, sixty (three-fourths) of the known populations have been extirpated due to conversion of the habitat to residential and commercial purposes, incompatible agriculture and forestry practices, and succession of the vegetative community due to fire suppression. Sandy pineland communities where the species exists have proven to be especially vulnerable to development because soils are level, deep, and suitable as building sites. Also, many *Schwalbea* populations

were or are very near the Atlantic coast where development pressures are severe (Rawinski and Cassin 1986). Habitat destruction presently taking place on Cape Cod, Massachusetts, exemplifies the situation throughout much of the range of *Schwalbea*. None of the ten historic Massachusetts populations of this plant have been relocated and other potentially suitable habitat is being destroyed at a rapid rate. In Florida, four of the seven historic sites are confirmed extirpated because of habitat destruction (Rawinski and Cassin 1986). In New Jersey, a population was extirpated in 1988 by the construction of a street for new housing (D. Snyder, New Jersey Natural Heritage Program, *in litt.*, 1988). Development was a factor in the demise of at least 15 other populations rangewide (Johnson 1988).

Current threats to extant populations include destruction of habitat due to development, agriculture, or forestry practices, succession of vegetation, and improper management that renders the habitat unsuitable. Impending development is an immediate threat to two of the extant populations. Development or succession of habitat is a potential threat to five other populations on private land. Development adjacent to extant populations may also pose a threat since urbanization generally results in fire suppression and thus possible succession of field habitats. The threats due to fire suppression will be discussed in more detail under Factor E.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* One extant population has been adversely affected due to removal of plants by an employee of a botanical garden for transplanting to the garden. This population was also adversely affected by a local photography club that dug up plants to photograph them under studio conditions, and by careless photographers and onlookers who have trampled the site. Attention due to listing could result in further threats to accessible populations due to collection and trampling from curiosity seekers and vandals.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* Currently, in the State of Mississippi, *Schwalbea* is not on an official list and there is no protection for the species.

In Florida, *Schwalbea* is listed as endangered under The Preservation of Native Flora of Florida Act, section 581, 185-187, Florida Statute. This Act prohibits removal of State-listed plants from public lands or from private lands without written permission of the landowner.

In Georgia, *Schwalbea* is currently being proposed as endangered on the official State list. If this listing is completed, the species will receive protection under The Georgia Wildflower Preservation Act of 1973. This Act prohibits digging, removal, or sale of State-listed plants from public lands without the approval of the Georgia Department of Natural Resources. However, the three *Schwalbea* populations in Georgia are on private land and would benefit minimally from the protection of this Act. These populations receive limited protection through voluntary, informal landowner agreements with The Nature Conservancy.

The official status of *Schwalbea* in North Carolina is endangered. North Carolina General Statute 19-B, 202.12-202.19, provides State-listed plants protection from intra-state trade without a permit, provides for monitoring and management of listed populations, and prohibits taking of plants without a State permit and written permission of landowners.

In South Carolina, *Schwalbea* is recognized as "of national concern" by the South Carolina Advisory Committee on rare, threatened, and endangered plants; however, this State offers no legal protection to recognized species.

In New Jersey, *Schwalbea* is listed as endangered on the Endangered Plant Species List authorized by the Endangered Plant Species List Act (N.J.S.A. 7:5C). This list provides recognition to listed plants, but does not provide regulatory protection to the species from collection, habitat loss, or habitat degradation. The population in New Jersey occurs within the Lebanon State Forest and within the Pinelands Reserve. The State Forest does not provide any specific protection to the species. Pursuant to the policy to preserve, protect, and enhance the diversity of plant communities through regulation of development, the Pinelands Protection Act (N.J.S.A. 13:18-1 et seq.) states that no development within the Pinelands shall be carried out unless it is designed to avoid irreversible adverse impacts to the survival of populations of threatened or endangered plants listed therein. Despite the location of the New Jersey population within the Pinelands Reserve, it is still subject to severe adverse impacts. It is located next to a roadway in an area maintained by the highway department. This type of maintenance is exempt from the aforementioned protection of threatened or endangered species. Current management of this population consists of yearly mowing and is conducted through an informal agreement between the New Jersey Department of Environmental Protection and the highway department. Protection of the site is inadequate. Vehicles routinely pull off of the road, damaging plants and disturbing the habitat.

Only North Carolina has legislation protecting *Schwalbea* from taking, and only New Jersey has some protection for its habitat. The primary threat to *Schwalbea* is habitat destruction and lack of habitat management, therefore, existing legislation is inadequate.

E. *Other natural or manmade factors affecting continued existence.* As mentioned in Factor "A", fire or another suitable form of disturbance, such as well-timed mowing, is essential to maintain the sub-climax community where this species exists. Although corroborating research is lacking, botanists familiar with the species believe that *Schwalbea* may be adapted to a regular fire regime. Historically, naturally occurring fires throughout *Schwalbea's* range maintained these conditions. These naturally occurring lighting-strike fires were frequent enough that fuel did not accumulate and, thus, they were generally of low intensity. Herbaceous species were favored over tree and shrub species and thrived in these conditions. With the general suppression of natural fires in this century, the habitat for this species has been greatly reduced. Without fire, open grass-sedge communities proceed through seral stages and become dominated by trees, shrubs and dense herbaceous growth that overtops *Schwalbea*. The species appears to be shade intolerant. If fire is suppressed for more than three years, the *Schwalbea* population declines as other species shade and out-compete it (D. Rayner, Wofford College, pers. comm., 1991). Without naturally occurring fires, management in the form of prescribed burns or mowing may be necessary to maintain the sub-climax community and perpetuate *Schwalbea* populations. However, excessive mowing or disturbance could eliminate populations, and there are questions concerning the optimal timing and frequency of burning or mowing. Further research on the effects of prescribed burning and mowing, and/or soil moisture variation is needed to determine the best management techniques that will maintain viable populations of the species.

Ten of the eighteen known populations of *Schwalbea* contain fewer than one hundred plants with five of these populations having fewer than 20

plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *Schwalbea* could persist following a natural event such as drought or high-intensity fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Schwalbea americana* as endangered. The species is extirpated from over half of its historic range. Only eighteen populations, approximately one-forth of recorded historic populations, are known to persist. Existing populations are threatened by the continuation of fire suppression, development, and potential mismanagement of habitat. Specific habitat requirements and optimum management regimes are unknown; lack of such critical information greatly hampers efforts to protect and perpetuate this species. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not prudent if one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

The Service finds that designation of critical habitat is not prudent for *Schwalbea americana* at this time because such designation will exacerbate threats from collecting and trampling. As noted under Factor "*B*", above, collecting and careless trampling by wildflower photographers have already adversely affected at least one population. The Act furnishes listed plants with very limited protection from take, prohibiting collection and harm only when plants are located on federally administered lands or in situations where take is perpetrated in knowing violation of a State law or regulation. Only six *Schwalbea* populations are located on lands under Federal jurisdiction. Most populations are small to moderate in size and, therefore, even occasional collecting and trampling could exert significant adverse impacts on them. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact *Schwalbea* and its habitat in the future include, but are not limited to, incompatible forestry and wildlife management practices, and construction of access roads to accommodate changes in military bombing practice areas on lands under Federal jurisdiction. The Service will work with the involved agencies to secure protection and proper management of *Schwalbea* while accommodating agency activities to the extent possible.

Conservation and management of *Schwalbea* will likely involve a combination of site protection through acquisition or landowner agreements and habitat manipulation to maintain early successional habitats. Listing *Schwalbea americana* will encourage research on critical aspects of its life history and population ecology, and the effects of fire, mowing and soil moisture variation on population establishment and maintenance. This information is necessary to determine the optimal timing and frequency of these management techniques.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, rm 432, 4401 N Fairfax Dr., Arlington VA 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Schwalbea*;

(2) The location of any additional populations of *Schwalbea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Schwalbea*; and

(4) Current or planned activities in the subject area and their possible impacts on *Schwalbea*.

Final promulgation of the regulation on *Schwalbea* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, New Jersey Field Office, U.S. Fish and Wildlife Service (See "**ADDRESSES**" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Chesser, R.K. 1983. Isolation by distance: relationship to the management of genetic resources. pp. 66-77 *in* C. Schonewald-Cox, S.M. Chambers, B. MacBryde and L. Thomas (eds.), Genetics and conservation: A reference for managing wild animal and plant populations. The Benjamin/Cummings Pub. Co., Inc., Menlo Park, CA.

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Johnson, R.T. 1988. Draft of an element stewardship abstract (*Schwalbea americana*). Unpublished report prepared for New Jersey Natural Heritage Program, Pottersville, NJ.

Kral, R. 1983. A report on some rare, threatened or endangered forest-related vascular plants of the south. USDA Technical publication R8-Tp2, *Schwalbea americana*. 306:1045-1048.

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Musselman, L.J., and W.F. Mann, Jr. 1978. Root parasites of southern forests. USDA. General technical report SO-20, Washington, DC.

Pennell, F.W. 1935. The Scrophulariaceae of eastern temperate North America. The Academy of Natural Sciences of Philadelphia: monographs 1:482-487.

Porcher, R.D. 1980. Inventory of populations of proposed endangered and threatened species of vascular plants on the Francis Marion National Forest in Berkeley and Charleston Counties, South Carolina. Unpublished report to U.S. Forest Service, McClellanville, SC.

Rawinski, T., and J. Cassin. 1986. Final status survey reports for 32 plants. Unpublished report to U.S. Fish and Wildlife Service. Newton Corner, MA. Eastern Heritage Task Force of The Nature Conservancy.

Author

The primary author of this proposed rule is Dana M. Peters (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

1. The authority citation for 50 CFR part 17 continues to read as follows:

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Figwort family:						
*	*	*	*	*	*	
Schwalbea americana	American chaffseed	U. S. A. (AL, CT, DE, FL, GA, KY, MA, MD, MS, NC, NJ, NY, SC, TN, VA).	E		NA	NA
*	*	*	*	*	*	

Dated: July 26, 1991.

Richard N. Smith,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-21801 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-55-F

Notices

Federal Register
Vol. 56, No. 176
Wednesday, September 11, 1991

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 COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Export Administration.

Title: Disclosure of Shipment Which Should Have Been Under a Validated License.

Form Number: Agency—EAR § 772.7(b); OMB No. 0694–0032.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 10 respondents; 10 reporting hours. Average time per respondent is 1 hour.

Needs and uses: This reporting requirement is used for exporters to report themselves when the mistake of shipping without a required validated license is made, before possible prosecution by the government is begun.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 5, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–21830 Filed 9–10–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Export Administration.

Title: Defense Priorities and Allocations System (DPAS).

Form number: Agency—DPAS § 700.91; OMB Control No. 0694–0053.

Type of request: Extension of the expiration date of a currently approved collection.

Burden: 1,000,000 respondents; 16,667 recordkeeping hours; Average time per respondent is 1 minute.

Needs and uses: The recordkeeping required by the DPAS, of producers and suppliers of industrial items, is necessary for the enforcement and administration of the delegated authority of the Defense Production Act and the Selective Service Act. Any person who receives a rated order under the implementing DPAS regulation must retain records of transactions for at least 3 years.

Affected public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Mandatory.

OMB Desk officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 5, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–21831 Filed 9–10–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census.

Title: 1992 National Census Test.

Form Number(s): DA–1A, DA–1B, DA–1C, DA–1D.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,279 hours.

Number of Respondents: 15,200.

Avg Hours Per Response: 9 minutes.

Needs and Uses: The Census Bureau is concerned about declining response rates to mail-out decennial census questionnaires. We are requesting clearance to conduct a study to test whether a simplified questionnaire with less questions provides a higher response rate than a questionnaire of greater length. The test will consist of four questionnaires: (1) A user-friendly form with four questions; (2) a user-friendly form with all questions from the 1990 short form; (3) a 1990 census short form; and (4) a user-friendly form with 1990 questions plus a social security number question for each person in the household. There will also be a telephone debriefing of selected respondents and nonrespondents. The sample for the testing will be drawn from the 1990 census address control file.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-21833 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of the Census.

Title: 1992 Annual Demographic Survey Supplement to the Current Population Survey.

Form Number(s): CPS-1, CPS-260, CPS-665.

Agency Approval Number: 0607-0354.

Type of Request: Revision of a currently approved collection.

Burden: 24,250 hours.

Number of Respondents: 60,000.

Avg Hours Per Response: 24 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as part of the Current Population Survey. In the ADS, we collect information on work experience, personal and family income and noncash benefits, poverty levels, population status, family relationships, marital status, and migration. For 1992, additional race information will be collected form persons who report their race as Asian or Pacific Islander. The Bureau of Labor Statistics and the Department of Health and Human Services use data gathered in the ADS to determine the official Government poverty statistics. The ADS is the primary source of family income data.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-21834 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Export Administration.

Title: Application for a Duplicate License.

Form Number: Agency—EAR § 772.10; OMB Control No. 0694-0031.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 156 respondents; 42 reporting/recordkeeping hours; average time per respondent is 15 minutes.

Needs and Uses: This collection of information is necessary to identify export licenses of respondents who request duplicate export licenses for lost or destroyed licenses and provides information needed to issue the duplicate license.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 5, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-21832 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-570-809]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Easton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1777.

Final Determination

The Department of Commerce ("the Department") determines that imports of steel wire rope from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

We published the preliminary determination on April 22, 1991 (56 FR 16319). In response to a request from respondent that we postpone the final determination pursuant to 19 CFR 353.20(b)(1), on May 13, 1991, we postponed the final determination until September 4, 1991 (56 FR 21988). We verified the questionnaire response from May 16 through May 30, 1991.

On May 28, 1991, the Department received a request from petitioner to exclude stainless steel wire rope from the scope of this investigation. On June 10, 1991, the Department solicited comments from interested parties regarding petitioner's request. On July 9, 1991, we published notices in the investigations of steel wire rope from Argentina and Mexico excluding stainless steel wire rope from the scope of those investigations. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (56 FR 31098, July 9, 1991).

Petitioner and respondent submitted comments in case briefs on August 5, 1991, and in rebuttal briefs on August 12, 1991.

Scope of the Investigation

The product covered by this investigation is steel wire rope. Steel

wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables, and cordage, other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Steel wire rope is currently classifiable under HTS subheadings 7312.10.90.30, 7312.10.90.60, and 7312.10.90.90. Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1990, through November 30, 1990.

Fair Value Comparisons

To determine whether sales of steel wire rope from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified below. In determining FMV, we used the best information available (BIA). Since the only BIA data available related to bright steel wire rope, we have limited comparisons to bright steel wire rope.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, because the steel wire rope was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances. Purchase price was based on the C&F or CIF, packed price to unrelated purchasers in the United States. We made deductions for charges incurred for ocean freight and marine insurance.

Since the goods exported from the PRC to the United States were, for the greatest part, transported aboard market-economy carriers, we based the deduction for ocean freight on the charges reported by respondent.

Foreign Market Value

For FMV, we have used BIA. (*See* "Doc Position" to Comment 1 in the "Interested Party Comments" section of this notice.) As BIA, we have based FMV on petitioner's estimate of FMV for bright steel wire rope, as contained in the November 16, 1990 supplement to the petition

Verification

As provided in section 776(b) of the Act, we verified respondent's information used in making our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondent.

Interested Party Comments

Given the Department's use of BIA for FMV, comments regarding aspects of FMV other than BIA are moot, and have not been addressed in this notice.

Comment 1

Petitioner argues that dumping margins should be determined on the basis of only the information it provided. It concludes that this action is warranted because: (1) Virtually all of the information provided in the questionnaire response concerning FMV changed at verification; (2) much of the information relating to the U.S. sales changed at verification; and (3) respondent did not report all U.S. sales during the POI.

Respondent contends that all revisions to its response were minor, that its submissions were provided in a timely manner in the form requested, and that acceptance of minor revisions is consistent with the Department's practice. Moreover, respondent argues that its adjusted data were verified, and that the calculation of FMV should be based upon the information provided by the verified factories. Finally, respondent claims that the portions of the response regarding U.S. sales were accurate and complete, and verified as such.

DOC Position

We agree with petitioner in part. The Department's verification of FMV was conducted at two factories, Jiangyin Steel Wire Rope Factory and Zhangjiagang Wire Rope Factory. Virtually every element of the FMV portion of the questionnaire response was in error. The purpose of the Department's verification is to establish the reliability of the response, not to create a new one. In these circumstances, the Department is obligated to reject respondent's FMV data. As the Department stated in the Final Determination of Sales at Less Than Fair Value: Photo Albums and Filler Pages from Korea (50 FR 43754, October 29, 1985), "[i]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department."

The Department has discretion to determine which information to use as BIA based on their circumstances of each case. In determining the appropriate BIA, 19 CFR 353.37(b) permits the Department to consider the respondent's efforts to comply with the Department's requests. In this case, respondent's attempts to cooperate with the Department's requests for information, in combination with the minor nature of the corrections necessary for the USP data, make it appropriate to accept the USP portion of the questionnaire response.

Finally, information on the record does not support petitioner's contention that respondent did not report all U.S. sales during the POI.

Comment 2

Petitioner argues that the ocean freight adjustment should be based on charges actually incurred, despite respondent's claim that certain charges were erroneous. Respondent replies that it was overcharged on certain contracts and is expecting a refund, and therefore that the adjustment should be based on expenses net of the refund.

DOC Position

We agree with petitioner. Respondent's expectation of a refund can only be seen as speculative.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of steel wire rope from the PRC that are entered, or withdrawn from warehouse, for consumption on or after April 22, 1991, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of steel wire rope from the PRC exceeds the USP, as shown below. Given the exclusion of stainless steel wire rope from the scope of this investigation, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or release any bonds now posted on such merchandise. The suspension of liquidation on all other

steel wire rope will remain in effect until further notice. The margin is as follows:

Manufacturer/producer/exporter	Margin percentage
All Manufacturers, Producers, and Exporters	47.54

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, the Department will issue an anti dumping duty order directing Customs officials to assess antidumpting duties on all steel wire rope from the PRC, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: September 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21835 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-801]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0186 or 377-1769, respectively.

Final Determination

The Department of Commerce (the Department) determines that imports of steel wire rope from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

We published an affirmative preliminary determination on April 22, 1991 (56 FR 16323). On May 14, 1991, Bombay Wire Rope, Ltd. (BWR), one of the two designated respondents in this investigation, informed the Department that it would no longer participate in the proceeding. On May 13, 1991, the Department published a notice extending the final determination date, until September 4, 1991, at the request of respondent Usha Martin Industries, Ltd. (UMIL).

On May 28, 1991, the Department received a request from petitioner to exclude stainless steel wire rope from the scope of this investigation. On June 10, 1991, the Department solicited comments from interested parties regarding petitioner's request. On July 9, 1991, we published notices in the investigations of steel wire rope from Argentina and Mexico excluding stainless steel wire rope from the scope of those investigations. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (56 FR 31098, July 9, 1991).

On June 17-21, 1991, the Department conducted verification of UMIL's responses in Calcutta and Ranchi, India. Because the Department did not receive a timely request for a hearing by interested parties, no hearing was held in this investigation. On July 24, 1991, and July 31, 1991, petitioner and UMIL submitted case and rebuttal briefs, respectively.

Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, i.e., ropes, cables and cordage, other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Steel wire rope is currently classifiable under HTS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation.

The period of investigation (POI) is June 1, 1990, through November 30, 1990.

Such or Similar Comparisons

We have determined that all of the steel wire rope covered by the scope of the investigation constitutes one such or similar category. Product comparisons were made on the basis of the following criteria: (1) Type of steel wire; (2) diameter; (3) core type; and (4) class/construction.

Fair Value Comparisons

To determine whether sales of steel wire rope from India to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV) for UMIL, as specified below. For BWR, the respondent which withdrew its participation from this proceeding, we used the best information available (BIA) as required by section 776(c) of the Act.

Best Information Available

BWR withdrew its participation from this proceeding after the preliminary determination. This withdrawal precluded the Department from verifying BWR's questionnaire responses; therefore, the Department could not rely on the information contained in these responses for rendering a final determination. As BIA, we used 65.6 percent, the highest margin alleged in the petition. (See DOC Position to Comment 1.)

United States Price

For UMIL, we based USP on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

We calculated purchase price based on packed c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, foreign insurance, foreign brokerage, and ocean freight, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(1)(B) and (C) of the Act, we also made adjustments, where appropriate, for rebates of indirect taxes, indirect taxes not collected on export sales, and duty drawback.

When there is a companion countervailing duty proceeding on the merchandise subject to an antidumping proceeding, the Department limits adjustments to USP for the rebate of

indirect taxes to only those taxes paid on inputs that are physically incorporated into the subject merchandise. See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Argentina, (56 FR 37891, August 9, 1991). In this case, there is a companion countervailing duty proceeding, the verification findings of which showed that the actual indirect tax incidence on inputs physically incorporated into exports of the subject merchandise was lower than the rebate allowed under India's Cash Compensatory Support (CCS) program. See concurrent Final Countervailing Duty Determination: Steel Wire Rope from India. Therefore, the indirect taxes rebated on physically incorporated inputs under the CCS program were added to USP to the extent that such taxes were paid in the home market on the subject merchandise.

Foreign Market Value

In order to determine whether there were sufficient sales of steel wire rope in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. For UMIL, the volume of home market sales exceeded five percent of the aggregate volume of third country sales, indicating there were sufficient sales in the home market to provide a basis for calculating FMV.

For UMIL, we calculated FMV based on ex-godown or delivered prices to unrelated purchasers in the home market. We made deductions, where appropriate, for inland freight, insurance, discounts, and rebates. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for credit, technical service expenses, and warranty expenses, pursuant to 19 CFR 353.56. We recalculated home market and U.S. credit expenses to adjust for discounts and findings at verification. We also made adjustments for indirect taxes not collected on export sales.

We made further adjustments for differences in commissions, in accordance with 19 CFR 353.56(a)(2). Where commissions were paid in one market and not in the other, we allowed an adjustment for indirect selling expenses incurred in the other market to offset commissions, in accordance with 19 CFR 353.56(b). We also adjusted for physical differences in merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent United States currency using the exchange rates as certified by the Federal Reserve.

Interested Party Comments

Comment 1

Petitioner contends that the Department must apply BIA to BWR, pursuant to 19 CFR 353.37, because that company withdrew from the investigation prior to the vertification of its questionnaire response. Petitioner asserts that as BIA, the Department should use the highest dumping margin alleged in the petition. Furthermore, petitioner argues that this BIA rate should also be the "all others" rate in light of the Indian government's failure to properly identify the wire rope manufacturers/exporters to whom antidumping questionnaires in this case should have been sent.

DOC Position

We agree with petitioner that, because BWR, withdrew from this proceeding and its questionnaire responses could not be verified, the Department must establish a rate for BWR based on BIA. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information, or otherwise impeded the proceeding. Thus, the Department determines on a case-by-case basis what is BIA. For purposes of this proceeding, because BWR withdraw its participation, we have established BIA for BWR based on the highest margin alleged in the petition.

With respect to the "all others" rate, it is our general practice to include all affirmative rates, as well as those based on BIA, and exclude all zero or *de minimis* rates, in our calculation of the "all others" rate. See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) from the Federal Republic of Germany, et al. (54 FR 18992, May 3, 1989). We find no circumstances in this investigation that justify deviating from our normal practice. Therefore, following our standard practice, we have included in the calculation of the "all others" rate, the affirmative margin (i.e., the BIA margin for BWR), and excluded the *de minimis* margin (i.e., the calculated margin for UMIL) for purposes of the final determination.

Comment 2

Petitioner argues that the adjustment for duty drawback made in the preliminary determination should not be allowed for purposes of the final determination since the wire rod subject to the duty was used only to manufacture steel wire rope intended for export. Because UMIL provided no evidence that it used imported steel wire rod, or paid duties on such rod, in producing the subject merchandise sold in the home market, petitioner claims that allowing the adjustment for duty drawback would create an unequal comparison. Furthermore, petitioner contends that the adjustment itself was not supported by sufficient documentation at verification. That is, the exportation of the subject merchandise made from the steel wire rod imported under an Advance License occurred beyond the time limitation specified in the terms of the license. Petitioner further asserts that should the Department allow such an adjustment, the amount of the adjustment should exclude the amount attributable to wastage because it was not supported by any documentation examined at verification.

UMIL maintains that an adjustment for duty drawback is not a "circumstance of sale" adjustment over which the Department has discretion; rather, it is a mandatory adjustment under section 772 of the Act. UMIL further asserts that the expiration date on the Advance License applied to the import of raw materials, not the export of the finished product. Under the terms of the Advance License, importation of raw materials must occur within 18 months of the date of the Advance License, and exportation of the finished merchandise must occur within 15 months of the date of importation of the raw materials. According to UMIL, the importation of the steel wire rod used in the manufacture of the subject merchandise occurred within 15 months of the date of the Advance License, and subsequent exportation of the subject merchandise occurred within six months of the date of importation of the steel wire rod.

UMIL also maintains that the adjustment for duty drawback should be increased to account for waste, since all imports of steel wire rod under the Advance License entry duty free—including all of that used to manufacture the subject merchandise, At the time of entry, a debit-type account is set up to register the amount of imports. When the finished merchandise is exported, the account is drawn down by the

amount exported. According to UMIL, as long as imports and exports continue, the ledger may never be drawn down completely.

DOC Position

Respondent claimed a duty drawback adjustment on U.S. sales arising from the importation of raw materials under an Advance License. The Advance License permits the importation of raw materials duty free provided that the imported goods are subsequently exported. Respondent claimed, and the Department verified, that UMIL used imported high carbon wire rod for its production of high carbon wire rope destined for sale to the United States, and that duties were not collected on this imported material by reason of exportation of the subject merchandise. Based on the foregoing, we have made an upward adjustment to USP for such duties in accordance with section 772(d)(1)(B) of the Act. However, because UMIL was unable to substantiate at verification that an adjustment for wastage was permitted under this program, we have not increased the amount of the adjustment to account for any wastage.

Comment 3

Petitioner argues that the adjustment for inland freight should be disallowed because UMIL failed to adequately document and describe its freight charges, and because these charges were not verified. In particular, petitioner objects to the use of POI inland freight charges that were estimated based on a percentage of current freight rates, and to the failure of UMIL to indicate the points of departure and destination to which the charges apply in order to determine whether or not the charges were direct expenses.

UMIL claims that it adequately described and documented its inland freight charges. The POI inland freight adjustment factor was based upon a contract with one of UMIL's major transporters. Since the contract and the methodology used to calculate the POI inland freight adjustment factor were verified by the Department, UMIL contends that the adjustment to home market prices for inland freight should be allowed.

DOC Position

We agree with UMIL. It is often the case that respondents' records are not maintained in the particular format in which the Department requests information. In this case, because UMIL made a substantial number of home market sales of the subject merchandise during the POI, the tracking of actual freight charges on a sales-specific basis would have been unnecessarily burdensome. Therefore, respondent reported, and the Department verified, a freight rate for each sale based upon the final destination of the particular sale and the ratio of current to POI freight rates as specified in UMIL's agreements with its transporters. As stated in the Department's verification report, "UMIL's inland freight expense methodology was found to be based on accurately calculated current and POI freight rates, and did not appear to distort the POI freight cost." (Verification Report at 8.) Based on our verification findings and the reasonable nature of the methodology employed, we have deducted the verified inland freight charges from FMV.

Comment 4

Petitioner maintains that calculation of UMIL's overall home market cost of credit should be exclusive of loans from private sources extended to the Usha Alloys & Steel (UAS) Division of UMIL because these loans were not verified. These loans were contracted with interest rates in excess of the average interest rate reported in UMIL's response.

UMIL states that it had not anticipated the need for documentation substantiating these loans at verification and, therefore, did not retrieve them from the UAS Division which is located in a city different from that in which verification was conducted. Because it was not until the last day of verification that these documents were requested, UMIL asserts that time and logistical constraints impeded its ability to provide the requested documents for the Department's review. Based on the fact that other factors included in the calculation of home market credit expenses were verified to the Department's satisfaction, and UMIL's inability to verify the loans at issue was beyond its control given verification time constraints, UMIL argues that the home market credit expense information originally submitted should be used for purposes of the final determination.

DOC Position

Based on the fact that the loans at issue were not originally reported and that the Department could not verify the loans at issue, we have only included the verified loan information in the calculation of home market credit expenses.

Comment 5

Petitioner contends that UMIL's overall cost of short-term credit in the home market should be applied to the period in which UMIL held an undiscounted note from a U.S. customer. Since UMIL elected to hold the note, petitioner argues that it became a *de facto* home market credit expense.

Given that all exporters in India are eligible for post-shipment financing at 8.65 percent for a period of up to 180 days, UMIL contends that this rate should be used in calculating imputed credit expenses associated with the note as it is the rate UMIL would have obtained had it sought financing. UMIL also contends that the credit expense adjustment for U.S. sales should be based upon verified rates, and not the rate used in making the preliminary determination.

DOC Position

It is the Department's practice to calculate credit expenses using the interest rate a company paid or would have paid if it borrowed funds to finance its accounts receivable. In this case, we verified that 8.65 percent was the interest rate applicable to export financing. (See Verification Report at 12.) Therefore, we have applied this rate to the relevant portion of UMIL's credit cost term for U.S. sales, and used verified information to calculate the credit expense applicable to the remaining portion.

Comment 6

Petitioner argues that UMIL's claimed adjustments to home market price for discounts and rebates should be disallowed. UMIL does not make cash discounts, but instead issues notes of credit, allows some customers to take the discount themselves, and periodically makes discount payments to customers when requested. Since there is no evidence that discounts were actually paid, nor is there information in the questionnaire response or verification report regarding the history of past payments, petitioner maintains that adjustments for these discounts should be disallowed. Similarly, petitioner contends that UMIL's policies regarding rebates have not been sufficiently described to allow the Department to make an adjustment.

Because discounts and rebates were reported on a sale-specific basis, and were verified to be accurate, UMIL contends that adjustments for the discounts and rebates should be allowed for purposes of calculating FMV.

DOC Position

We agree with UMIL. We note that the subject "rebates" were granted for short lengths, invoice mistakes and

other adjustments to gross price. As stated in the verification report, "[d]iscounts and rebates were reviewed during verification and were found to be accurately reported in UMIL's response." (Verification Report at 9.) Therefore, we have included the subject discounts and "rebates" in our calculation of FMV.

Comment 7

Because UMIL provided information in its questionnaire response regarding its technical service and quality control expenses, detailed the methodology it used to allocate these expenses to home market sales, and offered to verify this information, UMIL asserts that an adjustment to home market prices should be allowed for these claimed expenses.

DOC Position

The claimed technical service expenses, as described by respondent in its April 15, 1991 response, were comprised of the travel expenses of UMIL's service personnel to and from the customers' places of business. These expenses are variable costs and, as such, qualify for treatment as direct selling expenses if they are directly related to sales of the subject merchandise. Because verification time limitations often preclude the Department from verifying every item contained in a questionnaire response, and UMIL's description of these expenses conforms to the standards applicable to direct selling expenses, we have made a circumstance of sale adjustment to FMV for these expenses.

With respect to quality control expenses, however, respondent failed to fully describe the nature of these expenses in its questionnaire response and the Department did not verify this item. Respondent states in its April 15, 1991, response that the claimed expenses constitute testing and inspection charges which are not included in the fixed overhead costs of the company's Quality Control Department. Based on this limited discussion to UMIL's response, we cannot determine the proper classification of these expenses. Therefore, we have not made a circumstance of sale adjustment to FMV for these expenses in the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rope from India that are entered, or withdrawn from warehouse, for consumption on or after April 22, 1991, with the exceptions noted below. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of steel wire rope exceeds the USP as shown below. The cash deposit rate will be reduced to account for any export subsidies found in the companion countervailing duty investigation. With respect to the exclusion of stainless steel wire rope from the scope of this investigation and the *de minimis* finding for UMIL, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or bonds now posted on such merchandise. The suspension of liquidation on all other steel wire rope will remain in effect until further notice. The dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
Usha Martin Industries, Ltd.	[1] 0.06
Bombay Wire Rope, Ltd.	65.60
All other companies	65.60

[1] *De minimis.*

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all steel wire rope from India with the exceptions noted above, on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the USP.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: September 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21836 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-811]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-8922.

Final Determination

The Department of Commerce (the Department) determines that imports of steel wire rope from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

We published an affirmative preliminary determination on April 22, 1991 (56 FR 16325). On May 1, 1991, we issued a second deficiency letter covering sections A, B and C of the Department's questionnaire.

In response to a request from respondents that we postpone the final determination pursuant to 19 CFR 353.20(b)(1), on May 13, 1991, we postponed the final determination until September 4, 1991, (56 FR 21988).

On May 28, 1991, the Department received a request from petitioner to exclude stainless steel wire rope from the scope of this investigation. On June 10, 1991, the Department solicited comments from interested parties regarding petitioner's request. On July 9, 1991, we published notices in the investigations of steel wire rope from Argentina and Mexico excluding stainless steel wire rope from the scope of those investigations. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (56 FR 31098, July 9, 1991).

On June 19, 1991, the Department notified respondents Song Ho Industrial Co., Ltd., (Song Ho) and Sevens Industrial Corp. (Sevens) that numerous deficiencies existed in their questionnaire responses and that the Department had decided not to verify the information submitted to date for those two respondents.

The Department verified the response of Yuan Yang Trading Co. (Yuan Yang) from July 1 through July 3, 1991. Verification of the response of Yng-Chern Fine Wire Ropes Co., Inc. (Yng-Chern) took place from July 4 through July 6, 1991.

Beginning on July 15, 1991, the Department verified the cost responses for these two companies. The Department issued sales verification reports on July 18 (Yuan Yang) and July 22, 1991 (Yng-Chern); cost verification reports for both companies were issued on August 9, 1991. Petitioners and respondents submitted case briefs on August 16, 1991; respondents filed a rebuttal brief on August 21, 1991.

The Department did not receive a request for a public hearing from either petitioner or respondents.

Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, i.e., ropes, cables and cordage, other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under *Harmonized Tariff Schedule* (HTS) subheading 7312.10.6000.

Steel wire rope is currently classifiable under HTS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is June 1 through November 30, 1990.

Fair Value Comparisons

To determine whether Sevens, Song Ho, Yuan Yang and Yng-Chern made sales of steel wire rope at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified below.

Although Sevens and Song Ho attempted to cooperate with the Department's requests for information, each failed to respond adequately to the Department's questionnaire. Therefore, in accordance with section 776(c) of the Act, our results are based on the best information available (BIA). Likewise, although Yuan Yang and Yng-Chern responded to the Department's deficiency questionnaires, in attempting to verify their responses, the Department discovered numerous reporting errors and inconsistencies. We have, therefore, also based the determination for Yng-Chern and Yuan Yang on BIA. Given the attempts made by each of the respondents to cooperate with our requests for information, as BIA, we have assigned to each of the four respondents the average of all margins contained in the petition.

United States Price

We based USP on CIF price quotations for several different varieties of wire rope as provided in the petition. We deducted from the unit USP the per-unit charge reported by petitioner for international freight and insurance. We made no other deductions or adjustments to USP.

Foreign Market Value

We based FMV on FOB price quotations, also contained in the petition, for merchandise comparable to that for which petitioner provided U.S. prices. We made no deductions or adjustments to FMV. Petitioner converted the prices to using the exchange rate effective on the date of the home market price quotation. We converted the prices using the exchange rate effective on the date of the U.S. price quotation.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency to United States currency using the official exchange rates in effect on the appropriate dates.

Best Information Available

We have determined that the questionnaire responses of all four respondents are an inadequate basis for estimating dumping margins.

Sevens and Song Ho failed to fully and accurately respond to the Department's initial and deficiency questionnaires. With respect to Yuan Yang and Yng-Chern, the Department determined that, for the information we examined at verification, the misreporting and inaccuracies in the responses were so pervasive as to make the responses inherently unreliable. The following is a company-specific, illustrative list of the deficiencies and inaccuracies which compel the Department to use BIA.

Sevens

As of May 20, 1991, Sevens, by its own admission, failed to report approximately 80 percent of its home market sales. Despite repeated requests by the Department, Sevens failed to fully explain the reported expenses for home market packing; home market freight; brokerage; ocean freight; U.S. packing; and difference in merchandise adjustments. The Department did not have sufficient information on the record to conduct verification and time constraints prevented the Department from allowing Sevens additional time subsequent to receipt of the deficiency responses to correct the outstanding deficiencies.

Song Ho

As of May 20, 1991, Song Ho, by its own admission, failed to report approximately 95 percent of its home market sales. Despite repeated requests by the Department, Song Ho failed to fully explain the reported expenses for home market packaging; foreign inland freight; ocean freight; marine insurance; and difference in merchandise adjustments. The Department did not have sufficient information on the record to conduct verification and time constraints prevented the Department from allowing Song Ho additional time subsequent to receipt of the deficiency responses to correct the outstanding deficiencies.

Yng-Chern

Prior to verification, Yng-Chern's record responses were, in the Department's view, an adequate basis for estimating dumping margins. At verification, the following items, among others, were found to have been inaccurately reported (fully, or in part): Home market shipment date; home market freight; home market packing; U.S. payment dates; and U.S. freight. Further, many reported charges and adjustments could not be traced to Yng-Chern's financial statements. In addition, Yng-Chern failed to assign unique product control numbers to several home market products. At verification, the Department also discovered several inaccuracies in the line-item reporting for the pre-selected sales.

With respect to the cost verification, the Department found numerous clerical and mathematical errors throughout the response. Additionally, costs were not consistently developed from the financial statements Yng-Chern submitted, and costs for many home market products were not included in the response.

Yuan Yang

Prior to verification, Yuan Yang's record responses were, in the Department's view, an adequate basis for estimating dumping margins. At verification, the following items, among

others, were found to have been misreported (fully, or in part): Home market date of sale; home market volume and value; home market payment date; home market freight; home market packing; U.S. payment dates; U.S. foreign inland freight; and U.S. packing expense. Further, many reported charges and adjustments could not be traced to Yuan Yang's accounting records. At verification, the Department also discovered several inaccuracies in the line-item reporting for the pre-selected sales.

With respect to the cost verification, the Department found the following significant deficiencies: Costs were not consistently developed from the financial statements Yuan Yang submitted; Yuan Yang failed to report cost of production information for a significant percentage of home market transactions; Yuan Yang incorrectly reported the relative costs for steel and polyvinylchloride which resulted in an inaccurate cost of manufacture for the product sold in the United States.

Interested Party Comments

General Comment

Petitioner contends that the responses of Yuan Yang and Yng-Chern are replete with material deficiencies and discrepancies that make the use of BIA obligatory in this investigation. Petitioner cites the numerous deficiencies noted in the Department's verification report as evidence of the inaccurate and unsound reporting methodologies of respondents. As BIA, petitioner suggests that the Department utilize the higher of "the highest rate calculated for purposes of the preliminary determination * * * or the highest rate calculated for any other respondent."

Respondents contend that no significant issues arose at verification and that the "calculations and facts were examined and verified" and that the "thorough and accurate nature of the responses" was substantially verified by the Department. Respondents contend that they are "entitled to a negative determination of no duties."

DOC Position

That the responses of Yuan Yang and Yng-Chern are "thorough and accurate" is, to say the least, an overstatement. As noted in the BIA section of this notice, the responses are seriously deficient in numerous respects. As the Department stated in the Final Determination of Sales at Less Than Fair Value: Photo Albums and Filler Pages from Korea (50 FR 43754, October 29, 1985), "[i]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department." Since verification of Yng-Chern and Yuan Yang did not establish the accuracy of the responses, the Department is compelled to use BIA. We have used the margins contained in the petition as BIA, consistent with our decision in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, (54 FR 18992, 19033, May 3, 1989). As stated above, because all four respondents made good faith efforts to comply with the Department's requests, we used the average of all the margins listed in the petition.

Given the Department's use of BIA, other comments submitted by the parties in their briefs in this investigation are moot, and will not be addressed in this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rope from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after April 22, 1991. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of steel wire rope exceeds the United States price as shown below. Given the exclusion of stainless steel wire rope from the scope of this investigation, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or release any bonds now posted on such merchandise. The suspension of liquidation on all other steel wire rope will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Sevens Industrial Corp	16.07
Song Ho Industrial Co., Ltd	16.07
Yng-Chern Fine Wire Ropes Co., Inc	16.07
Yuan Yang Trading Co	16.07
All others	16.07

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all steel wire rope from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: September 4, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21837 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-805]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3798.

Final Determination

The Department of Commerce (the Department) determines that imports of steel wire rope from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the Department published an affirmative preliminary determination on April 22, 1991, (56 FR 16323), the following events have occurred. On April 23, 1991, we issued a second

deficiency letter covering sections A, B and C of the Department's questionnaire.

In response to a request from respondent Usha Siam Steel Industries, Ltd. (Usha Siam) that we postpone the final determination pursuant to 19 CFR 353.20(b)(1), on May 13, 1991, we postponed the final determination until September 4, 1991 (56 FR 21988).

On May 28, 1991, the Department received a notice of withdrawal of appearances from counsel for respondent Usha Siam. The Department had not received answers to its deficiency questionnaire for sections A, B and C or the section D cost questionnaire. Since the Department did not receive a request for a hearing, on July 2, 1991, the Department accelerated the briefing schedule in this investigation.

On May 28, 1991, the Department received a request from petitioner to exclude stainless steel wire rope from the scope of this investigation. On June 10, 1991, the Department solicited comments from interested parties regarding petitioner's request. On July 9, 1991, we published notices in the investigations of steel wire rope from Argentina and Mexico excluding stainless steel wire rope from the scope of those investigations. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (56 FR 31098, July 9, 1991).

On July 12, 1991, petitioners submitted their brief. Usha Siam did not submit a brief.

Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Excluded from this investigation is stainless steel wire rope, i.e., ropes, cables and cordage, other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Steel wire rope is currently classifiable under HTS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is June 1 through November 30, 1990.

Fair Value Comparisons

The lone respondent in this investigation, Usha Siam, did not respond to the Department's deficiency questionnaire or section D of the questionnaire. Therefore, in accordance with section 776(c) of the Act, our results are based on the best information available (BIA). For BIA, we compared the United States price to the foreign market value, as specified below.

United States Price

We based United States price (USP) on May, 1990 Bureau of the Census data provided in the petition for three categories of steel wire rope. We recalculated USP to remedy rounding errors made by petitioner. We made no deductions or other adjustments to USP.

Foreign Market Value

We based foreign market value (FMV) on ex-factory prices, contained in the petition, for merchandise comparable to that for which petitioner provided U.S. prices. We recalculated the 22 foreign market values for which petitioner provided complete and accurate information. We made no deductions or other adjustments to FMV.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent United States currency using the official exchange rates in effect on the appropriate dates.

Interested Party Comment

Comment

The petitioner contends that, since the respondent in this investigation has not provided any further information responsive to the Department's questionnaire since the date of the preliminary determination, the Department should assign respondent the highest rate calculated, rather than the simple average used in the preliminary determination.

DOC Position

The Department agrees and has applied the highest margin in the petition adjusted as noted above. At the time of the preliminary determination Usha Siam was actively participating in the investigation and had made good faith efforts to respond to the Department's questionnaire. Since then, the firm has provided no response to deficiency letters regarding sections A, B and C of the questionnaire, nor has it responded to section D of the questionnaire. We have, therefore, applied the highest petition margin, consistent with our decision in the Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico, 56 FR 31098 (July 9, 1991).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rope from Thailand that are entered, or withdrawn from warehouse, for consumption on or after April 22, 1991. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of steel wire rope exceeds the United States price as shown below. The cash deposit rate will be reduced to account for any export subsidies found in the companion countervailing duty investigation. Given the exclusion of stainless steel wire rope from the scope of this investigation, we will instruct the U.S. Customs Service to terminate the suspension of liquidation on that merchandise and to refund any cash deposits or release any bonds now posted on such merchandise. The suspension of liquidation on all other steel wire rope will remain in effect until further notice. The dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
All companies	54.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel wire rope, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all steel wire rope from Thailand, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: September 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21838 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-802]

Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 at (202) 377-5414.

Final Determination

Case History

Since the publication of our preliminary determination in the **Federal Register** (56 FR 4259, February 4, 1991), the following events have occurred. On February 13, 1991, petitioners requested that we align the due date for the final countervailing duty determination with the final determination in the concurrent antidumping duty investigation. On February 20, 1991 (56 FR 6837), we published an amendment to the preliminary determination.

On March 8, 1991, we presented a supplemental questionnaire to the Government of India, Usha Martin Industries Ltd. (USHA), and Bombay Wire Ropes Ltd. (BWR). On March 18, 1991, we published a notice in the **Federal Register** (56 FR 11406) announcing the alignment of the final countervailing duty determinations for India and Thailand with the final determinations in the companion antidumping duty investigations for India and Thailand.

We received responses from the Engineering Export Promotion Council (EEPC), on behalf of the Government of India, USHA, and BWR on April 1, 1991. From April 16 to April 26, 1991, we conducted verification in India of the questionnaire responses of the EEPC, USHA, and BWR. On May 17, 1991, we received additional information from the respondents. On June 12, 1991, we published a notice in the **Federal Register** (56 FR 26994) postponing the final determination in this investigation until September 4, 1991.

On May 28, 1991, the Department received a request from petitioners to exclude stainless steel wire rope from the scope of this investigation. On June 10, 1991, the Department solicited comments from interested parties regarding petitioners' request. On July 9, 1991, we published notices in the investigations of steel wire rope from Argentina and Mexico excluding stainless steel wire rope from the scope of those investigations. See Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Mexico (56 FR 31098, July 9, 1991).

Case briefs were filed by petitioners and respondents on August 7, 1991, and a rebuttal brief was filed by petitioners on August 14, 1991.

Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables, and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Steel wire rope is currently classifiable under HTS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

We did not receive responses to our questionnaire from South India Wire Ropes, Ltd. (South India) and Mohatta & Hectel Ltd. (Mohatta). Therefore, as best information available (BIA), we are assigning these companies the highest subsidy rate found in this investigation for any company for each program determined to be countervailable.

When we calculate the country-wide rate, we weight the individual company rates according to each company's share of exports of the subject merchandise to the United States. In this case, however, we cannot include South India and Mohatta in the calculation of the country-wide rate because we have no information on the value of their exports of the subject merchandise to the United States. Therefore, these two companies to the United States. Therefore, these two companies are receiving separate rates, which have not been included in the calculation of the country-wide rate.

For purposes of this investigation, the period for which we are measuring subsidies ("the review period") is April 1, 1989, through March 31, 1990, which corresponds to the most recently completed fiscal year of the respondent companies.

Based on our analysis of the petition, responses to our questionnaires, verification, and written comments from petitioners and respondents, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in India of steel wire rope (wire rope) under the following programs:

A. International Price Reimbursement Scheme (IPRS)

On February 9, 1981, the Government of India introduced the IPRS for exporters of products with steel inputs. The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On January 10, 1985, and June 2, 1988, the Government of India extended the IPRS to include stainless steel wire rod and high carbon steel wire rod, respectively. The price of wire rod, the primary input into wire rope, is not controlled. Eligibility for IPRS rebates is restricted to wire rope inputs purchased domestically.

The EEPC, a non-profit organization funded by the Government of India and private firms, processes the claims for, and disburses, the IPRS rebate. The IPRS rebate is purportedly based on (1) the differential between the domestic and international prices of steel wire rod and (2) the actual wire rod consumption, inclusive of a maximum ten percent allowance for waste. The domestic price of wire rod is based on a calculated average of domestic producers' prices. The international price of wire rod is theoretically derived from international prices of an upstream steel product. During the review period, both USHA and BWR received IPRS rebates on exports of wire rope to the United States.

We consider a government program that results in the provision of an input to exporters at a lower price than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5)(A) of the Act. Therefore, we determine that the IPRS program confers a countervailable export subsidy. We consider the benefit to be the entire IPRS rebate with an

adjustment for a service fee charged by the EEPC.

For any given review period, it has been our practice to consider the benefit from the IPRS program to equal the total amount of IPRS benefits received during the review period. (See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India 56 FR 41658 (August 22, 1991)) (Castings, 1987 Administrative Review). The estimate net subsidy from this program is 32.66 percent *ad valorem* for all manufacturers and exporters in India of wire rope except for USHA, which has a significantly different aggregate benefit. The estimated net subsidy for USHA is 11.08 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 32.66 percent *ad valorem*.

B. Pre-Shipment Export Loans

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credits to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based in presentation of a confirmed order or letter of credit. In general, the pre-shipment loans are granted for a period of 180 days. Interest on these loans is paid quarterly or at the date of repayment. Because only exporters are eligible for these pre-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

During the review period, the interest rates under this program were 7.5 percent for goods shipped within the first 180 days, 9.5 percent for the next 90 days, and the commercial interest rate thereafter. As the Government of India does not maintain statistics on the average predominate short-term commercial rate, it was unable to provide a benchmark interest rate. However, based on the information gathered at verification from officials from the Reserve Bank of India and a commercial bank, we estimate that the average short-term commercial interest rate during the review period was 17.5 percent and have used this rate as our commercial benchmark.

We compared this benchmark to the interest rate charged on pre-shipment financing and found that the interest rate charged under the program was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable.

The calculate the benefit on those preferential loans for which interest was paid during 1989–1990, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 16, 1984); see also *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. The difference between these amounts is the benefit. We allocated the benefit to either total exports or exports of the subject merchandise to the United States, depending on how the amount of pre-shipment financing was reported or verified. On this basis, we determine the estimated net subsidy from this program to be 2.91 percent for all manufactures and exporters in India of steel wire rope except for USHA, which has a significantly different aggregate benefit. The estimated net subsidy for USHA is 1.68 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 2.91 percent *ad valorem*.

C. Post-Shipment Loans

The Reserve Bank of India, through commercial banks, provides post-shipment financing to exporters. Post-shipment financing provides working capital to manufacturers/exporters for the interim period between shipment of goods and receipt of payment. Post-shipment financing is available to manufacturers/exporters upon presentation of a confirmed order or letter of credit subsequent to shipment of the goods. The terms of post-shipment financing with respect to the due date are those stated in the purchase order/contract. The due date may in no case exceed 180 days. Interest on these loans usually is paid up front in the form of a discount. Because only exporters are eligible for these post-shipment loans, we determine that they are counteravailable to the extent that they are provided at preferential rates.

During the review period, the interest rate under this program was 8.65 percent. For the reasons stated in the Pre-Shipment Financing section, we are using 17.5 percent as our short-term interest rate benchmark. We compared this benchmark to the interest rate charged on Pre-Shipment Financing and found that the interest rate charged under this program was lower than the benchmark. Therefore, we determine that loans provided under this program are counteravailable.

To calculate the benefit on those preferential loans for which interest was paid during 1989–1990, we followed the same short-term loan methodology discussed above. We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. The difference between these amounts is the benefit. We allocated the benefit to total exports of the subject merchandise to all markets. On this basis, we determine the estimated net subsidy from this program to be 0.66 percent for all manufacturers and exporters in India of steel wire rope except for USHA, which has a significantly different aggregate benefit. The estimated net subsidy for USHA is 1.97 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 1.97 percent *ad valorem*.

D. Advance Licenses

Advance Licenses are only available to exporters to import duty-free raw material inputs used in the production of exports. Recipients of Advance Licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an Advance License is closely linked to the amount of exports to be produced. However, a product imported under an Advance License does not necessarily have to be physically incorporated into the exported product. Unlike Additional and Replenishment Licenses (discussed below), Advance Licenses are not transferable.

We verified that USHA used four Advance Licenses during the review period to import inputs used in the production of wire rope. Of the various inputs used in the production of wire rope with Advance Licenses, wire rod, zinc, fiber core, lead, and lubricants are physically incorporated. We consider the use of the Advance License in this case to be the equivalent of a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. Therefore, we determine that the duty-free importation of physically incorporated inputs under the Advance License is not a counteravailable subsidy.

However, because of this program is limited to exporters, we consider any import duty exemption provided on imported products that are not physically incorporated into an exported product to constitute a counteravailable export subsidy. During the review period, USHA also imported soap with an Advance License. Because soap is not physically incorporated in wire rope, we consider the duty-savings

attributable to imports of soap to be a counteravailable subsidy.

We verified that USHA sold in the domestic market steel, lead, and zinc scrap recovered from production processes outside of its "Export Oriented Unit" (EOU) (see discussion below). This scrap originated, in part, from duty-free imports made under Advance License. Because USHA was not liable for the payment of import duties when the scrap from these imports was sold domestically, we consider the duty-savings attributable to these imports also to be a counteravailable subsidy.

To calculate the benefit attributable to the duty-savings on soap and scrap, we divided the total duty-savings by USHA's total exports to all markets. On this basis, we determine the estimated net subsidy from this program to be 0.00 percent *ad valorem* for all manufacturers and exporters in India of wire rope except for USHA, which has a significantly different aggregate benefit. The estimated net subsidy for USHA is 2.61 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 2.61 percent *ad valorem*.

E. Use and Sale of Additional Licenses

Additional Licenses are available to Export/Trading Houses. To be designated as an Export/Trading House, a company must have achieved a certain level of export performance over a three-year period. An Additional License permits its holder to import a relatively wide variety of items in an amount equal to at least ten percent of the "net foreign exchange" earned in the previous year. Imports against Additional Licenses are dutiable and recipients face no export obligation. Additional Licenses are fully transferable. If a recipient does not use the license, it can be sold for a premium, which is expressed as a percentage of the value of the license (*i.e.*, the amount that can be imported under the license).

USHA used a portion of one Additional License during the review period. We verified the value of the portion of the Additional License sold during the review period and the premium received for this portion of the license. We also verified the value of the Additional License used during the review period.

Because only exporters receive Additional Licenses based on their status as exporters, we have determined that these licenses provide a countervailable subsidy, and that the benefit is equal to the proceeds resulting from the sale of these licenses. To calculate the benefit from the partial sale of the Additional License, we divided the amount received by total exports to all markets.

Unlike the situation where the license (or a portion of it) is sold, we have no premium value for the Additional License that was used. Therefore, as BIA, we calculated the benefit attributable to use of the Additional License by estimating the value of the proceeds that would have resulted if the portion of the Additional License used was sold.

To estimate this value, we took the premium percentage earned on the license portion that was sold and applied it to the value of the license portion that was used. The resulting value was then divided by total exports to all markets. On this basis, we determine the net subsidy to be 0.00 percent for all manufacturers and exporters in India of wire rope except for USHA, which has a significantly different aggregate benefit. The net subsidy for USHA is 1.03 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 1.03 percent *ad valorem*.

F. Cash Compensatory Support (CCS)

In 1966, the Government of India established the CCS program to rebate indirect taxes on exported merchandise. We verified that the standard rebate for exports of wire rope was set at a maximum of ten percent for the review period, and is paid as a percentage of the FOB invoice price. This rate was based on the results of a 1989 audited survey of domestic wire rope manufacturers administered by the EEPC and the Ministry of Commerce (MOC). The survey received by the government, upon which the ten percent rebate is based, assumes that duties are paid on imported inputs.

During the review period, we verified that BWR earned an allowable rebate of ten percent on its exports of wire rope to the United States. USHA, however, earned less than ten percent because it imported certain inputs duty-free under EOU procedures and Advance Licenses. Under the rules governing the CCS, exports from an EOU or exports produced from inputs imported under an Advance License may earn less than the standard rate. The exact rate earned is contingent upon the percentage of domestic value-added contained in the exported product. We verified that USHA earned CCS rebates during the review period which ranged from five to ten percent depending on the percentage of domestic value-added.

To determine whether an indirect tax rebate system confers a subsidy, we must apply the following analysis. (See Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel from Indonesia, 49 FR 49672, December 21, 1984.) First, we examine whether the system is intended to operate as a rebate of indirect taxes and/or import duties. Next, we analyze whether the government properly ascertained the level of the rebate. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

When the rebate system meets these conditions, the Department will consider that the system does not confer a subsidy unless the fixed amount set forth in the rebate schedule for the exported product exceeds the amount rebated for duties and indirect taxes on inputs physically incorporated into the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find a subsidy to exist to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs.

In our preliminary determination, we found that the rebate system meets all the above-mentioned criteria and that the rebates under this program reasonably reflected the incidence of indirect taxes on physically incorporated inputs. In this determination, we find that the rebate system meets all three of the above-mentioned criteria and that there is a clear link between the amount of indirect taxes and import duties paid, and the level of CCS rebates. However, upon closer examination, we have determined that the rebate rates earned by BWR and USHA slightly exceed the amount of import duties and indirect taxes paid on physically incorporated items.

To determine the extent to which the rebate rate earned by BWR exceeds the tax incidence on items physically incorporated into the subject merchandise we calculated the indirect taxes paid on physically incorporated inputs. We consider scrap, alloys, coke, graphite, wire rod, zinc, lead, fiber, lubricants, and packing materials to be raw material inputs that are physically incorporated into the subject merchandise. We divided the total tax incidence on these physically incorporated inputs by the net FOB value per metric ton. We then compared the rebate rate of ten percent to our calculation of the allowable rebate rate for items physically incorporated and

found that the government authorized rebate of ten percent was excessive.

As noted above, USHA earned a CCS rebate less than the standard ten percent because it imported certain inputs duty-free under EOU procedures and Advance Licenses. The possibility of importing inputs duty-free was not taken into account in the 1989 survey received by the government. Because USHA earned less than the standard rate of ten percent on its exports of wire rope, and because the 1989 survey does not account for USHA's duty-free importation of inputs during the review period, we have examined certain company-specific information submitted by USHA. This information consists of verified information concerning the CCS rebates earned by USHA on its total exports of the subject merchandise to all markets, and the average amount of indirect taxes and import duties paid per metric ton of wire rope exported by USHA during the review period. Based on this information, we find that the average rebate earned by USHA exceeded the amount of the indirect taxes and import duties paid by USHA during the review period. Consequently, we determine that there was an overrebate of import duties and indirect taxes to USHA.

On the basis of the two overrebates calculated above, we determine the estimated net subsidy from this program to be 0.70 percent for all manufacturers and exporters in India of steel wire rope except for USHA, which has a significantly different aggregate benefit. The estimated net subsidy for USHA is 0.85 percent *ad valorem*. The estimated net subsidy for South India and Mohatta is 0.85 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

Based on the responses and verification, we determine that subsidies are not being provided to manufacturers, producers, and exporters in India of wire rope under the following programs:

A. Sick Industrial Company Act (SICA)

SICA was implemented in 1987 with the aim to revive and rehabilitate those "sick industrial companies" which are potentially commercially viable and to wind up those companies determined to not be commercially viable. If the Board for Industrial and Financial Reconstruction (BIFR) determines that a company is commercially viable, it will direct an "operating agency" (normally, the company's commercial bank) to prepare a rehabilitation package for the company.

We verified that a wide variety and broad range of industries have benefitted from the provisions of SICA. Therefore, we have determined that SICA does not confer a countervailable subsidy.

B. 100 Percent Export Oriented Units (EOU)

Designation as an EOU is awarded by the Board of Approvals. An EOU is a bonded area and status as an EOU is not transferable. Imports by an EOU are duty-free and an EOU is eligible for a five-year income tax holiday during the first eight years from commencement of production. An EOU must export 100 percent of its export production for ten years and export products with a value-added content of over 20 percent. Goods incorporating duty-free inputs which are sold in the domestic market, except "deemed" exports, will be subject to duties and taxes.

In our preliminary determination, we stated that we needed more information concerning three EOU issues: (1) The domestic sale of final products for which inputs were imported duty-free, (2) the duty-free importation of certain inputs that may not have been physically incorporated into exported merchandise, and (3) the duty-free importation of machinery and equipment during the review period. The first issue relates to products sold by the EOU in the domestic market which under the regulations governing EOUs in India were "deemed" or considered as exports by USHA's EOU. We verified that the deemed exports made by USHA were not of the subject merchandise. Therefore, we determine that USHA did not receive a countervailable benefit from its "deemed" exports.

The second issue concerned the duty-free importation of inputs which may not have been physically incorporated into exported merchandise. At verification, we noted that a typographical error had been made in the preparation of the responses. We verified that the particular imported product at issue was physically incorporated in an exported product. Therefore, we determine that no benefit was provided to USHA through the duty-free importation of inputs used in the production of exports.

With respect to the third issue raised in the preliminary determination, namely the duty-free importation of machinery and equipment, we verified that although certain machinery had been imported it was done so after the review period. Therefore, we determine that USHA did not receive a countervailable benefit during the review period.

Finally, during verification we discovered that all EOUs are eligible for a five-year income tax holiday. However, we verified that USHA did not claim this benefit on the tax return filed during the review period. Therefore, we determine that USHA did not receive a benefit during the review period from the provision of a five-year tax holiday.

III. Programs Determined to be Not Used

Based on the responses and verification, we determine that manufacturers, producers, or exporters in India of wire rope did not apply for, claim, or receive benefits during the review period for exports of wire rope to the United States under the following programs:

A. Income Tax Deductions Under Section 80HHC

B. Market Development Assistance (MDA) Grants

C. Receipt, Use, or Sale of Replenishment Licenses

Comments

Comment 1

Petitioners contend that the Department of Commerce (the Department) should affirm its preliminary finding that rebates received under IPRS by Indian exporters of steel wire rope constitute a countervailable export subsidy. Petitioner argues that although the U.S. countervailing duty law explicitly incorporates item (d) of the Illustrative List contained in Annex A of the GATT Subsidies Code, the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit previously have upheld the Department's findings that the IPRS constitutes a countervailable export subsidy. (Certain Iron-Metal Construction Castings From India, Final Results of Countervailing Duty Administrative Review, 51 FR 45788 (December 22, 1986), *aff'd RSI (India) Pvt., Ltd.* v. *United States*, 687 F. Supp. 605 (CIT 1988), *aff'd* 876 F.2d 1571 (Fed. Cir. 1989)) (*Castings*). Therefore, respondents' reliance on item (d) of the Illustrative List is not persuasive because its argument has already been rejected by the Department and the Courts.

Petitioners contend that the IPRS is controlled and funded by the Government of India, as in the *Castings* case. In addition, no reliable world market price for steel wire rod, the raw material used to produce steel wire rope, exists. Petitioners argue that the lack of any verifiable world market price is demonstrated by (1) the absence

of a published international price for high carbon steel wire rod and the subsequent use of the price of a surrogate product, (2) the absence of any price adjustment to the surrogate price to account for the differences in the price of the various grades of steel wire rod, and (3) the failure of the respondents during verification to provide support documentation for the international price of steel wire rod. Therefore, consistent with the *Castings* decision, the Department should find in this case that the IPRS is a countervailable export subsidy.

USHA contends that the Department should reverse its preliminary finding that the IPRS is countervailable. USHA presents three arguments to support its contention that the IPRS program does not provide countervailable benefits to Indian steel wire rope producers.

First, USHA distinguishes between the facts in Certain Iron-Metal Castings from India, 55 FR 50747, (December 10, 1990) (*Castings, 1985 administrative review*), in which the Department found the IPRS to be countervailable, and the facts in the present case. Unlike what was found in *Castings, 1985 Administrative Review*, the Indian government does not control the price of domestic steel wire rod and, therefore, cannot provide a benefit to Indian steel wire rope producers through maintenance of artificially high domestic prices of steel wire rod. Rather, high domestic prices of steel wire rod are a result of higher power costs and the higher cost of metal scrap used to produce steel wire rod.

Second, USHA argues that the IPRS program does not bestow an economic benefit on steel wire rope producers because the methodology used to calculate the IPRS rebate is designed to ensure that no economic difference exists between the price of domestic wire rod and imported wire rod for use in steel wire rope exports.

Third, the IPRS provides domestically-produced steel wire rod to steel wire rope exporters at prices equal to or greater than world market prices. Item (d) of the Illustrative List contained in the Trade Agreements Act of 1979 provides that provision of goods or services to exporters at preferential prices is countervailable only if the prices are more favorable than those that would be available on world markets. USHA maintains that, consistent with the Department's past practice, the Department should not find the IPRS countervailable because it does not provide domestically-produced steel wire rod at prices lower than world market prices.

DOC Position

IPRS payments are countervailable because the IPRS program results in the provision of an input to exporters at a price lower than to producers of domestically-sold products. It may be that the market, rather than the Indian government, controls the domestic price of steel wire rod. Nevertheless, as a result of the program, exporters of wire rope in India receive their primary input at a price lower than the price paid for the same input by producers of wire rope who sell their product domestically.

With respect to USHA's argument that item (d) of the Illustrative List controls Commerce's treatment of the IPRS, we have determined that the Illustrative List is not controlling of the identification and measurement of export subsidies, but must be considered along with other provisions of the statute and its legislative history, administrative practice and judicial practice. *See Castings, 1987 Administrative Review.*

As we stated in the *Castings, 1987 Administrative Review*, it is irrelevant whether the IPRS is consistent with item (d) because we are not concerned with world market prices but with the alternative price of the input commercially available in the domestic market. In this case, we found at verification that the IPRS program results in the provision of lower-priced inputs to exporters than to domestic purchasers. Therefore, we determine that the IPRS program is countervailable.

USHA's remaining argument assumes that the IPRS rebates only the difference between the domestic and international price of wire rod. However, during verification the EEPC was unable to document its calculation of the international world price of wire rod (see Verification Report at p. 19). Therefore, even assuming, *arguendo*, that USHA's rationale for the IPRS were correct, there is no evidence on the record to support the notion that the IPRS provides no economic benefit to wire rope producers. Therefore, USHA's argument must be rejected.

Comment 2

USHA contends that even if the Department finds the IPRS to be countervailable, the subsidy rate on the IPRS for USHA should be zero because USHA did not make any claim for rebates under the IPRS on its exports to the United States during the period of investigation.

USHA also argues that use of the cash-flow method is inappropriate in this case because USHA knew with certainty at the time of export that its U.S. exports were ineligible for IPRS rebates. Furthermore, the objective of the cash flow method is to prevent misstatement of the amount of the subsidy. In this case, this concern does not exist because there will be no IPPRS rebates on U.S. exports made during the period of investigation, now or in the future.

Petitioners urge the Department to affirm its preliminary determination to use the cash-flow method to calculate the amount of countervailable benefits received under the IPRS. Petitioners argue that the Department's preliminary decision is correct because (1) the Department's proposed rules codify the cash-flow method, which identifies a countervailable benefit upon a change in cash flow resulting from receipt of a benefit, and (2) USHA received IPRS rebates on prior export sales of the subject merchandise during the period of investigation. Furthermore, the exceptions to the use of the cash-flow method are inapplicable in this case because the IPRS rebate is based on a price differential formula in which the amount of the rebate is not known until the time the rebate is received. Therefore, respondents' argument that USHA was ineligible for IPRS rebates on its export sales made during the period of investigation is irrelevant.

DOC Position

The Department has continued to countervail IPRS benefits using the cash-flow methodology, which requires the Department to recognize a subsidy benefit upon receipt of the rebate rather than when the rebate is claimed. The cash-flow methodology is based upon the premise that a company does not receive a benefit until its cash flow is affected. (*See* Notice of Proposed Rulemaking: Countervailing Duties, 54 FR 23366 (May 31, 1989) at 23384 § 355.48)). Therefore, because USHA received rebates during the period of review, it is not relevant that USHA made no IPRS claims during the review period.

One of the situations in which we do not employ our cash flow methodology is when the benefit is earned on a shipment-by-shipment basis and the exact amount of the benefit is known at the time of export. In this case, we verified that an eligible company does not know the exact amount of the IPRS payment at the time of export. When a company is not eligible to claim a benefit it obviously knows that its benefit amount will be zero. However, the Department's determination as to whether an exception to the cash-flow

methodology should be made is based on how and when a benefit amount to be provided under a particular program is calculated. Therefore, the exception to the cash-flow method does not apply in this case.

Comment 3

Petitioners contend that the Department should increase the subsidy received by USHA under its Advance License by the amount of the import duty exemption that would be attributable to the scrap that is sold in the domestic market. The scrap was generated during the processing of raw materials imported under an Advance License. Petitioners maintain that the amount of duties not paid on the domestically-sold scrap constitutes a countervailable domestic subsidy.

DOC Position

The Department agrees with the petitioners. As stated above, the Advance License permits exporters to import duty-free inputs that are used in the production of exports. During verification, the Department found that scrap was generated from the production processes at USHA's non-EOU facilities which used, in part, inputs imported under Advance Licenses. Verification further revealed that USHA resold lead, steel and zinc scrap, which was generated from the production process, in the domestic market. USHA, however, did not pay import duties on the scrap subsequently sold in the domestic market.

Contrary to sales of scrap from non-EOU facilities, the Department also found at verification that USHA was liable for import duties on scrap which was generated at its EOU facility and sold in the domestic market.

The Department considers these two situations to be factually consistent except for the disparity in the requirement of payment of duties on the sale of scrap. Furthermore, we find that because the Government of India required payment of duties on domestic sales of scrap from the EOU, the Government of India recognizes that a benefit accrues to the exporter when such duties are not collected. We also note that in the concurrent antidumping investigation, the Department was unable to verify that the Government of India provides for a waste allowance under the Advance License program. Therefore, the Department determines that the duty savings attributable to sales of scrap generated during the processing of raw materials imported under Advance License by non-EOU's constitutes a countervailable subsidy.

Comment 4

Petitioners claim that at the preliminary determination, the Department understated the *ad valorem* rate of the benefit conferred from the use of the Advance License by USHA. Petitioners claim that the amount of the subsidy received should by divided by the f.o.b. value of the export sales set forth in the licenses rather than the value of export sales to all markets. Petitioners point out that the f.o.b. value of export sales which used raw materials imported under the Advance Licenses is explicitly identified in the licenses. Therefore, because the Department can tie the benefits received directly to specific export sales, the Department should recalculate the rate of the subsidy conferred to reflect the amount of export sales authorized by the licenses.

DOC Position

Although petitioners correctly assert that the Advance Licenses required the company to export a specific amount of sales, the Department is unable to directly tie the benefit received under the licenses during the review period to the value of export sales set forth in the licenses. At verification, we found that the time period of the licenses did not correspond to the review period. Moreover, we do not have information concerning the amount of exports during the review period which were taken against the export obligation specified in the licenses. Therefore, we allocated the benefit received over total export sales during the review period.

Comment 5

Petitioners claim that the Department should countervail the benefits provided to BWR as a result of its designation as a "sick" company under the Sick Industrial Company Act of 1985 (SICA). Petitioners maintain that these benefits are countervailable because the benefits were mandated by the Government of India, and only select industries may be designated as "sick" companies.

DOC Position

We disagree with petitioners. Although the benefits received by BWR may have been mandated by the Goverment of India, the Department verified that a large number and broad range of industries have benefitted from the provisions of the SICA. Because the benefits under SICA are not limited to a specific enterprise, or industry, or group of enterprises or industries, we have determined that SICA does not confer a countervailable subsidy.

Comment 6

Petitioners request the Department to use the higher of either the highest subsidy calculated for a respondent subject to verification or the net subsidy rate alleged in the petition as BIA to calculate the "all other" rate. Petitioners argue that application of the most adverse BIA standard conforms with the Department's precedent and regulations. In this case, at least two Indian respondents completely failed to respond to the Department's questionnaire. These parties' failure to respond warrants application of the most adverse BIA rate to all other Indian manufacturers/exporters.

DOC Position

Section 355.20(d) directs the Department to assign producers or exporters under investigation the country-wide net subsidy rate unless the Department determines that a firm has received benefits that are "significantly different" from the country-wide rate. If a significant differential exists between the weighted-average country-wide rate and an individual company rate, the company receiving significantly different subsidies is assigned its own individual rate. The "all other" rate is the average of the net subsidy rates of all other remaining companies. The rate of deposit applied to all companies other than those which were assigned an individual rate is the "all other" rate.

In the instant investigation, the Department found that USHA received subsidies during the period that were "significantly different" from those received by the other responding company under investigation. Therefore, USHA will receive an individual rate while the rate of deposit applicable to BWR is the "all other" rate.

However, two other companies, South India and Mohatta, received countervailing duty questionnaires from the Department but completely failed to respond to the questionnaires. Section 355.37(a) of the Department's regulations permits the Department to apply BIA to any party which fails to adequately respond to the Department's request for factual information. It remains within the Department's discretion to determine the nature of the best information available. We have determined that in this case, best information available is the highest net subsidy rate for each program calculated for any other respondent. (See Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings

from India, 56 FR 41650 (August 22, 1991)).

When we calculate the "all other" rate, we weight the individual company rates, including those companies which receive a BIA rate, according to each company's share of exports of the subject merchandise to the United States. In this case, however, we cannot include the BIA rates for South India and Mohatta in the calculation of the "all other" rate because we have no information on the value of their exports of the subject merchandise to the United States. Therefore, these two companies are receiving separate rates, which are not included in the calculation of the "all other" rate.

Comment 7

USHA contends that the Department should affirm its decision at the preliminary determination that the CCS program does not provide countervailable benefits to wire rope producers. USHA argues that the Department should not find the CCS rebates countervailable because the rebate percentage earned on exports of the subject merchandise to the United States was not greater than the average amount of indirect taxes and import duties paid as a percentage of the average metric ton price of wire rope exported to all markets.

DOC Position

As explained in Section I.F., based on our analysis of the information submitted by USHA, we have determined that the CCS rebate on wire rope exports slightly exceeds the indirect tax incidence on inputs physically incorporated into the exports of wire rope. In making this determination, we compared the CCS rebates earned by USHA on its total exports of the subject merchandise to all markets, to the average amount of indirect taxes and import duties paid as a percentage of the average metric ton price of wire rope exported to all markets. We used the CCS rebate earned on subject merchandise exports to all markets as opposed to simply exports to the United States to better match the company's analysis of indirect taxes and import duties paid.

Comment 8

Consistent with the Department's verification findings, USHA urges the Department to reaffirm all other aspects of its preliminary determination in which it found no countervailable benefit, especially with respect to Import Replenishment Licenses, income tax deductions under section 80 HHC of the Finance Act, and MDA grants. In addition, with respect to the following programs for which the Department required additional information to make an informed finding, USHA contends that verification revealed that such programs did not confer subsidies on Indian steel wire rope producers. These programs are (1) import duty exemptions available to EOUs, (2) provisions available under the SICA, and (3) the use, as opposed to the sale, of an Additional License.

DOC Position

As noted above under Section III., we have determined that Import Replenishment Licenses, income tax deductions under section 80HHC, and MDA grants were not used by respondents. With respect to import duty exemptions for EOUs and provisions under SICA, we found these programs not to provide countervailable benefits. However, with respect to the sale and use of Additional Licenses, we have determined that Additional Licenses provide a countervailable subsidy because they are available only to exporters in India. Moreover, we do not believe that using, rather than selling, an Additional License negates the benefit to the company using the license. When a company uses an Additional License it is exercising a right to import which is not available to non-exporters. Therefore, we have determined that the use of an Additional License constitutes a countervailable export subsidy, and the amount of the countervailable benefit associated with the use of the Additional License is the amount of the sales proceeds that would have been remitted upon the sale of the Additional License.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (room B-009) of the Main Commerce Building.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on February 4, 1991, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require the posting of a cash deposit or bond equal to the duty deposit rate. This final countervailing duty determination was extended to coincide with the final antidumping duty determination on the same product from India, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after June 4, 1991, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between February 4, 1991, and June 3, 1991. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit on all entries of the subject merchandise as follows:

Manufacturer/Exporter	Net ad valorem subsidy (percent)
Bombay Wire Ropes, Ltd.	36.93
Usha Martin Industries Ltd	19.21
South India Wire Rope, Ltd.	42.03
Mohatta & Hectel Ltd.	42.03
All other manufacturers or exporters	36.93

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however the

ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of wire rope from India entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: September 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21839 Filed 9-10-91; 8:45 am]

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[C-549-806]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-0167.

Final Determination

Based on our investigation, we determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Thailand of steel wire rope. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Short-Term Loans Provided under the Export Packing Credit (EPC) Program.
- Tax Certificates for Exports.
- Electricity Discount for Exporters.

The estimated net bounty or grant is 0.56 percent *ad valorem*. Vivat Steel Wire Rope (1979) Company Limited (Vivat) received benefits during the review period which amounted to 0.15 percent *ad valorem*. Since these benefits are less than 0.50 percent we have found them to be *de minimis*. Therefore we are excluding Vivat from this final affirmative determination and countervailing duty order.

Case History

Since publication of the Preliminary Negative Countervailing Duty Determination in the **Federal Register** (56 FR 4262, February 4, 1991) (Preliminary Determination), the following events have occurred. On January 31, 1991, we issued a second supplemental/deficiency questionnaire to the Government of Thailand (GOT) and the respondent companies, Usha Siam Steel Industries Limited (Usha) and Vivat. On February 26, 1991, after granting an extension, we received responses from the GOT and the two respondent companies. From May 13, to May 24, 1991, we conducted verification in Thailand of the government and company responses. We received no requests for a hearing. Case briefs and rebuttal briefs were received on July 23 and July 30, 1991, respectively.

Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from this investigation is stainless steel wire rope, *i.e.*, ropes, cables, and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Wire rope is currently classified under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, or written description of the scope of this investigation is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1989, which corresponds to the fiscal year of the respondent companies. Based upon our analysis of the petition, the responses to our questionnaires, the verification, and written comments filed by petitioner and respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of wire rope under the programs listed below. For a description of these programs and our analysis of each, see the Preliminary Determination.

A. Short-Term Loans Provided Under the Export Packing Credits Program

We verified that Usha received export packing credit (EPC) loans on which interest was paid during the review period. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. We verified that Vivat did not receive EPA loans during the review period.

As a benchmark for short-term financing, we ordinarily use the predominant source of short-term financing in the country in question. Where there is no single predominant source of short-term financing in the country in question, we may use a benchmark composed of the interest rates for two or more sources of short-term financing in the country in question, weighted, if possible, by the total value of financing from each source. In the preliminary determination, we used the weighted-average interest rate on bills, loans, and overdrafts as our benchmark interest rate, because the Government of Thailand reported that there was no predominant source of short-term financing in Thailand.

Since the preliminary determination, we have found that the overall weighted-average benchmark interest rate used in the preliminary determination was significantly less than the minimum loan rate (MLR) and the minimum overdraft rate (MOR) as reported in the Bank of Thailand Quarterly Bulletin. In fact, the benchmark interest rate as calculated by the BOT was less even than the inter-bank lending rate as reported in the government response.

During verification, we met with officials of a large commercial bank in Bangkok who stated that the MOR and the MLR were representative of short-term lending rates and explained that most of the bank's short-term loans were made at these rates. These rates are declarations by commercial banks of "prime" lending rates. The term "prime", however, connotes the going rate rather than a rate to preferred customers.

Furthermore, at verification, we determined that loans and overdrafts combined accounted for about 70 percent of short-term financing in Thailand during the review period. Consequently, we calculated a benchmark interest rate based on the interest rates for these two sources of short-term financing, which together represent the predominant source of short-term financing in Thailand during

the review period. In view of the above, we have concluded that the MLR and the MOR are more representative of short-term interest rates in Thailand than the weighted-average rate used in our preliminary determination. We note that we were unable to obtain interest rate information for bills during the review period.

In calculating the benchmark interest rate for the final determination, we took an average of the MLR and MOR rates and calculated a benchmark of 11.75 percent for loans taken out in 1988 and a benchmark of 12.23 percent for loans taken out in 1989. Comparing the benchmarks for 1988 and 1989 to the rate charged on EPCs, as verified by the DOC, we find that the rate on EPCs is preferential and, therefore, confers a bounty or grant on exports of wire rope. We verified that only Usha received benefits under this program during the review period.

To calculate the benefit from the EPC loans on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations (see, for example, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990) (*Pipe Fittings*); and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico (53 FR 15290, April 28, 1988) and which is described in more detail under § 355.44(b)(3) of "Countervailing Duty Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989); *see also, Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985).

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Because we verified that all loans received by Usha were tied to specific export shipments, we calculated the amount of interest that Usha would have paid at the benchmark rate on loans covering exports to the United States and subtracted the amount of interest that the company actually paid. Since Vivat is being excluded from this determination, there was no need to weigh the benefits received by Usha by its share of exports to the United States. On this basis, we determined the net bounty or grant from this program to be 0.22 percent *ad valorem*.

B. Tax Certificates for Exports

We verified that both Usha and Vivat received tax certificates during the review period. To determine whether, and the extent to which, the tax certificates confer an excessive remission of indirect taxes, we calculated the indirect taxes paid on physically incorporated inputs according to the most recent I/O table. We divided the tax incidence on all items physically incorporated into all products classified in the other fabricated metal products sector by the FOB-adjusted value of all domestically produced finished goods in that sector. We then compared the authorized rebate rate of 0.59 percent, which is based on both physically and non-physically incorporated inputs, to the allowable rebate rate and found that there is an excessive remission of indirect taxes to exporters of wire rope of 0.15 percent. The difference between the two rebate rates equals the net overrebate. On this basis, we calculated an estimated net bounty or grant of 0.15 percent *ad valorem*.

C. Electricity Discounts for Exporters

We verified that this program provides discounts of 20 percent of the cost of electricity consumed to produce exports and that Usha received benefits under this program during the review period but that Vivat received no benefits.

Since the benefits received by Usha were contingent on export, we divided the total amount of the discounts received by Usha during the review period by Usha's total exports during the same period. Because Vivat is excluded from this determination, there was no need to weight the benefit received by Usha by its share of exports of the subject merchandise to the United States. On this basis we determined the net bounty or grant from this program to be 0.19 percent *ad valorem* for all manufacturers and exporters in Thailand of wire rope.

We verified that, effective January 1, 1990, the GOT eliminated entirely the electricity rebate for exporters. The law terminating the program was issued on January 16, 1990. However, we are not reducing the cash deposit rate to adjust for this program-wide change, since Usha received residual benefits after the program-wide change.

II. Programs Determined not to be Used

We determine, based on verified information, that manufacturers, producers, and exporters of wire rope in Thailand did not apply for, claim, or receive benefits during the review period for exports of wire rope to the United States under the following programs which were listed in the Notice of Initiation (55 FR 50734, December 10, 1990):

A. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act.

B. Rediscount of Industrial Bills.

C. International Trade Promotion Fund.

D. Export Processing Zones.

E. Additional Incentives Under the IPA.

- Section 31
- Section 33
- Section 34
- Section 36(1)
- Section 36(2)
- Section 36(3)
- Section 36(4)

For a complete description of these programs, see the Preliminary Determination.

Interested Party Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1

Petitioner claims that the respondent companies do not account for all wire rope exports to the United States during 1989 and 1990. Both U.S. import statistics and Thai export statistics show volumes and values of shipments of wire rope that exceed those accounted for by the two respondent companies. Petitioner concludes that only the existence of one or more additional Thai companies can explain the shipment levels reported in the referenced statistics. Consequently, in its final determination, Commerce should establish a countervailing duty rate for all other exporters based on the best information available.

DOC Response

The Harmonized Tariff Schedule of Thailand does not include an *eo nomine* provision for steel wire rope. The applicable Thai tariff schedule number includes not only steel wire rope but also steel stranded wire and wire. Because the tariff schedule number is a basket category, it is not possible to get precise volume and value statistics for wire rope exports. In reporting export levels for steel wire rope, the government of Thailand relied on information from the two known producers and exporters, Usha and Vivat.

For the review period, steel wire rope exports to the United States, as reported by Usha and Vivat, compare closely with U.S. Bureau of the Census import

statistics (IM-146 statistics) for this product for the same period. The volume of exports for 1989 as reported in the response accounts for about 92 percent of the total volume reported in the IM-146 statistics. Value figures as reported in the response are about five percent greater than those reported in the IM-146 statistics. Overall the two sets of statistics compare quite favorably and leave no reason to suspect that other producers or exporters were shipping to the United States during the review period.

For the first nine months of 1990, steel wire rope exports from Thailand to the United States as reported by respondents do not match IM-146 statistics as closely as they did in 1989. During verification, the DOC team made every effort to determine the reason for the discrepancy. Thai government and company officials cooperated fully in this effort. Officials of the Ministry of Trade provided full access to export statistical data including monthly and year-to-year compilations, which show not only volume and value data by country but also the names of the various exporters and a breakdown for each exporter. From these statistical compilations, it was evident that only Usha and Vivat had shipped wire rope to the United States during 1989 and the first nine months of 1990. In addition, we verified response statistics from company books and records. Although there remains a discrepancy between the response data and the IM-146 data, we are satisfied that Usha and Vivat were the only two companies exporting to the United States during these periods. In any event, the first nine months of 1990 are not a part of the review period. Our determination in this investigation is based solely on the 1989 review period. During this period, response statistics and IM-146 statistics, as mentioned above, compared favorably.

Comment 2

Petitioner claims that in calculating the benchmark interest rate for the preliminary determination, the DOC used an inflated figure for total loans, bills, and overdrafts outstanding and should have used a figure for this total taken from Table 9 of the Bank of Thailand's (BOT) Quarterly Bulletin, which would have been more accurate and reliable.

DOC Response

Since we are no longer using a overall weighted-average interest rate as our short-term loan benchmark rate, we do not need a figure for total loans, bills, and overdrafts outstanding. Therefore the issue of whether we should take this figure from the government response or from Table 9 as claimed by petitioner becomes moot. As explained in the EPC section of this notice, we are using as our benchmark for the final determination the average of the minimum loan rates and the minimum overdraft rates during the review period. These are the rates associated with two forms of financing which taken together account for well over 50 percent of short-term financing in Thailand.

Comment 3

Petitioner claims that the DOC should calculate the benefit received during the review period on the basis of the electricity discounts earned in 1989 rather than on the basis of receipts in 1989. In addition, petitioner argues that the DOC should include discounts earned in 1988 and received in 1989, since the response did not report these latter discounts separately.

DOC Response

The Department considers a benefit to be received at the time when there is a difference in cash flow to the firm receiving the benefit. In this case, we recognize a difference in cash flow when the firm receives an electricity bill on which the discount has been credited, thereby reducing the net amount owed by the firm. We verified that Usha received a single electricity discount in 1989. This discount was based on exports made in 1987. The difference in cash flow to Usha, however, occurred entirely in 1989. Therefore, we recognize the benefit in 1989. Likewise, discounts received in 1990 would be recognized in that year, even if based entirely on exports from earlier years. For further detail on this methodology, see § 355.48(a) of the Proposed Substantive Countervailing Duty Regulations (54 FR 23366, May 31, 1989).

Comment 4

Petitioner cites Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Malleable Iron Pipe Fittings from Thailand (54 FR 6439, February 10, 1989) (Malleable Iron Pipe Fittings) in support of its contention that electricity discounts received in 1990 based on 1989 exports should be considered as benefits received during the review period. Petitioner refers specifically to DOC's statement that "since there was no program-wide change in the electricity discount program, it would be inappropriate to use discounts received after the review period in the calculation of the duty deposit rate." Petitioners infer that since a program-wide change has taken place in this case it would be appropriate to apply discounts received in 1990 to the review period.

DOC Response

The above quote is simply a restatement of the Department's practice with respect to program-wide changes. If discounts received after the review period differ from those received during the review period, the Department would use the discounts received after the review period for purposes of calculating the duty deposit rate, provided that the revised discounts were the result of a program-wide change which occurred after the review period but prior to the preliminary determination and provided that no residual benefits were received. The quote does not in any way imply that the Department would consider the level of benefits received after the review period for purposes of determining the subsidy rate for its final determination. Nor does it imply that benefits received after the review period should be combined with those received during the review period for purposes of calculating the subsidy rate for the final determination. The Department may take a program-wide change into account only in setting the duty deposit rate, but not in calculating the subsidy rate to be used in the final determination. See, for example, § 355.50(a) of the proposed substantive countervailing duty regulations.

Comment 5

Petitioner claims that in determining the percent of benefit for the electricity discount, the DOC should have divided the total discount amount by total exports of wire rope, rather than by total exports of all products, since it was never established that other products qualified for the electricity discount.

DOC Response

Only Usha received the electricity discount. During and prior to the review period, Usha's only exports consisted of wire rope, strand, and wire. The January 14, 1991, response indicates that each of these products received the discount and stated the discount rate applicable to each. During verification, we established that exports of each of these products qualified for and received electricity discounts during as well as prior to the review period. Discounts received during the review period, however, were based on exports made in 1987. Since we did not have a breakout of volume of each of the products exported in 1987, we allocated

the total amount of the discount to total 1989 exports.

Comment 6

Petitioner claims that the DOC should conclude that both Usha and Vivat received tax certificates on exports at the "A" rate rather than at the lower "B" rate. Petitioner maintains that only exporters using the duty drawback program receive the "B" rate and that neither respondents nor the DOC ever established that respondents used the duty drawback program. Therefore, for the final determination, the DOC should calculate the benefit of export tax certificates based on the "A" rate.

DOC Response

During verification, the DOC took the most direct and reliable approach to establish whether respondent companies received tax certificates at the "A" or "B" rate. We examined the documents actually used to obtain tax certificates, including completed application forms, the attached schedule of exports, cover letters transmitting certificates, and company ledgers in which tax certificate amounts were recorded. From all of these documents, it was abundantly clear that both companies received tax certificates at the "B" rate, as opposed to the "A" rate.

Comment 7

Petitioner claims that respondents have not demonstrated that zinc and aluminum chloride are physically incorporated into steel wire rope. Following its practice in Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof; Final Negative Countervailing Duty Determination: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand (54 FR 19133, May 3, 1989), the Department should, therefore, countervail the rebate of any indirect taxes on these two items which are not physically incorporated in the final product.

DOC Response

Consistent with the Department's determination in Malleable Iron Pipe Fittings, we find that aluminum and zinc chloride were used as a flux in the galvanizing process and as such are physically incorporated in the finished item. In addition, malleable iron pipe fittings are included in sector 111, other fabricated metal products, the sector which includes the subject merchandise. Since we now evaluate the Input/Output Study of Thailand on a sector-wide basis, the fact that we have previously found the compounds to be physically incorporated in a product produced by the sector serves to reinforce our determination in this case that the compounds are physically incorporated. For further discussion, see Pipe Fittings.

Comment 8

Petitioner claims that the DOC should countervail the Industrial Finance Corporation of Thailand (IFCT) loan received by Usha, since the IFCT gives high priority to export-related projects, since the GOT maintains a partial ownership interest in IFCT, and since the DOC did not establish that the loan was consistent with commercial considerations.

DOC Response

During verification, we carefully examined the IFCT loan application and contract and found no evidence that the loan was export-oriented or to suggest that IFCT loans were provided or required by government action. In addition, IFCT is a majority privately owned corporation. Lacking evidence to suggest that the IFCT loan might be a bounty or grant, the Department did not include the loan in its full-scale investigation.

Comment 9

Respondents claim that the proper benchmark interest rate for calculating the benefit from short-term export EPC loans received by Usha is the interest rate on a commercial loan received by the company during the last quarter of 1989. The interest rate on this loan was somewhat less than the benchmark interest rate computed by the BOT on the basis of the average of bills, loans, and overdrafts outstanding in Thailand during 1989. Respondents maintain that the company-specific benchmark interest rate is appropriate in this case because Usha is the only company which received EPC loans during the review period.

Petitioner claims that use of an interest rate from a single loan to a single company as a benchmark interest rate is entirely inconsistent with past DOC practice and precedent.

DOC Response

We find the rate on the loan which respondents propose to use as the benchmark short-term interest rate to be unacceptable for several reasons. For short-term loans, the Department uses the predominant source of short-term financing in the country or, if no predominant source exists, the weighted-average of two or more sources of short-term financing. See, for example, Final Results of Countervailing Duty Administrative Review: Non-rubber Footwear from Brazil (52 FR 843, January 9, 1987). The loan referred to by respondents is a long-term loan, while EPC loans are short-term loans not to exceed 180 days. The Department would not use a long-term benchmark for purposes of evaluating the benefit from short-term loans.

Second, it is inappropriate to use a company-specific benchmark for short-term loans. In accordance with longstanding practice, the Department has consistently used either a national weighted-average short-term interest rate or the interest rate for the predominant source of short-term financing in calculating the benefit from short-term loans. The Department has found that the variation in short-term loan interest rates is small, reflecting the fact that short-term financing is considerably less risky than long-term financing. For this reason, a weighted-average rate or the rate for a predominant source of financing is used rather than a company-specific rate. See, for example, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Cold Rolled Carbon Steel Flat Rolled Products from Argentina (49 FR 18006, April 26, 1984).

Finally, the loan proposed by respondents is denominated in a currency other than the Thailand baht, whereas EPC loans are denominated in baht. The Department bases its benchmark rate on short-term financing denominated in the currency of the relevant country because the relative strength of any given currency has a significant effect on the interest rate charged for loans made in that currency. Since EPC loans are in baht, the loans selected for purposes of the benchmark must also be in baht.

Comment 10

Respondents claim that penalty payments for failure to produce documents or ship goods in a timely manner should offset any benefits received under the EPC loan program.

Petitioner claims that no offset should be made, since penalties were refunded.

DOC Response

As stated in the EPC section of this notice, penalty payments are refunded when exporters can prove that they shipped the goods within 60 days of the due date or received payment for goods within 60 days of the due date. In cases where USHA received refunds of penalties during the review period because it complied with these

requirements, we have not offset the benefit by the amount of the penalty, since there was no impact on the ultimate benefit derived from the loan. In these instances, the DOC found that USHA received a net benefit. In cases where USHA paid a penalty which was not refunded during the review period, we considered the penalty to be a part of the cost of the loan and to increase the effective interest rate on the loan. Applying this methodology, the DOC determined that the effective interest rate on these loans exceeded the benchmark and therefore did not confer a countervailable benefit. We did not, however, offset the benefit of one loan with the penalty payment from another loan We considered each loan on its own merits and determined the benefit separately for each loan.

Comment 11

Respondents claim that benefits from the electricity discount for exporters should not be considered countervailable, since the program was eliminated effective January 1, 1990, as a result of a program-wide change.

DOC Response

We disagree. Although a program-wide change occurred after the period of review and prior to the preliminary determination, residual benefits from the electricity discount continued to be received in the period following the program-wide change. While the Department may adjust the duty deposit rate to take into account a program-wide change, it is not appropriate to do so if residual benefits continue to be received after the program-wide change, since entries of the merchandise may very well continue to benefit from such a program. See, for example, § 355.50(c) of the proposed regulations. Therefore, no adjustment should be made to the duty deposit rate.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 705(c)(1)(B), we are directing the U.S. Customs Service to suspend liquidation on all entries of steel wire rope from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a), of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit equal to 0.56 percent *ad valorem* for each entry of the subject merchandise made on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with section 706(a)(1) and 751 of the Act. We are excluding Vivat from this countervailing duty order, since benefits received by this company during the review period were found to be *de minimis*.

This determination is published pursuant to sections 705(d) and 706(a) of the Act (19 U.S.C. 1671(d) and 1671e(a)).

Dated: September 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-21840 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An ad hoc committee of the North Pacific Fishery Management Council will hold a public meeting on September 17, 1991, at the National Marine Fisheries Service (NMFS), Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, Washington. The committee will begin meeting at 9 a.m. to review the NMFS proposed regime governing interactions between marine mammals and commercial fishing operations. The NMFS proposed regime is described in a Legislative Environmental Impact Statement that was published in June 1991.

For more information contact North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907-271-2809.

Dated: September 5, 1991.

David S. Crestin,

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

[FR Doc. 91-21730 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Plan Amendment Advisory Group (PAAG) and its Halibut Regulatory Amendment Advisory Group (RAAG) will hold separate public meetings.

PAAG—will meet on September 16, 1991, beginning at 9 a.m., at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, Washington, to review groundfish proposals submitted for the 1992 fishery management plan amendment cycle.

RAAG—will meet on Sunday, September 22, 1991, beginning at 6:30 p.m., at the Anchorage Hilton Hotel, Anchorage, AK (meeting room will be posted on the second floor), to review proposals to amend the halibut fishery regulations for the 1992 fishing year.

For more information contact Chris Oliver, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907-271-2809.

Dated: September 5, 1991.

David S. Crestin,

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

[FR Doc. 91-21731 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Puget Sound Salmon Stock Review Group (PSSSRG) will hold its second public meeting. The meeting will be held on September 13, 1991, beginning at 10 a.m., at the Olympia Center, room 101, 222 North Columbia, Olympia, Washington.

The PSSSRG will examine the causes that have led to failure in attaining the spawning escapement objectives for naturally-produced Skagit River and Hood Canal coho, Skagit River spring,

Stillaguamish River summer/fall, and Snohomish River summer/fall chinook stocks. The PSSSRG will report its findings and recommendations to the Pacific Fishery Management Council prior to establishment of the 1992 ocean salmon fishery management recommendations.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: September 5, 1991.

David S. Crestin,

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

[FR Doc. 91-21732 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on September 15-20, 1991, at the Red Lion Inn—Columbia River, 1401 North Hayden Island Drive, Portland, OR. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on September 17 at 8 a.m., in a closed session (not open to the public), to discuss litigation and personnel matters. The Council's open session begins at 9 a.m., to consider administrative matters, salmon management issues, and habitat matters. The Council will accept comments on issues not on its agenda at 4 p.m. On September 18, beginning at 8 a.m., the Council will address Pacific halibut allocation and groundfish license limitation. Groundfish management discussions will be continued on September 19-20, beginning at 8 a.m. each day.

Salmon management items on the agenda are: (1) Sequence of events and status of the fishery, and (2) Plan Amendment #11—flexibility to deviate from the base recreational salmon allocation between the areas north and south of Leadbetter Point, Washington.

Groundfish management issues include: (1) Final action on license limitation; (2) fishery status report and inseason adjustments; (3) status of the Pacific whiting fishery and reserve release; (4) review of pre-1990 California gillnet regulations for consistency with the fishery management plan; (5) comprehensive data gathering (observer) program; (6) status of the United States/Canada whiting allocation discussions; (7) preliminary harvest levels for 1992; and (8) preliminary management measures for 1992.

The *Scientific and Statistical Committee* will meet on September 16 at 1 p.m. to address scientific issues on the council's agenda, and will reconvene on September 17 at 8 a.m.

The *Socio-economics Subcommittee* will meet on September 15 at 9 a.m., and will reconvene on September 16 at 8 a.m.

The *Salmon Subcommittee* will meet on September 16 at 8:30 a.m., and will reconvene on September 18 at 8 a.m.

The *Groundfish Advisory Subpanel* will meet on September 16 at 1 p.m. to addresss groundfish issues on the Council's agenda and will reconvene on September 17 at 8 a.m.

The *Habitat Committee* will meet on September 16 at 1 p.m. to address issues affecting habitat of fish stocks managed by the Council.

The *Budget Committee* will meet on September 16 at 3 p.m. to review the status of the Council's 1991 budget, and consider a 1992 budget.

The *Enforcement Consultants* will meet on September 18 at 8 a.m. to consider enforcement ramifications of management issues on the Council's agenda.

The *Salmon Technical Team* will meet on September 18 at 9 a.m. at the Council's office (address below), to discuss technical matters concerning the ocean salmon fisheries.

Detailed agendas for the above meetings will be available to the public after September 16, 1991. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: September 5, 1991.

David S. Crestin,

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

[FR Doc. 91-21733 Filed 9-10-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreements

AGENCY: U.S.Department of Energy.

ACTION: Notice of Solicitation Number DE-PS01-91CE40961.

SUMMARY: The Department of Energy (DOE) announces a Program Solicitation to select two or more field managers for the DOE Energy Analysis and Diagnostic Center (EADC) program. Two or more successful EADC field management selectees will be awarded cooperative agreements with a period of performance of five (5) years as a follow on to the field management services currently provided by the University City Science Center (UCSC), Philadelphia, Pennsylvania. Funding will be subject to the annual appropriation of funds each fiscal year for operation of the EADC program. It is the Department's intent to award two or more cooperative agreements for field management of EADCs located by region in the United States.

Currently, 18 EADCs are located at competitively selected engineering schools throughout the continental United States. Each EADC conducts 30 energy conservation and process efficiency audits annually, for small and medium sized manufacturing plants (e.g., SIC 20 through 39). Audits are conducted by senior and graduate engineering students working under the guidance of the "EADC Director" who is a tenured engineering faculty member of the host school.

EADC field managers are responsible, in conjunction with the DOE program manager, for: (a) the guidance and evaluation of audit operations; (b) review of all audit reports prepared by each assigned EADC; (c) review of EADC follow up reports concerning implementation EADC audit report recommendations by the audited firms; and (d) participation with the DOE, as necessary, in the solicitation and competitive selection of additional participants for the expansion of the EADC program.

The field manager will also be responsible for collecting data on the audits performed, maintenance and update of an energy audit data base. Assignments of current and new institutions to specific field managers' responsibility will be made annually by the DOE. Because the growth rate for the program will be uneven, numbers of institutions managed by a specific field manager may vary slightly.

Innovative management concepts for management of the EADC program are desired. A pre-application conference will be scheduled and the conference date promulgated with the DOE solicitation.

Requests for copies of this solicitation should be addressed to: U.S. Department of Energy, Office of Placement and Administration, ATTN: Document Control Specialist, PR-33, Room 1E-057, 1000 Independence Avenue SW., Washington, DC 20585.

For further information contact Rose Mason at (202) 586-6757.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-21818 Filed 9-10-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 7783-002 North Carolina]

Bullock Industries; Availability of Environmental Assessment

September 4, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of exemption for the Cedar Falls Hydroelectric Project. The amendment includes modifications to the existing lower dam and powerhouse intake structure, and installation of 2-foot-high flashboards on the lower dam. The project is located on the Deep River in Randolph County, North Carolina. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21748 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3605-012 New York]

Mohawk Paper Mills, Inc. and Fourth Branch Associates; Availability of Environmental Assessment

September 4, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to increase the height of the flashboards at the Mohawk Paper Mills Project. The project is located on the Mohawk River in Saratoga County, New York. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21749 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2913-000 et al]

Panhandle Eastern Pipe Line Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

September 3, 1991.

1. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP89-2913-000 *et al.*]

Take notice that on August 28, 1991, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: October 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of,[2] Receipt	Points of,[2] Delivery	Start up date, rate schedule, service type	Related docket,[3] contract date
CP91-2913-000 (8-28-91)	McLeod Farms	750 750 273,750	CO, IL, KS, LA, OH, OK, TX, OLA, OTX, Canada.	TX	7-1-91, PT, Interruptible.	ST91-9668-000, 6-21-91.
CP91-2914-000 (8-28-91)	Clinton Gas Transmission, Inc.	50,000 50,000 18,250,000	CO, IL, KS, OK, TX	KS	7-1-91, PT, Interruptible.	ST91-9671-000, 6-17-91.
CP91-2915-000 (8-28-91)	CNG Trading Co.	50,000 50,000 18,250,000	CO, IL, KS, OK, TX	IA	7-1-91, PT, Interruptible.	ST91-9666-000, 2-15-91.
CP91-2916-000 (8-28-91)	Polaris Corporation	5,000 5,000 1,825,000	CO, IL, KS, LA, MI, OH, OK, TX, WY, OLA, OTX, Canada.	OH	6-28-91, PT, Interruptible.	ST91-9844-000, 9-1-90.

Docket No. (date filed)	Shipper name	Peak day,[1] avg. annual	Points of,[2] Receipt	Points of,[2] Delivery	Start up date, rate schedule, service type	Related docket,[3] contract date
CP91-2917-000 (8-28-91)	Polaris Corporation	8,500 8,500 3,102,500	CO, IL, KS, LA, MI, OH, OK, TX, WY, OLA, OTX, Canada.	OH	6-25-91, PT, Interruptible.	ST91-9840-000, 9-1-90.

[1] Quantities are shown in Dekatherms.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

2. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-2929-000, CP91-2930-000, CP91-2931-000]

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2929-000 (8-29-91)	City of Waverly, IL (LDC)	1,050 1,050 383,250	Various	IL	4-1-89, SCT, Firm	ST91-9835, 7-1-91.
CP91-2930-000 (8-29-91)	Town of Hardesty, OK (LDC).	83 83 30,295	Various	OK	4-1-89, SCT, Firm	ST91-9837, 7-1-91.
CP91-2931-000 (8-29-91)	Village of Pleasant Hill, IL (LDC).	725 725 264,625	Various	IL	4-1-89, SCT, Firm	ST91-9842, 7-1-91.

3. Williston Basin Interstate Pipeline Co.

[Docket Nos. CP91-2932-000, No. CP91-2933-000, No. CP91-2935-000]

Take notice that Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1118-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2932-000 (8-29-91)	Amerada Hess Corporation (producer).	40,375 40,375 14,736,875	ND	ND	12-24-90, IT-1, Interruptible	ST91-10058, 7-25-91.
CP91-2933-000 (8-29-91)	Rainbow Gas Company (marketer).	1,342 1,342 489,830	Various	Various	8-24-90, IT-1, Interruptible	ST91-10057, 7-22-91.
CP91-2935-000 (8-29-91)	Exxon Corporation (producer).	22,200 22,000 8,103,000	Various	Various	3-14-90, IT-1, Interruptible	ST91-10056, 7-22-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. Granite State Gas Transmission, Inc.

[Docket No. CP91-2891-000]

Take notice that on August 26, 1991, Granite State Gas Transmission, Inc. (Granite State) filed in Docket No. CP91-2891-000 an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations, for a certificate of public convenience and necessity, with pre-granted abandonment, to authorize Granite State to provide firm transportation services for Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) between the systems of CNG Transmission Corporation (CNG) and Tennessee Gas Pipeline Company (Tennessee) at Ellisburg, Pennsylvania, to Agawam, Massachusetts on the Tennessee system utilizing transportation capacity available to Granite State, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Granite State, in Docket No. CP88-171-000, as amended and supplemented, the Commission authorized Tennessee to construct additional pipeline facilities on its system to provide up to 452,900 Dth a day of firm transportation capacity on its system for shippers with natural gas markets or proposed new cogeneration projects in the Northeast.[4] Among the cogenerators that had subscribed for transportation capacity in Tennessee's project were the Capitol District Energy Center Cogeneration Associates (CDECCA) and the ANR Ventures Springfield Company (Springfield). CDECCA proposed to ship up to 14,140 Dth a day of natural gas on the expansion facilities to fuel a cogeneration project in Hartford, Connecticut. Springfield proposed to ship up to 7,430 Dth a day for a similar plant in Springfield, Massachusetts.

Subsequent to the issuance of the certificate to Tennessee, Springfield advised Tennessee that it no longer desired the transportation capacity that was authorized for its proposed cogeneration project, releasing effectively the 7,430 Dth a day of capacity downstream from a connection with CNG at Ellisburg, Pennsylvania, to Agawam, Massachusetts, that was being constructed for its project. Coincidentally, CDECCA requested an increase of 310 Dth a day of transportation capacity from the Ellisburg connection with CNG. After satisfying CDECCA's request for an incremental increase in capacity downstream from Ellisburg, a balance of 7,120 Dth a day of capacity became available on the Tennessee system from Ellisburg to Agawam. Granite State has executed a Precedent Agreement with Tennessee for this capacity.

On July 16, 1991, Tennessee filed a petition in Docket Nos. CP88-171-008 and CP81-108-006 for authority, among other requests, to amend the underlying authorizations to transfer to CDECCA and Granite State the above quantities of firm transportation capacity now under construction between Ellisburg and Agawan that were previously committed to Springfield.

In this application, Granite State proposes to make the firm transportation capacity on the Tennessee system between Ellisburg, Pennsylvania and Agawam available to Bay State and Northern Utilities for a five year period in the following quantities: Bay State, 6,170 Dth a day; and Northern Utilities, 950 Dth a day.

Tennessee proposes to charge Granite State for the transportation service under its new Rate Schedule NET-EU, approved by the Commission in Docket No. CP88-171-000, et al. Granite State proposes to establish two new rate schedules in Volume No. 2 of its FERC Gas Tariff which will be, in all material respects, mirror images of the Tennessee Rate Schedule NET-EU, one for service to Bay State (Rate Schedule T-5) and one for service to Northern Utilities (Rate Schedule T-6). Under the proposed tariff arrangements, Granite State will be a billing conduit for collecting the Tennessee Rate Schedule NET-EU transportation charges from Bay State and Northern Utilities and Granite State will track through its Rate Schedules T-5 and T-6 changes in the Tennessee rates as they occur, without any revenue gain or loss.

Granite State's transportation contract with Tennessee provides for an initial term of 20 years from the date of the commencement of service following completion of the construction of facilities on the Tennessee system, now expected to occur about November 1, 1991.

No new Granite State facilities are required to provide the proposed transportation services for Bay State and Northern Utilities.

Comment date: September 24, 1991, in accordance with Standard Paragraph F at the end of this notice.

[4] Tennessee Gas Pipeline Co., 51 FERC 61,113 (1990) ("NIPS Phase II Order") and 52 FERC 61,257 (1990) ("NIPS Phase III Order").

5. Mississippi River Transmission Corporation

[Docket No. CP91-2904-000]

Take notice that on August 27, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-2904-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon 53 miles of pipeline comprising a deteriorated segment of its oldest line, Main Line 1, in Missouri, all as more fully set forth in the application on file with the Commission and open to public inspection.

MRT states that it proposes to abandon 53 miles of 22-inch diameter pipeline which extends from MRT's Poplar Bluff Compressor Station in Butler County, Missouri, to a point 16 miles north of MRT's Twelvemile Compressor Station in Madison County, Missouri. MRT states that this segment of pipeline has physically deteriorated to a point where it is expensive to maintain and beyond economical repair. MRT further states that it has excluded from the request a 7.2 mile sub-segment of the pipeline located north of the Twelvemile Compressor Station and a 6.1 mile sub-segment of the pipeline extending from the Twelvemile Station south, which will remain in service.

MRT states that it has already removed the deteriorated segment of pipeline from service through a miscellaneous rearrangement of facilities pursuant to the authority of its blanket construction certificate issued in Docket No. CP82-489-000. MRT proposes to remove from the ground and salvage portions of the abandoned pipeline where feasible.

MRT estimates the cost of removal of the affected segment of Main Line 1 to be $760,000. In addition, MRT anticipates that the pipe may have a net salvage value of as much as from $250,000 to $500,000 after the cost of removal is taken into account.

Comment date: September 24, 1991, in accordance with Standard Paragraph F 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. 91-21729 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin"), on August 30, 1991, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, tariff sheets listed in Attachment A and proposed to be effective October 1, 1991.

Algonquin states that pursuant to Section 32 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Algonquin is filing the tariff sheets listed in Attachment A to track the increase in the Commission's Annual Charges Adjustment Subcharge for the Fiscal Year 1991.

Algonquin states that the net effect of the instant filing is to increase the commodity charge by 0.02¢ per MMBtu for Rate Schedules F-1, F-2, F-3, F-4, WS-1, I-1, E-1, I-2, T-1, T-LG, T-X, AFT-1, AFT-3, AIT-1, PSS-T, FTP and X-33 and to increase the third party injection rate in Rate Schedules STB and SS-III by the same amount.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406 , in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21741 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-216-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that ANR Pipeline Company ("ANR"), on August 30, 1991 tendered for filing as part of its FERC Gas Tariff, six copies of the tariff sheets, as listed in appendix A attached to the filing, which ANR proposes to become effective on October 1, 1991.

ANR states that the above referenced tariff sheets are being filed pursuant to § 154.63 of the Commission's Regulations to revise the payment provisions under the General Terms and Conditions of Original Volume No. 1, Volume No. 1-A, Volume No. 2 and Volume No. 3 of its FERC Gas Tariff.

ANR states that the proposed changes will provide for ANR's sales, transportation and storage customers (customers) to make payments by wire transfer to a bank account designated by ANR for billed amounts equal to or greater than $50,000. However, for billed amounts less than $50,000, ANR will give customers the option of making payments either by wire transfer or by check.

ANR states that copies of this filing were served upon all of its Volume No. 1, Volume No. 1-A. Volume No. 2 and Volume No. 3 customers, interested State Commissions and parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street NE., Washington, DC 20426 by September 11, 1991, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21740 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-88-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1991.

First Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed to reflect an ACA charge of .22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1991.

Black Marlin further states that a copy of its filing has been served on all customers receiving gas under its FERC

Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21762 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-123-000]

Canyon Creek Compression Co.; Informal Settlement Conference

September 4, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, September 25, 1991 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Joan Dreskin at (202) 208-0738 or Russell B. Mamone at (202) 208-0744.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21758 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Carnegie Natural Gas Company ("Carnegie") on August 30, 1991, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1:

Nineteenth Revised Sheet No. 8
Nineteenth Revised Sheet No. 9
Third Revised Sheet No. 10
Second Revised Sheet No. 23

The proposed effective date of these revised tariff sheets is October 1, 1991.

Carnegie states that it is amending its generally-applicable sales and transportation rate schedules to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0023 per Dth. Carnegie is also amending its Rate Schedule S-6 to reflect an ACA unit charge of $.0024 per Mcf. Carnegie states that this filing is submitted in compliance with § 154.38(d)(6) of the Commission's Regulations and section 24 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, Second Revised Volume No. 1.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and the applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21765 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective October 1, 1991:

FERC Gas Tariff, Second Revised Volume No. 1

Third Revised Twentieth Revised Sheet No. 8
First Revised Sixth Revised Sheet No. 8A
First Revised Fifth Revised Sheet No. 8B

FERC Gas Tariff, Original Volume No. 3

First Revised Fifth Revised Sheet No. 1039

FGT states that the above-referenced tariff sheets are being filed to reflect an ACA charge of .23¢/MMBtu (.023¢/therm) based on the Commission's Annual Charge Billing for Fiscal Year 1991.

FGT further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21763 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-77-000]

High Island Offshore System; Compliance Filing

September 4, 1991.

Take notice that on August 30, 1991, High Island Offshore System ("HIOS") filed with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to be effective October 1, 1991.

First Revised Volume No. 1:

Sixth Revised Sheet No. 8
Third Revised Sheet No. 8A

HIOS states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment ("ACA") rate from $0.0022 per Mcf to $0.0024 per Mcf pursuant to section 5 of the Schedule of Rates and Charges of its FERC Gas Tariff, First Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. All such protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the approximate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21773 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-25-000]

Mississippi River Transmission Corp., Proposed Change in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets.

Second Revised Volume No. 1

Sixty-Fifth Revised Sheet No. 4
Twenty-Fourth Revised Sheet No. 4.1
Ninth Revised Sheet No. 4D

Original Volume No. 1-A

Seventh Revised Sheet No. 2
Seventh Revised Sheet No. 3

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in MRT's jurisdictional sales and transportation rates to the new fiscal 1992 FERC approved surcharge of $.0024 per Mcf effective October 1, 1991.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional customers and to the State Commission of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21759 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-211-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, Natural Gas Pipeline Company of America (Natural) tendered for filing First Revised Sheet Nos. 90 and 91 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective October 1, 1991.

Natural states that the purpose of this filing is to add section 8, Insufficient Supply penalty provision, under Rate Schedule FTS-G. The Insufficient Supply penalty provision provides that in a situation when a customer under Rate Schedule FTS-G does not have adequate supplies at its receipt points to maintain the level of service required at the delivery point and the customer continues to take gas from Natural at such desired level after notification by Natural of such supply insufficiency, the customer will pay Natural an Insufficient Supply penalty rate for such volumes taken. Natural further proposes that the Insufficient Supply penalty rate consist of its currently effective commodity rate for Full Requirements customers under Natural's Rate Schedule G-1 plus $5.00 per MMBtu. This Insufficient Supply penalty rate is consistent with the minimum penalty rate paid by buyers under Rate Schedule G-1 for unauthorized daily overtakes. The Insufficient Supply penalty will be in lieu of any imbalance penalty otherwise applicable under Rate Schedule FTS-G.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1991.

Natural states that copies of the filing were served on Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21747 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Thirteenth Revised Sheet No. 10
Thirteenth Revised Sheet No. 11
Eighth Revised Sheet No. 13

First Revised Volume No. 1-A

Eighth Revised Sheet No. 201

Original Volume No. 2

Twenty-Fifth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective October 1, 1991, to reflect (1) interest applicable to July, August and September 1991, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.74¢ per MMBtu for the three months commencing October 1, 1991.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21766 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-73-000]

Ozark Gas Transmission System; Proposed Change in FERC Gas Tariff

September 4, 1991.

Take notice that Ozark Gas Transmission System ("Ozark") on August 30, 1991, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 4

The proposed effective date is October 1, 1991.

Ozark states that it is amending its transportation rate schedule to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0024. Ozark states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations.

Ozark states that copies of filing were served upon Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21760 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-64-000]

Pacific Interstate Offshore Co.; Change in Rate

September 4, 1991.

Take notice that on August 30, 1991, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Original Volume No. 1

Thirteenth Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .24 cents per MCF in its Rate Schedule G-10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1991.

PIOC states that a copy of the filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilities Commission of the state of California.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21761 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-8-000, TM92-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 4, 1991.

Take notice that on August 30, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets pursuant to the Purchased Gas Cost Adjustment (PGA) provision set out in section 14 of South Georgia's FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates shown:

Proposed sheets	Effective date
Seventy-Sixth Revised Sheet No. 4.	October 1, 1991.
Third Revised Sheet No. 32B	March 1, 1991.
Fifth Revised Sheet No. 33	March 1, 1991.
Seventh Revised Sheet No. 34A.	October 1, 1991.

South Georgia states that Seventy-Sixth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from October 1, 1991, through December 31, 1991, reflects an increase in jurisdictional revenues of approximately $1.3 million which is attributable to an increase in the demand component of $2.827 per Mcf and an increase in the commodity component of $.84 per MMBtu from South Georgia's annual PGA filing in Docket No. TA91-1-8-000. Seventh Revised Sheet No. 34A reflects an increase of .02¢ per Mcf in the Annual Charge Adjustment charge from the current level of .22¢ per Mcf of the .24¢ per Mcf level recently authorized by the Commission.

South Georgia states that the remaining tariff sheets are being filed in compliance with the Commission's letter order dated June 28, 1991, in Docket No. TA91-1-8-000, which directed South Georgia to establish separate demand and commodity surcharges on the balance of its deferred gas costs in Account No. 191. The Commission directed South Georgia to apply all changes in its pipeline supplier rates on an as-billed basis.

South Georgia states that copies of South Georgia's filing were served upon all of South Georgia's jurisdictional purchasers, and interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21768 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Stingray Pipeline Company (Stingray) on August 30, 1991, tendered for filing tariff sheets that propose changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of the tariff sheets is October 1, 1991.

Stingray states that this filing reflects: (1) Continued collection of existing rates for firm service under Rate Schedule T-1 and FTS; (2) a Revenue Sharing Mechanism (RSM) to govern the disposition of the demand-related portion of revenues collected under Rate Schedule ITS; (3) a market-driven interruptible transportation rate keyed to fluctuations in the commodity price of gas; and (4) a Rate Adjustment Proposal (RAP) which would be triggered by implementation of a capacity release program with respect to firm shippers as contemplated by the Notice of Proposed Rulemaking in Docket No. RM91-11-000.

Stingray states that copies of its filing are being served on its jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. 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 to this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21742 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-80-000]

Tarpon Transmission Co.; Filing

September 4, 1991.

Take notice that on August 30, 1991, Tarpon Transmission Company ("Tarpon") submitted for filing Sixth Revised Tariff Sheet No. 2A to reflect a revised Annual Charge Adjustment (ACA) unit rate to be applied to Tarpon's rates for the recovery of 1991 Annual Charges assessed to Tarpon by the Commission pursuant to Order No. 472 (codified in part 382 of the Commission's regulations). As shown on Sixth Revised Sheet No. 2A, Tarpon is authorized to collect from its jurisdictional customers an ACA unit rate equal to .0024 cents for each Mcf of gas transported under the Commission's jurisdiction. Tarpon requests that the revised tariff sheet be made effective as of October 1, 1991.

Any person desiring to be heard and/or to protest the instant filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 824 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before September 11, 1991.

The Commission will consider protests in determining the appropriate action to be taken in the referenced matter; however, protests 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 the filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 91-21774 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-17-000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 30, 1991 tendered for filing as part of its FERC Gas Tariffs, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Thirty-fourth Revised Sheet No. 50.1
Thirty-sixth Revised Sheet No. 50.2
Twenty-first Revised Sheet No. 51
Fourth Revised Sheet No. 51.1
Fifth Revised Sheet No. 51.2
Fourth Revised Sheet No. 51.3

Original Volume No. 2

Fourth Revised Sheet No. 1J
Fourth Revised Sheet No. 1K
Second Revised Sheet No. 1L

Texas Eastern states that the purpose of this filing is to permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1991. The ACA Unit Surcharge authorized by the Commission for fiscal year 1991 is $0.0024 per Mcf, $0.0023 per dth converted to Texas Eastern's measurement basis.

Texas Eastern also proposes to track in its Rate Schedules SS-2 and SS-3 rates CNG Transmission Corporation's (CNG) revised ACA surcharge for rates applicable to its Rate Schedule GSS. Texas Eastern states that CNG is filing revised tariff sheets to be effective October 1, 1991 reflecting its revised ACA surcharge. Section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 provide for an automatic rate adjustment to flow through any changes in CNG's GSS rates which underlie Texas Eastern's SS-2 and SS-3 rates.

The proposed effective date of the above listed tariff sheets is October 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions and all current Rate Schedule IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriae action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D Cashell,

Secretary.

[FR Doc. 91-21771 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-214-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

September 4, 1991.

Take notice that on August 30, 1991 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are contained in appendix A attached to the filing. The proposed effective date of these tariff sheets is October 1, 1991.

Transco states that the purpose of the instant filing is to reflect, effective

October 1, 1991, the elimination of Fixed and Commodity Litigant Producer Settlement Payment (LPSP) charges which Transco was authorized to collect over a one-year amortization period October 1, 1990 through September 30, 1991. In that regard, by order issued September 28, 1990 in Docket No. RP90-179-000, the Commission approved Transco's proposal for the partial recovery from customers of approximately $22.0 million of LPSP amounts pursuant to sections 33, 35, and 37 of the General Terms and Conditions of Transco's Volume No. 1 Tariff. Due to the expiration of the one-year amortization period on September 30, 1991, Transco filed revised tariff sheets which eliminate such LPSP charges from rates and where appropriate, any references thereto, effective October 1, 1991.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21743 Filed 9-10-91 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-215-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Transwestern Pipeline Company ("Transwestern"), on August 30, 1991, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective September 1, 1991

87th Revised Sheet No. 5
Original Sheet No. 5D(iv)
Original Sheet No. 5E(iii)
50th Revised Sheet No. 6
8th Revised Sheet No. 89
8th Revised Sheet No. 90

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay, buy-out and buy-down mechanism ("TCR" mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs ("Transition Costs") it has paid, which amounts qualify under the Litigation Exception provision of its tariff.

Transwestern states that it has paid an additional $6,500,000.00 in settlement costs ("TCR Amount Seven") and is revising certain tariff sheets and requesting authority to begin recovery of a portion of such amounts under the referenced tariff sheets. Recovery of these amounts has not yet been allowed by the Commission.

Under these tariff sheets, Transwestern proposes to absorb twenty-five percent (25%) of the additional Transition Costs, to direct bill another twenty-five percent (25%), and recover the remaining fifty percent (50%) through a zoned, volumetric surcharge which includes a reconciliation or "true-up" mechanism that complies with Order No. 528-A. The direct bill portion will be allocated based on each customer's contract demand quantity under all firm rate schedules as of January 31, 1989, the date of Transwestern's filing for the Litigation Exception, with each small customer's allocation based on its actual annual volumes for the twelve-month period ending August 31, 1988, and with such allocation being reduced by fifty percent (50%) in compliance with Order No. 528-A (the difference being reallocated to remaining customers). The zoned TCR Surcharge B which is to be revised is mileage-based, was developed using the volumes underlying Transwestern's currently effective rates, and was approved in Docket Nos. RP91-104-000, RP91-106-000, and RP91-109-000. Transwestern proposes an amortization period commencing with September 1, 1991 and terminating March 31, 1992.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheets submitted by it to become effective September 1, 1991.

Transwestern states that copies of the filing were served upon all of Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21744 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-217-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Transwestern Pipeline Company ("Transwestern"), on August 30, 1991, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1991

3rd Revised Sheet No. 91
2nd Revised Sheet No. 92

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay Transition Cost Recovery Surcharge true-up mechanism ("TCR" mechanism) in order to revise the operation of its TCR Surcharge B true-up provision.

Under these tariff sheets, Transwestern proposes to refund actual overcollections of its TCR surcharge B and to absorb amounts not collected as a result of rate discounts given to its customers. Undercollections resulting from lower throughput than that utilized in developing the surcharge may be recouped in an extended amortization period.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheets submitted by it to become effective October 1, 1991.

Transwestern states that copies of the filing were served upon all of

Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21745 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-74-000]

U-T Offshore System; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that U-T Offshore System (U-TOS) tendered for filing on August 30, 1991 Third Revised Sheet No. 5 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of this tariff sheet is October 1, 1991.

U-TOS states that the purpose of the instant filing is to reflect an increase of $0.0002 per Mcf in the Annual Charge Adjustment (ACA) Charge in the commodity portion of U-TOS' transportation rates. Pursuant to Order 472, the Commission has assessed U-TOS its annual ACA charges based on $0.0024 per Mcf for the annual period commencing October 1, 1991. In accordance with §§ 4.8 and 4.7 of Rate Schedules FT and IT, respectively, contained in Second Revised Volume No. 1 and Article 8 of Rate Schedules T-1 through T-11 contained in Original Volume No. 2 of U-TOS' FERC Gas Tariff, U-TOS is submitting herewith for filing Third Revised Sheet No. 5 which tracks the Commission approved ACA unit rate of $0.0024 per Mcf commencing October 1, 1991.

U-TOS states that copies of the filing are being mailed to each of its Shippers for whom transportation service is being provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21767 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Valero Interstate Transmission Company ("Vitco"), on August 30, 1991 tendered for filing the following tariff sheets containing changes to the ACA unit rate in each applicable rate schedule:

FERC Gas Tariff, Original Volume No. 1

22nd Revised Sheet No. 14
1st Revised Sheet No. 14a
27th Revised Sheet No. 14.2
6th Revised Sheet No. 21.12
5th Revised Sheet No. 29.9

FERC Gas Tariff, Original Volume No. 2

37th Revised Sheet No. 6
5th Revised Sheet No. 12.50

The proposed effective date of the above filing is October 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by October 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21769 Filed 9-10-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 4, 1991.

Take notice that Williams Natural Gas Company (WNG) on August 30, 1991, tendered for filing Fourth Revised Third Revised Sheet Nos. 6, 6A, and 9 to its FERC Gas Tariff, First Revised Volume No. 1. WNG states that pursuant to Article 21 of the General Terms and Conditions of such Tariff, it proposes to increase its rates effective October 1, 1991, to reflect an increase in the FERC Annual Charge Adjustment from $.0022 to $.0024 per Dth for the fiscal year beginning October 1, 1991, per the Commission's Annual Charges Billing issued July 26, 1991.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21764 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-49-000]

Williston Basin Interstate Pipeline Co.; Federal Energy Regulatory Commission Annual Charge Adjustment Filing

September 4, 1991.

Williston Basin Interstate Pipeline Company (Willstion Basin), on August 30, 1991, submitted for filing as part of

its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Third Revised Thirty-fourth Revised Sheet No. 10

Original Volume No. 1-A

Third Revised Twenty-seventh Revised Sheet No. 11

Third Revised Thirty-third Revised Sheet No. 12

Original Volume No. 1-B

Third Revised Twenty-second Revised Sheet No. 10

Third Revised Twenty-second Revised Sheet No. 11

Original Volume No. 2

Third Revised Thirty-fifth Revised Sheet No. 10

Third Revised Twenty-eighth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is October 1, 1991.

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges (18 CFR part 382) and the General Terms and Conditions of Williston Basin's FERC Gas Tariff First Revised Volume No. 1, section 30; Original Volume No. 1-A, section 27; and Original Volume No. 1-B, section 25. The filing incorporates the Commission approved ACA surcharge of .240 cents per Mcf (.227 cents per dkt on the Williston Basin system), an increase of .02 cents per Mcf from the current amount as authorized by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 11, 1991. 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21772 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-76-000]

Wyoming Interstate Co., Ltd.; Filing

September 4, 1991.

Take note that on August 30, 1991, Wyoming Interstate Company, Ltd. (WIC) submitted for filing Thirteenth Revised Sheet No. 5 to FERC Gas Tariff, Original Volume No. 1, and First Revised Sheet Nos. 4 and 5 in Volume No. 2 reflecting an increase of $0.0002 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0024 per Mcf based on WIC's 1991 ACA billing.

WIC has requested that the proposed tariff sheets be made effective October 1, 1991.

WIC notes that copies of its filing are being served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20246, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21746 Filed 9-10-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3994-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected cost and burden; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride (Subpart F)—Information Requirements (EPA ICR #0186.06; OMB #2060-0071). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of polyvinyl chloride, ethylene dichloride, and vinyl chloride monomer plants must submit to EPA or the State regulatory authority an application for approval of construction or modification of their plants and a notification of startup. They may apply for a waiver of the initial emission test, if desired. Owners or operators of the regulated facilities are required to submit quarterly reports of excess emissions. They must also report each relief valve and manual vent valve discharge within 10 days. Owners or operators must maintain records of leaks detected in accordance with an approved leak detection and elimination program. EPA or the delegated State authority use these data to determine the compliance status of sources, and to target inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 56 hours per response for reporting, and 143 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed, and review the collection of information.

Respondents: Owners or operators of polyvinyl chloride plants, ethylene dichloride plants, and vinyl chloride monomer plants.

Estimated No. of Respondents: 44.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 16,159 hours.

Frequency of Collection: Quarterly and on occasion.

Title: New Source Performance Standards (NSPS) for Stationary Gas Turbines (Subpart GG)—Information Requirements (EPA ICR #1071.04; OMB #2060-0028). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of stationary gas turbines must notify EPA or the State regulatory authority of construction, modification, startup, shutdown, malfunction, and the date and results of the initial performance test. Owners or operators using water injection to control nitrogen oxide must install a continuous monitoring system (CMS) to record fuel consumption and the fuel to water ratio, and must notify EPA or the regulatory authority of the date of demonstration of the CMS. They must keep records of the sulfur and nitrogen content of the fuel used. Owners or operators must submit semiannual reports of excess sulfur dioxide and nitrogen oxide emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 16.4 hours per response for reporting, and 91.25 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of stationary gas turbines.

Estimated No. of Respondents: 335.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 41,559 hours.

Frequency of Collection: Semiannually and on occasion.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: September 5, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-21852 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3994-5]

Proposed Ruling on Petition Pursuant to Section 324(a)(1) of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed ruling on petition.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by the Governor of the Virgin Islands pursuant to section 324(a)(1) of the Clean Air Act Amendments of 1990. In response to the petition, EPA proposes to exempt the Virgin Islands Water and Power Authority (VIWAPA) from having to obtain a Prevention of Significant Deterioration (PSD) of Air Quality permit prior to commencement of construction of its Unit #18 in accordance with the specified conditions detailed in this proposed ruling.

DATES: *Comments.* Comments must be received on or before October 11, 1991.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to Kenneth Eng, Chief, Air Compliance Branch, 26 Federal Plaza, room 500, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Kenneth Eng, at (212) 264-9627.

SUPPLEMENTARY INFORMATION: Alexander A. Farrelly, Governor of the Virgin Islands, submitted a petition to the Administrator of EPA pursuant to section 324(a)(1) of the Clean Air Act, 42 USC 7625-1(a)(1), as amended by the Clean Air Act Amendments of 1990, Public Law 101-549 806 (the "Act") on April 22, 1991. The petition requested that the Virgin Islands Water and Power Authority (VIWAPA) be authorized to commence construction of an electric generating unit (Unit #18) prior to receipt of an effective Prevention of Significant Deterioration (PSD) of Air Quality permit. The request did not include allowing the operation of any part of Unit #18 unless and until the PSD permit is issued in final form and is made effective.

The primary provisions of the PSD regulations require that major new stationary sources and major modifications at stationary sources be carefully reviewed prior to commencement of construction to ensure compliance with the National Ambient Air Quality Standard (NAAQS), the applicable PSD air quality increments, and the requirement to apply Best Available Control Technology (BACT) to minimize the project's emissions of air pollutants. This is a requirement of section 110 (a)(2)(C).

As amended, section 324(a)(1) states that:

> * * * the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this Act other than section 112 or any requirement under section 110 or Part D necessary to attain or maintain a national primary ambient air quality standard. Such exemptions may be granted if the Administrator finds that compliance with the requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory or such other local factors as the Administrator deems significant * * *

The 1990 amendments to the Act Permit such exemptions to apply to the Virgin Islands.

On the basis of the language cited above, the first prerequisite to granting an exemption under section 324(a)(1), is that the request not involve any requirement necessary to attain or maintain a national primary air quality standard. Although the PSD program is a requirement under section 110, the PSD permitting requirements of the program are generally applicable to areas which attain the NAAQS. The air quality analyses which have been performed for the Unit #18 PAD review indicate that this unit will not cause a violation of the NAAQS in the Virgin Islands. Therefore, the VIWAPA Unit #18 project is within the scope of section 324(a)(1), and can qualify for an exemption from the permitting requirements of the PSD regulations based on this prerequisite.

The other prerequisite to granting such a petition is that the requirement is not feasible or is unreasonable, due to unique geographical or meteorological factors or such local factors as the Administrator may deem significant. No arguments have been presented which demonstrate that the requirement for a permit is not feasible. Information contained in the petition indicates that there is a critical need for additional power and potable water for the residents of St. Thomas and the neighboring islands. In analyzing the situation currently existing at VIWAPA, the Administrator concludes that although the power shortage may not be attributable to the geography and meteorology of the islands, the current capability of the system, merits special consideration as a significant "local factor".

VIWAPA's lack of additional power generating and water desalination capacity to meet current power demands and to ensure adequate water supply will have significant impact on

the residents of St. Thomas and St John. There is evidence that the existing capacity is being extended beyond its limits and the loss of any existing capacity would cause very serious limits on power and potable water. A decision to allow construction, but not operation, of Unit #18 without a PSD permit does not solve the problem of inadequate power. VIWAPA has submitted a PSD permit application for Unit #18. VIWAPA officials must obtain the permit before Unit #18 becomes available to alleviate the shortages. There is not indication at this time that a proper permit will not be issued provided that VIWAPA attends to the application expeditiously and submits a complete permit application in the near future. Based upon these considerations, the Administrator therefore approves the Governor's request for a limited exemption from certain of the PSD regulations with respect to VIWAPA, subject to the following conditions:

1. The exemption shall be for installation of the proposed gas turbine, (Unit #18) prior to obtaining a PSD permit. VIWAPA would be authorized to perform only the following activities as they relate to Unit #18 prior to permit issuance: clear/level the ground, excavate ground for foundation and piling, construct turbine pad, install unit, install wiring/connection with control room, power grid and fuel supply.

2. VIWAPA will proceed as rapidly as possible to obtain a PSD permit for Unit #18. VIWAPA shall also submit a bimonthly (by the tenth day of the following month) progress reports to EPA, Region II. These reports shall provide the status on the construction of Unit #18. This requirement to submit reports to EPA shall continue until completion of construction/installation of the unit.

3. VIWAPA shall modify/retrofit the gas turbine to accommodate whatever is ultimately determined to be the BACT control technology for oxides of nitrogen and carbon monoxide, and all other pollutants for which emission limitations are established in the permit.

4. VIWAPA shall not operate the unit until a final PSD permit is issued by EPA, Region II. VIWAPA shall not operate the unit for shakedown, performance testing and other "startup" activities considered "operation" of the unit.

VIWAPA shall hereby be exempt from the prohibition on beginning actual construction of a PSD affected facility without an effective PSD permit for the facility described above, provided that the conditions listed above are met. VIWAPA shall submit a complete PSD permit application as soon as possible and is not exempt from the requirement to operate the facilities in accord with the application for and the terms of such PSD permit that may be finally issued and made effective for the facility. This exemption shall terminate:

1. Six (6) months from the date of this letter; or

2. On the effective date of a PSD permit issued for this facility; or

3. Upon any failure by VIWAPA to adhere to the conditions set out herein.

This limited exemption does not guarantee that EPA will issue a PSD permit reflecting the terms set forth in VIWAPA's application. EPA reserves the right to issue a final PSD permit that contains terms that other than those requested in VIWAPA's applications, or deny the application altogether. Thus, any expenditures by VIWAPA as a result of beginning actual construction prior to the issuance of a final and effective PSD permit are made at VIWAPA's risk. In addition, the terms of any PSD permit issued by EPA will be established without regard to any construction related expenditures that may be made by VIWAPA prior to the issuance of such permit.

Dated: August 21, 1991.

F. Henry Habicht,

Acting Administrator.

[FR Doc. 91-21807 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00110; FRL 3944-8]

Biotechnology Science Advisory Committee; Full Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee (ESAC) Full Committee. The meeting will be open to the public. The Committee will hear and discuss reports from various Subcommittees, that met during 1990 through July 1991, including the Subcommittees' reports from meetings on: (1) Mobile Genetic Elements; (2) Ecoregions; (3) Good Developmental Practices; (4) Implementation of Scope Principles under the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and (5) the proposed Biotechnology rule under TSCA. The BSAC will also receive updates on various activities, such as the biotechnology product reviews and risk assessment research at EPA.

DATES: The meeting will be held on Monday, September 30, 1991, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Radisson Plaza Hotel, Mark Center, 5000 Seminary Road, Alexandria, VA.

Written comments should be submitted to: Creavery Lloyd, Biotechnology Science Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, rm. E-627, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting 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: This notice is in accordance with the Federal Advisory Committee Act which requires timely notice of each meeting of a Federal Advisory Committee be published in the **Federal Register**. This notice announces such a meeting. Attendance by the public will be limited to available space. The Environmental Assistance Division will provide summaries of the meeting at a later date. Time will be allocated for public comments. Requests for additional information regarding written comments should be given to Creavery Lloyd at (202) 260-6900. Priority will be given to commenters who have provided written comments in advance of the meeting.

Dated: September 1, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-21853 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-00111; FRL 3945-4]

Maryland Biotechnology Institute; Large-Scale Environmental Applications of Microoganisms; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day open meeting of the Maryland Biotechnology Institute, cosponsored by the Environmental Protection Agency and Environment Canada, to identify and examine issues and information needs for dealing with large-scale environmental applications of microoganisms for agricultural or

biotreatment purposes (LS). Panelist will make presentations on various aspects of this subject followed by general discussion periods. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, October 9, 1991, from 8 a.m. to 5 p.m. and Thursday, October 10, 1991, from 8:30 a.m. to 4 p.m. The deadline for registration is Monday, September 23, 1991. Registration is limited to 113 people.

ADDRESSES: The meeting will be held at the: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852, (301) 468-1100.

FOR FURTHER INFORMATION CONTACT: Morris Levin, Maryland Biotechnology Institute, Center for Public Issues in Biotechnology, University of Maryland, Baltimore County, Catonsville, MD 21228, (301) 455-3763, FAX (301) 455-1077.

SUPPLEMENTARY INFORMATION: The workshop will address LS information requirements for regulatory decisions as opposed to information required for approval of field tests. Panelists will discuss use of and experiences with specific fungi, bacteria, and viruses. Representatives will present status reports on topics from Canada and Europe.

Interested persons should contact Morris Levin for registration information at the telephone number listed above under FOR FURTHER INFORMATION CONTACT.

Dated: September 1, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-21854 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3995-5]

Ecological Processes and Effects Committee Sediment Criteria Subcommittee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Sediment Criteria Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will meet on September 24, 1991 at the Fairchild Building, 499 South Capitol Street, SW., Washington, DC 20003, in room 111. This meeting is open to the public.

The meeting will start at 9 a.m. on September 24 and will adjourn no later than 5 p.m. on that day. The main purpose of this meeting is to complete a review of toxicity and bioaccumulation test methods that are used to evaluate dredged materials for possible ocean disposal. The Subcommittee will discuss its findings on the review of the manual for "Evaluation of Proposed Discharge of Dredged Material into Ocean Waters". Copies of this document are available from Mr. David Redford, OMEP (WH-556-F), 401 M St., SW., Washington, DC, 20460 (Telephone: (202) 260-9179).

For additional information concerning this meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 260-6552; Fax: (202) 260-7118). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than September 10, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. The room is small and seating at the meeting will be on a first come basis.

Dated: August 23, 1991.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 91-22011 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3995-6]

Science Advisory Board; Indoor Air Quality and Total Human Exposure Committee Open Meeting September 12-13, 1991

Pursuant to the Federal Advisory Committee Act, P.L. 92-463, notice is hereby given that the Science Advisory Board's (SAB) Indoor Air Quality and Total Human Exposure Committee (IAQTHEC) will meet on September 12-13, 1991 at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia 22202. The Hotel telephone number is (703) 684-7200. The meeting will begin both days at 9 a.m., ending no later than 12 p.m. on September 13th. The meeting is open to the public and seating is on a first-come basis.

The purpose of the meeting is to allow the Committee an opportunity to review the Agency's Draft Final Exposure Assessment Guidelines (dated August 8, 1991). If time permits, the Committee may also receive briefings on other relevant indoor air or exposure issues. For details concerning the review of the Guidelines, or for information concerning other possible activities of the Committee during the meeting, please contact Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-2552 and FAX: (202) 475-9693. Copies of the Draft Final Exposure Assessment Guidelines are NOT available from the Science Advisory Board. For more information concerning this document and its availability, please contact Dr. Michael Callahan, Chairman of the Exposure Assessment effort at (202) 475-8909.

Due to an administrative oversight, publication of this **Federal Register** Notice has been delayed. Normally, we request that members of the public who wish to provide oral or written statements to the Committee contact us prior to the meeting in order to be included on the meeting agenda. Due to the late notification concerning this meeting the Committee will accept written comments or statements from members of the interested public through October 18, 1991. Please forward these comments directly to Mr. Flaak at the above address. Comments received by October 18, 1991 will be forwarded to the Committee members to evaluate as they prepare their final report. These comments will also be available to members of the public—please contact Mr. Flaak after October 18, 1991 to receive a complete set. Depending on the extent and nature of the public comments received, we may schedule a public conference call in November to discuss the issues raised. This conference call, if to be held, will be announced in the **Federal Register** at least 15 days prior to the date selected.

Dated: September 9, 1991.

Donald Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91-22010 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100083A; FRL-3932-6]

Food and Drug Administration, U.S. Department of Agriculture; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice pertains to information submitted to EPA in connection with the pesticide information requirements of the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) and sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). It is a clarification of a **Federal Register** notice published on January 30, 1991, informing the public and the regulated community of a project between EPA, FDA, and USDA. The successful completion of part of this project will depend upon sharing data related to the export of pesticides.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Policy and Special Projects Staff (H7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1115, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7102.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of January 30, 1991 (56 FR 3464), concerning an Interagency Agreement between EPA, FDA, and USDA. The January notice included a list of chemicals that were purported to be canceled and unregistered food use pesticides manufactured in the U.S. and exported to foreign countries. The Agency cannot now support this characterization of the referenced chemicals. Information reported to the Agency indicates that only a small number of the chemicals listed in the previous notice are associated with export shipments. The Agency would like to emphasize that the list contains a number of inaccuracies and cannot be relied upon as representative of the pesticides that are exported from the U.S. EPA would now like to provide notice that the scope of the project will not be limited to the above mentioned list. Rather, EPA will provide FDA and USDA with information that, generally, can be submitted to EPA as confidential business information under FIFRA sections 7 and 17(a)(2). While EPA maintains data relevant to the pesticide export industry, a list will not be generated for the purposes of this notice.

Exported pesticides and food safety are the focus of the project. Confidential business information relevant to this area will be transferred to FDA and USDA consistent with the requirements of 40 CFR 2.209(c), 2.307(h)(3), and 2.308(i)(2). This transfer will enable EPA, FDA, and USDA to further pursue the objectives of a Memorandum of Understanding (MOU) of January 16, 1985 (50 FR 2304) between the three agencies. The MOU established guidelines for the coordination of Federal activities with regard to food safety and the regulation of drugs, pesticides, and environmental contaminants.

Under the FFDCA and the Pesticide Monitoring Improvements Act (PMIA), FDA is responsible for ensuring that foods and feed products that are in the U.S. channels of trade comply with certain health standards. Part of this responsibility involves monitoring imported and domestically produced foods for compliance with the pesticide tolerance standards established by EPA. Likewise, USDA is responsible under the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA) for checking meats and dairy products for compliance with EPA's pesticide residue requirements. Additionally, the three agencies are also interested in investigating the U.S. production and export sale of pesticides that may be used on foods that are imported into the U.S. and found to be adulterated by U.S. compliance inspectors. Special attention will be given to information relevant to anticipated use patterns of exported pesticides and compliance with U.S. tolerance standards for imported foods established under sections 408 and 409 of the FFDCA for those chemicals.

Information has been submitted to EPA under FIFRA sections 7 and 17(a)(2). Some of this information may be entitled to confidential treatment. Access to this information may assist the Agency in its regulatory goals. The purpose of this notice is to correct the previous notice published and inform the public and those that submit data to the Agency that the information is being shared. In accordance with the requirements of 40 CFR 2.209(c), 2.307(h), and 2.308(h)(2), this project will not result in the release of information in any form to a third party. Each official and employee has signed an agreement to protect the information from unauthorized release or compromise and to handle it in accordance with the FIFRA Information Security Manual. Records of information provided under this project will be maintained by EPA. All information supplied in connection with this project will be returned to EPA.

Dated: August 26, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-21669 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3994-6]

Privacy Act of 1974; System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Privacy Act of 1974; proposed new system of records.

SUMMARY: As required by the Privacy Act of 1974 (5. U.S.C. 522a), EPA is proposing to establish and maintain a system of records. This system is "EPA Senior Environmental Employment Program Enrollee (SEE) Records." The Senior Environmental Employment Program was established by Congress (Public Law 98-313) to utilize the talents of older Americans in programs authorized by other provisions of law administered by the EPA Administrator for projects of pollution prevention, abatement, and control. Information in the system will be used by the SEE Project Officer and his/her staff to manage the day-to-day activities of all active SEE Cooperative Agreements. Under the Cooperative Agreements of this program, grantees engage older Americans to handle special environmental tasks in support of designated EPA activities. This system of records is a repository of only the SEE enrollee personnel of payroll-related data necessary for EPA to properly manage the SEE program.

EFFECTIVE DATE: This system shall become effective as proposed sixty-days after publication unless comments are received which would result in contrary determination.

ADDRESSES: Comments may be submitted to SEE Records Manager, (RD-675), Senior Environmental Employment Program, Office of Exploratory Research, Office of Research and Development, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pat Powers, Director, Office of the Senior Environmental Employment Program, (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone (202) 382-2574.

Dated: September 2, 1991.

Edward Hanley,

Acting Assistant Administrator.

EPA-28

SYSTEM NAME:

EPA Senior Environmental Employment Program Enrollee Records—EPA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Senior Environmental Employment Program Project Officer, RD-675, Office of Research and Development, Office of Exploratory Research, 401 M Street, SW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA Grantees' employees who serve as enrollees under the EPA Senior Environmental Employment (SEE) Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains identification information, which includes but is not limited to, cost and/or budget-related enrollee data, health and/or medicare insurance-related data, medical-related information when required for health and safety job-related performance, official travel data, payroll, training and education data, wage/salary information, enrollee's work location and other personnel-related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Environmental Programs Assistance Act of 1984, 42 U.S.C. 4368(a).

PURPOSE(S):

EPA will use the records to manage the SEE Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of information may be made:

(1) To a member of Congress or a congressional office in response to an inquiry from that member or office made at the request of the individual to whom the record pertains.

(2) To a Federal, State or local agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

(3) To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

(4) To an appropriate Federal, State or local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statue, rule, regulation or order, and the information disclosed is relevant to the matter.

(5) To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

(6) In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include those made in the course or presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

(7) To the Department of Labor in response to a request for claim resolution related to life and health insurance claims, Title V related matters, and unemployment benefit claims.

(8) To the Office of Personnel Management in response to its request for information about the SEE program and the characteristics of its enrollee population.

(9) To the General Accounting Office in response to specific inquiries related to special investigation of the SEE program or related EPA activities.

(10) To representatives of the General Services administration and the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(11) To EPA contractors, grantees, or volunteers who have been engaged to assist EPA in the performance of a contract, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain the records in accordance with the requirements of the Privacy Act.

(12) To State unemployment compensation offices and to Federal Life Insurance or health benefit carriers regarding a claim relevant to the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer Database Files and hardcopy File Folders.

RETRIEVABILITY:

Records are retrieved by all data elements in the file including name of enrollee and social security number.

SAFEGUARDS:

Only authorized EPA employees with an official need-to-know are allowed access to the system. The hardcopy records will be stored in locked cabinets. The cabinets will be located in rooms protected by door locks in a building with controlled access. The computer data records will be stored on a security hard disk which is removable from the computer and locked when not in use.

RETENTION AND DISPOSAL:

Computer data records are erased monthly upon receiving updated copies. The new files will be copied over onto the old files. Hardcopy records will be kept for two years after being declared inactive and will be disposed by shredding.

SYSTEM MANAGER AND ADDRESS:

The Office of the Senior Environmental Employment Program, Records Manager, (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382-2574.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the System Manger in accordance with EPA's regulations at 40 CFR part 16. Any additional information or requirements will be provided by the System Manager.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Individual should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual.

RECORD SOURCE CATEGORIES:

Individual enrollees, EPA office preparing credentials, the Grantee, and other individuals or entities with relevant information to the SEE program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-21806 Filed 9-10-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1859]

Petitions for Reconsideration of Actions in Rule Making Proceedings

September 3, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed by September 27, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Hinesville, Georgia)

Number of Petitions Received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Boalsburg, Clearfield, Duncansville, Jersey Shore, Laporte, Lewisburg, Lock Haven, Mill Hall, Muncy, Renovo, Riverside, St. Marys, and Tioga, Pennsylvania). (MM Docket No. 88-496, RM Nos. 6346, 6469, 6625, 6626 and 6627)

Number of Petitions Received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Hannahs Mill, Milledgeville and Perry, Georgia) (MM Docket No. 89-547, RM Nos. 6899, 7021, 7100 and 7102)

Number of Petitions Received: 1

Subject: Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates. (MM Docket No. 90-4)

Number of Petitions Received: 5

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-21784 Filed 9-10-91; 8:45 am]

BILLING CODE 6712-01-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: Existing Collection in Use Without OMB Control Number.

Title: National Disaster Medical System Activation Request.

Abstract: The National Disaster Medical System is designed to provide medical care for victims of catastrophic domestic disasters or casualties arising from a military confict (nuclear war excluded). State and local governments may request Federal assistance when the medical needs of their jurisdictions exceed their capabilities by providing FEMA with information which is used by the Assistant Secretary for Health, DHHS, to determine whether or not to activate the NDMS.

Type of Respondents: State and local governments.

Estimate of Total Reporting and Recordkeeping Burden: 15.

Number of Respondents: 5;

Estimated Average Burden Hours per Response: 3.

Frequency of Response: One time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (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 Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: August 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-21794 Filed 9-10-91; 8:45 am]

BILLING CODE 6718-01-M

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: Revision of 3067-0066.

Title: Request for Fire Suppression Assistance.

Abstract: As soon as it is determined that the threat of a major disaster exists from an on-going fire or fires on publicly or privately owned forest or grassland, a State may request Federal assistance for fire suppression. Upon approval, FEMA will provide assistance including grants, equipment, supplies, and personnel to aid a State in the suppression of a fire.

Type of Respondents: State governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 25 Hours.

Number of Respondents: 6.

Estimated Average Burden Hours per Response: 4.08.

Frequency of Response: One-time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (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 Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: August 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support

[FR Doc. 91-21795 Filed 9-10-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-914-DR]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA-914-DR), dated August 26, 1991, and related determinations.

DATES: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Mangement Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated August 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Masschusetts, resulting from Hurricane Bob on August 19, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Masschusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Disaster Unemployment Assistance and Public Assistance in the designated areas. Other Individual Assistance programs may be provided at a later time, if needed. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared major disaster:

The counties of Barnstable, Bristol, Essex, and Middlesex for Disaster Unemployment Assistance; and

The counties of Barnstable, Bristol, Essex, and Middlesex for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 91-21796 Filed 9-10-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-913-DR]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA-913-DR), dated August 26, 1991, and related determinations.

DATES: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated August 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in the State of Rhode Island, resulting from Hurricane Bob on August 19, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Disaster Unemployment Assistance in the designated areas. Other Individual Assistance programs may be provided at a later time, if needed. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared major disaster:

The counties of Bristol, Kent, Newport, Providence, and Washington for Disaster Unemployment Assistance; and

The counties of Bristol, Kent, Newport, Providence, and Washington for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 91-21797 Filed 9-10-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-912-DR]

Wisconsin; Amendment To a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA-912-DR), dated August 6, 1991, and related determinations.

DATES: August 20, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Wisconsin, dated August 6, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 6, 1991:

Washington County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-21798 Filed 9-10-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Manufacturers Hanover Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Manufacturers Hanover Corporation, New York, New York; to acquire Manufacturers Hanover Servicing, Inc., Deerfield Beach, Florida, and thereby engage in acquiring certain assets of Centrust Mortgage Corporation comprising the mortgage originating, producing, acquiring, securitizing, and selling mortgage loans and securities based on and backed by such mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-21780 Filed 9-10-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, September 26, 1991, from 9 a.m. until 4 p.m. in room 7313 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the August 22 meeting and the continuation of discussion on draft exposure draft on federal accounting standards. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

DATES: September 26, 1991.

ADDRESSES: 441 G St., NW., room 7313, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St. NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: September 6, 1991.

Ronald S. Young,

Staff Director.

[FR Doc. 91-21803 Filed 9-10-91; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0271]

Atochem North America, Inc.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Atochem North America, Inc., to indicate that the petitioned additive β,3 (or 4)-bis(octadecylthio)cyclohexylethane is intended as an antioxidant for general use in polymeric articles intended for food contact. The previous filing notice indicated that the additive was for use only as a component of paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 301-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 8, 1991 (56 FR 37712), FDA announced that a petition (FAP 1B4274) had been filed by Atochem North America, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that the food additive regulations be amended in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of β,3 (or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food contact use.

Upon further review of the petition, the agency notes that the petitioner requested use of the additive for general use in polymers rather than only as an additive for paper and paperboard. Therefore, FDA is amending the filing notice of August 8, 1991, to state that the petitioner requested the food additive regulations be amended in § 178.2010 Antioxidants and/or stabilizers for polymers to provide for the use of β,3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant for general use in polymeric food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the

evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 30, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21848 Filed 9-10-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0394]

Edwards-Councilor Co., Inc.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Edwards-Councilor Co., Inc., to provide for the safe use of a sanitizing solution containing *n*-alkyl(C_{12}–C_{16})benzyldimethylammonium chloride, calcium stearate; sodium bicarbonate, starch and/or dextrine, and methylene blue as a colorant on food-processing equipment, utensils, and other food-contact equipment. This notice amends the previous filing notice to include ammonium chloride as a component of the sanitizing solution.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 27, 1989 (54 FR 43861), FDA announced that a petition (FAP 9B4159) had been filed by Edwards-Councilor Co., Inc., 427 Baker Rd., Airport Industrial Park, Virginia Beach, VA 23455, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of a sanitizing solution containing *n*-alkyl(C_{12}–C_{16})benzyldimethyl ammonium chloride, calcium stearate, sodium bicarbonate, starch and/or dextrine, and methylene blue as a colorant on food-processing equipment, utensils, and other food-contact equipment. On page 43861, column 3, the component ammonium chloride was omitted from the list of ingredients. The list of components in the subject sanitizer is hereby amended to include the following substances: *n*-alkyl(C_{12}–C_{16})benzyldimethylammonium chloride, ammonium chloride, calcium stearate, sodium bicarbonate, starch and/or dextrine, and methylene blue.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 30, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21849 Filed 9-10-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0334]

Heveafil Sendirian Berhad; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Heveafil Sendirian Berhad had filed a petition proposing that the food additive regulations be amended to provide for the safe use of natural rubber latex, sulfur, kaolin, butylated reaction product of *p*-cresol and dicyclopentadiene, zinc dibenzyldithiocarbamate, talc, ammonium caseinate, and sodium salt of polymerized alkyl aryl sulfonic acid as components of latex rubber thread in contact with meat and poultry.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4276) has been filed by Heveafil Sendirian Berhad, 4740-G Dwight Evans Rd., Charlotte, NC 28217. The petition proposes to amend the food additive regulations to provide for the safe use of natural rubber latex, sulfur, kaolin, butylated reaction product of *p*-cresol and dicyclopentadiene, zinc dibenzyldithiocarbamate, talc, ammonium caseinate, and sodium salt of polymerized alkyl aryl sulfonic acid as components of latex rubber thread in contact with meat and poultry.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 30, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21850 Filed 9-10-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0321]

Medtronic, Inc.; Premarket Approval of the SynchroMed® Infusion System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of the SynchroMed® Infusion System for intrathecal administration of preservative-free morphine sulfate. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 25, 1991, of the approval of the Supplemental application.

DATES: Petitions for administrative review by October 11, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Amalie Mattan, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1225.

SUPPLEMENTARY INFORMATION: On August 18, 1987, Medtronic, Inc., 7000 Central Ave. NE., Minneapolis, MN 55432, submitted to CDRH a supplemental application for premarket approval of the SynchroMed® Infusion System. This device is indicated for the delivery of preservative-free morphine sulfate approved for continuous intrathecal administration for the treatment of chronic intractable pain of malignant origin.

On October 6, 1987, the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On July 25, 1991, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Amalie Mattan (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d) (3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d) (3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grans the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place the review will occur, and other details.

Petitioners may, at any time on or before October 11, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 4, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-21851 Filed 9-10-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; NCI Briefing on SPORE Program

Notice is hereby given of a briefing by National Cancer Institute (NCI) staff on the NCI Specialized Programs of Research Excellence (SPORE) in Breast Cancer, in Lung Cancer, and in Prostate Cancer, October 8, 1991, at the St. Louis Airport Marriott Hotel, I-70 at Lambert Airport, St. Louis, Missouri.

The briefing will be open to the public on October 8 from 8 a.m. to 12 noon. The agenda will include an overview of the SPORE program by NCI staff followed by questions and answers. Attendance will be limited to space available.

Rooms are available for the night of October 7 at a special rate of $58 plus tax. Reservations should be made directly to the hotel at (314) 423-9700 by September 27. To receive the special rate, mention the NCI briefing.

For further information, contact Dr. Andrew Chiarodo, Organ Systems Coordinating Branch, National Cancer Institute, Executive Plaza North, Room 316, Bethesda, Maryland 20892 (301) 496-8528.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-21775 Filed 9-10-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-968-4230-15; AA-61030]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), sec. 12 of the Act of January 2, 1976, 43 U.S.C. 1611 n, as amended, and Par. 1.C.(2) of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," will be issued to Cook Inlet Region, Inc., for approximately 10 acres. The lands involved are in the vicinity of Elfin Cove, Alaska, and are described as:

Cooper River Meridian, Alaska

T. 42 S., R. 55 E., unsurveyed.
Sec. 25, Tract D.
Sec. 26, Tract B.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until October 11, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Christy Mitchell,

Lead Land Law Examiner Branch of Cook Inlet and Ahtna, Adjudication.

[FR Doc. 91-21782 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-963-4230-15; F-14831-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Kuskokwim Corporation (successor in interest to Aniak Limited) for approximately 295 acres. The lands involved are in the vicinity of Aniak, Alaska.

Parcel of land within U.S. Survey No. 2638, Alaska, located in T. 17 N., R. 57 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the The Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 11, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Marilyn J. Bremner,

Land Law Examiner, Branch of Calista Adjudication.

[FR Doc. 91-21791 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-JA-M

[OR-943-4214-10; GP1-185; ORE-02851A]

Opening of National Forest Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary segregative effect as to 1,900 acres of National Forest land included in a former application for withdrawal involving the Little North Fork Road Zone.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(e), at 8:30 a.m., on October 20, 1991, the following described lands will be relieved of the temporary segregative effect of the former withdrawal application ORE-02851A.

Willamette Meridian

Willamette National Forest

Those portions of the following described subdivisions that lie outside the withdrawals approved by Public Land Order No. 3502 of December 2, 1964, and Public Land Order No. 3556 of February 23, 1965:

T. 8 S., R. 4 E.,

Sec. 23, S½SE¼;
Sec. 24, SW¼, W½SE¼, and SE¼SE¼;
Sec. 26, N½N½ and SW¼NW¼;
Sec. 27, SE¼NE¼, SW¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 28, lots 1 and 2, and S½SE¼;
Sec. 32, lot 3 and SE¼NE¼;
Sec. 33, lots 1 and 2, and N½NE¼;
Sec. 34, W½NE¼, N½NW¼, and SE¼NW¼.

T. 8 S., R. 5 E.,

Sec. 19, lots 10, 11, and 12, and SE¼SW¼;
Sec. 26, W½NW¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 27, NE¼, S½NW¼, and NW¼SW¼;
Sec. 28, SE¼NE¼, N½S½, and S½SW¼;
Sec. 29, SW¼NW¼, N½S½, and SE¼SW¼;
Sec. 30, lots 1 and 2, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 35, W½E½, NE¼NW¼, and E½SE¼.

The areas described aggregate approximately 1,900 acres in Marion County.

Dated: August 26, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-21783 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Environmental Assessment: Wichita Mountains Wildlife Refuge, Indiahoma, OK

AGENCY: Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability for review.

SUMMARY: The FWS is issuing this notice to advise than an environmental assessment for the replacement of Elmer Thomas Dam at Wichita Mountains Wildlife Refuge at Indiahoma, Comanche County, Oklahoma is available for review.

DATES: Comments should be submitted to the Associate Manager (OK/TX), Division of Refuges, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103 by September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. M. Kathleen Wood, Refuge Program Specialist, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103, Telephone (505) 766-2036 extension 29.

SUPPLEMENTARY INFORMATION: As a result of field investigations, the Elmer Thomas Dam was determined to be unsafe. Emergency measures taken in 1988 included draining the reservoir and modification to the North spillway. Although these emergency measures and continued stand-by pumping procedures have been considered successful as interim steps, water seepage through the Dam, inadequate spillways, and the lack of a functional low-level outlet for draining the reservoir are a threat to the integrity of the Dam and public safety.

The EA presents discussions of alternatives for alleviating the Dam's safety deficiencies. It also includes evaluations of the environmental and socioeconomic impacts associated with those alternatives and proposes an action to be taken.

The FWS proposes to replace the existing Elmer Thomas Dam with a new roller compacted concrete dam of slightly greater height than the existing dam. The lake will be restored to operations very similar to those that existed before the lake was drained. The proposed action also includes modifications to the spillways.

Other alernatives considered includes no action, removal of existing structure with no replacement, repair of existing structure, and replacement of the existing dam with a 100-year flood control structure.

Copies of the EA are available for review at the Wichita Mountains Wildlife Refuge, Route 1, Box 448, Indiahoma, OK 73552, FWS Bridge/Dam Safety Office, 145 Union Ave, Lakewood, CO 80228, and the Southwest Regional Office, FWS, 500 Gold SW, P.O. Box 1306, Albuquerque, NM 87103.

M. Kathleen Wood,

Refuge Program Specialist, Albuquerque, New Mexico.

[FR Doc. 91-21792 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, September 20, 1991.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carry out

the provisions of the sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet for a regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Old Business.
4. Reports of Officers.
5. Superintendent's Report.
6. Nickerson Fund Recommendations.
7. North Atlantic Region Statement of Direction.
8. Presentation on North Truro Air Force Station Affordable Housing.
9. Presentation on Boston Harbor Sewage Outfall Project.
10. New Business.
11. Agenda for Next Meeting.
12. Date for Next Meeting.
13. Communications/public comment.
14. Adjournment.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: September 5, 1991.

Gerald D. Patten,

Regional Director.

[FR Doc. 91-21823 Filed 9-10-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-324]

Certain Acid-Washed Denim Garments and Accessories; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Bugle Boy Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 4, 1991.

Copies of the initial determination, the consent order agreement, 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 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-205-1802.

Issued: September 4, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-21811 Filed 9-10-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-321]

Certain Soft Drinks and Their Containers; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: International Grain Trade, Inc., Colgran Ltda. and MA Universe Trading Corp.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on September 4, 1991.

Copies of the initial determination, the consent order agreement, 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) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS. Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of the notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: September 4, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-21812 Filed 9-10-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-483 (Final)]

Certain Personal Word Processors From Japan

Erratum

The last sentence of the Commission's final determination notice published August 28, 1991 (56 FR 42636) in the above-referenced investigation should be corrected to read as follows:

The views of the Commission are contained in USITC Publication 2411 (August 1991), entitled "Certain Personal Word Processors from Japan: Determinations of the Commission in Investigation No. 731-TA-483 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 6, 1991.

By Order of the Commission.

[FR Doc. 91-21810 Filed 9-10-91; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Commission Order Suspending Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice of Commission order suspending limited exclusion order and cease and desist orders.

AUTHORITY: 19 U.S.C. 1337(k)(1), 19CFR 211.57.

SUMMARY: The Commission, having received information indicating there has been a cessation of production of the products at issue by the complainants in the United States, has determined to issue an order suspending the limited exclusion order and cease and desist orders issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2574. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810

SUPPLEMENTARY INFORMATION: At the conclusion of the above-captioned investigation, the Commission issued an order excluding from entry into the United States wire electrical discharge matching apparatus and components thereof, manufactured by or for respondents, that infringe claims 1, 7, 9, 20, or 22 of U.S. Letters Patent No. 3,928,163 ("the '163 patent") and cease and desist orders directed to the four domestic respondents. In the exclusion order, the Commission imposed a reporting requirement on complainants to monitor the progress of the establishment of the domestic industry relating to the '163 patent. The latest filed report and other information obtained by the Commission indicate that there has been a cessation of production of patented wire electrical discharge machining apparatus by complainants in the United States. Based on this information, the Commission determined to suspend the exclusion order and cease and desist orders issued in the investigation. In view of the complainants' and the respondents' concurrence in the suspension, the Commission also determined to waive the procedural requirements under Commission Interim Rule 211.57 for modification of Commission final actions.

Any request for a lifting of the suspension must be made by filing a petition with the Commission pursuant to Commission Interim Rule 211.57.

Copies of the Commission's order 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) 205-2000.

Issued: September 5, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-21813 Filed 9-10-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on July 31, 1991 in the United States District Court for the Middle District of Louisiana: *United States* v. *Ethyl Corporation*, Civil Action No. 91-707 B-M2. On August 28, 1991 a Consent Decree between the United States and Ethyl Corporation (hereinafter "Ethyl") was lodged with the court. This Consent Decree settles the government's claims in the complaint against Ethyl pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.* ("the Act"), and the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit No. LA0004090. Ethyl agreed to (1) perform injunctive relief to protect public health and the environment in the future, and (2) pay a civil penalty of seven hundred fifty thousand dollars. The complaint alleged, in part, that Ethyl owns and operates an industrial facility located in Baton Rouge, East Baton Rouge Parish, Louisiana (the "plant") that discharges pollutants to waters of the United States (the Monte Sano Bayou and then to the Mississippi River), in violation of its NPDES Permit No. LA0004090.

Under the terms of the proposed Consent Decree, Ethyl agrees to perform an environmental and management audit of its waste water discharge at the plant by hiring an independent contractor, approved by EPA, to conduct a thorough and complete audit of any water that leaves the plant. Prior to termination of the Decree and the Court's jurisdiction, an officer of the company must certify that the audit has been completed and implemented, and the company has remained in compliance with its current permit for a period of at least six months. The Consent Decree also calls for Ethyl to pay the United States seven hundred fifty thousand dollars in a civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Ethyl Corporation*, D.J. Ref. 90-5-1-1-3351.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VII

Contact: Quintin Farley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

United States Attorney's Office

Assistant United States Attorney, Civil Division, Middle District of Louisiana, 352 Florida Street, Baton Rouge, Louisiana 70801.

Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained by mail from the Document Center. When requesting a copy of the Decree, please enclose a check for copying costs in the amount of $5.00 payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21722 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on Thursday, August 29, 1991, two proposed Consent Decrees in *United States* v. *C. Robert Ivey, et al.*, Civil Action No. 89 CV 71179DT were lodged with the United States District Court for the Eastern District of Michigan. Both proposed Consent Decrees concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. One Consent Decree sets forth a settlement with Defendant Frontier Chemical Waste Process, Inc. and the other Consent Decree sets forth a settlement with Defendants Raymond J. Brinkman and Metro Tank Service, Inc. Under the terms of the Consent Decree with Frontier Chemical Waste Process, Inc., the United States will receive a payment of $500,000 as reimbursement for the United States' response costs at the LDI Site. Under the terms of the Consent Decree with Mr. Brinkman and Metro Tank Service, Inc., the United States will obtain judgments against each of the two defendants for $4.8 million and will receive payments totalling $25,000 as reimbursement to the United States for its response costs at the LDI Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to either or both of the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *C. Robert Ivey, et al.*, D.J. Ref. 90-11-2-220A.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Eastern District of Michigan, 231 West Lafayette, Detroit, Michigan 48226; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). Copies of the proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, D.C. 20004. In requesting a copy, please identify which decree(s) are requested and include a check in the amount of $5.25 for the Consent Decree with Frontier Chemical Waste Process, Inc. and/or $4.50 for the Consent Decree with Mr. Brinkman and Metro Tank Service, Inc. (25 cents per page for reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21723 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 21, 1991, a proposed consent decree in *United States* v. *Joseph Simon & Sons et al.*, Civil Action No. C90-5373B, was lodged with the United States District Court for the Western District of Washington at Tacoma. The proposed consent decree concerns a complaint filed by the United States under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9606, 9607. This is a civil action for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the facility, known as the "Tacoma Tar Pits Site" located in the Commencement Bay Tide Flats area of Tacoma, Washington, between the Puyallup River and the City of Tacoma waterway. The consent decree provides that potentially responsible generators (seven electric utilities) will pay $168,138 to the Hazardous Substances Trust Fund.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Joseph Simon & Sons, et al.*, D.J. Ref. 90-11-3-307.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington, 98402, at the Region 10 Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Twelth Floor, Seattle, WA 98101, at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1521, 601 Pennsylvania Avenue, NW., Washington, DC 20004. In requesting copies, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

The Administrative Record may be examined at the Region 10 Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Twelfth Floor, Seattle, WA 98101 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 91-21724 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 26, 1991 a proposed consent decree in *United States* v. *Joseph Simon & Sons, et al.*, Civil Action No. C90-5373B, was lodged with the United States District Court for the Western District of Washington at Tacoma. The proposed consent decree concerns a complaint filed by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9606, 9607. This is a civil action for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the facility, known as the "Tacoma Tar Pits Site" located in the Commencement Bay Tide Flats area of Tacoma, Washington, between the Puyallup River and the City of Tacoma waterway. The consent decree provides that Joseph Simon & Sons, a defendant, will pay $4,598,000 for response costs and penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Joseph Simon & Sons, et al.*, D.J. Ref. 90-11-3-307.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington, 98402, at the Region 10 Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Twelfth Floor, Seattle, WA 98101, at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1521, 601 Pennsylvania Avenue, NW., Washington, DC 20004. In requesting copies, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

The Administrative Record may be examined at the Region 10 Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Twelfth Floor, Seattle, WA 98101 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 91-21725 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 31, 1991, a proposed Consent Decree in *United States of America* v. *PPG Industries, Inc. and Aluminum Company of America*, Civil Action No. 91-1276, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed Consent Decree requires the Defendants, PPG Industries, Inc. and Aluminum Company of America (collectively "Defendants") to perform remedial action at the Site and to pay past and future response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The Consent Decree further requires Defendants to implement the June 29, 1990, Record of Decision. The Record of Decision calls for capping of soils contaminated with lead in excess of 300 parts per million, security fencing to restrict access to the Site, and continued monitoring of the ground water and surface water. A ground water verification study will also be performed to determine if any ground water remediation is necessary at the Site. The remedial objective set forth in the June 29, 1990 Record of Decision is to prevent risk to public health and to the environment through dermal contact or ingestion of contaminated soils. Under the Decree, Defendants agree to pay the United States $89,381.72 in settlement of the federal government's claim for reimbursement of past response costs incurred by EPA at the Site. Defendants also agree to pay all future oversight costs to be incurred by the United States at the Site overseeing the implementation of work under the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Asssitant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *PPG Industries, Inc. and Aluminum Company of America* (DOJ No. 90-11-2-660).

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Pennsylvania, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202-347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $37.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21726 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Union Oil Company of California d/b/a/ Unocal*, Civil Action No. 91-137-N (E.D.Va), was lodged on August 28, 1991 with the United States District Court for the Eastern District of Virginia. Defendant Union Oil Company of California d/b/a Unocal owns and operates a gasoline distribution facility in Chesapeake, Virginia. The Decree provides for the payment of a civil penalty of $80,000 pursuant to the provision of section 211(d) of the Clean Air Act, 42 U.S.C. 7545(d), in effect in 1989. The civil penalty is for violations of the gasoline volatility regulations at 40 CFR part 80 at the Chesapeake facility during the period June 1, 1989 through June 8, 1989. The Decree also

requires future compliance with the gasoline volatility regulations at the Chesapeake facility and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Oil Company of California d/b/a Unocal*, Civil Action No. 91-137-N (E.D.Va), DOJ reference #90-5-2-1-1527.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Virginia, U.S. Courthouse, 600 Grandy Street, Norfolk, Virginia 23510, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to "Consent Decree Library".

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21727 Filed 9-10-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Changes to Revised Operating Instructions for Implementing the 1988 Amendments to the Trade Adjustment Assistance Program

AGENCY: Employment and Training Administration.

ACTION: Notice of changes 1, 2 and 3 to General Administration Letter No. 15-90.

SUMMARY: The Department of Labor publishes with this notice Changes 1, 2 and 3 to General Administration Letter (GAL) No. 15-90, to inform the States and cooperating State agencies of substantive changes in Changes 1, 2 and 3 to the operating instructions issued in GAL 15-90. Changes 1 and 2 to Training and Employment Information Notice (TEIN) No. 13-90 are also published with this notice.

FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance. Telephone (202) 523-0555; this is not a toll free number.

SUPPLEMENTARY INFORMATION: GAL 15-90 was issued on August 21, 1990, and was published in the **Federal Register** at 55 FR 48770, together with TEIN 13-90. GAL 15-90 contains controlling operating instructions for the States on implementing the 1988 Amendments to the Trade Adjustment Assistance for Workers Program. Changes 1, 2 and 3 to GAL 15-90, announce substantive changes that supersede portions of the operating instructions in GAL 15-90. Changes 2 and 3 were accompanied by Changes 1 and 2 to TEIN 13-90.

The operating instructions in GAL 15-90 and TEIN 13-90, and the subsequent changes thereto are issued to the States and the cooperating State agencies by the Department of Labor in its role as the principal in the TAA Program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in these documents without the prior approval of the Department. Pending the issuance of final regulations implementing the 1988 Amendments, therefore, after the dates of GAL 15-90 and Changes 1, 2 and 3 to GAL 15-90, the operating instructions shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the 1988 Amendments. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in these documents and prior operating instructions for the periods they were in effect.

For the reasons set out above, Changes 1, 2, and 3 of GAL 15-90, together with Changes 1 and 2 to TEIN 13-90, are published below.

Signed at Washington, DC, on September 4, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Directive: General Administration Letter No. 15-90, Change 1

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Subject: Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988 Amendments to the Trade Adjustment Assistance Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement

1. *Purpose.* To inform the States and the cooperating State agencies of a change to the operating instructions issued in GAL 15-90, which constitutes supplemental operating instructions for implementing the amendments to the Trade Adjustment Assistance Program in the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (the 1988 amendments).

2. *References.* The Trade Act of 1974; part 3 of Subtitle D of title I of the OTCA (Pub. L. 100-418); regulations at 20 CFR part 617; the proposed rule published at 53 FR 48474; GAL 7-88; GAL 7-88, Change 1 and GAL 7-88, Change 2; GAL 15-90; TEIN 6-88 and TEIN 6-88, Change 1; and TEIN 13-90.

3. *Background.* GAL 15-90 rescinded GAL 7-88 and Changes 1 and 2 to GAL 7-88, and was reissued as a single document which included new interpretations by the Department of several provisions of the 1988 amendments.

In order to implement the Department's revised interpretation of the effective date of section 1430(a) of the OTCA, section 5.b. of GAL 15-90 requires States to review the authority they have under State UI law to redetermine or reconsider State UI claims and apply that authority to trade readjustment allowance (TRA) and trade adjustment assistance (TAA) claims under the same conditions that are applied to State UI claims. In addition, section 5.c. of GAL 15-90 requires a State that determines it has authority under State law to redetermine or reconsider any erroneous TRA/TAA decision to submit a certification to that effect signed by the State's Attorney General or other authorized official (including the time period covered) to the Department, via the appropriate Regional Office.

A careful review of the requirement in section 5.c. necessitates a modification concerning State certification of its redetermination or reconsideration authority under State law. It has been determined that, in order for the Department to equitably implement the revised interpretation, all States must certify either that the State has the authority or does not have the authority under State law to redetermine or reconsider State UI claims.

4. *Change to GAL 15-90.* Section 5.c. of GAL 15-90 is changed to read as follows:

c. That a State shall submit a certification signed by the State's Attorney General or other authorized official attesting to the authority the State has under State law to redetermine or reconsider State UI claims, including any terms and conditions such as time limitations, and the State shall submit this certification to the Department, via the appropriate Regional Office. If a State determines that it does not have authority under State law to redetermine or reconsider State UI claims, the State shall certify such finding signed by the appropriate authorized official and submit the certification to the Department, via the appropriate Regional Office.

5. *Action Required.* SESA Administrators are requested to:

a. Inform appropriate staff of the change in this Change 1 to the operating instructions published in GAL 15-90; and

b. Submit the certifications required by section 4 of this directive to the appropriate Regional Office by December 21, 1990.

6. *Inquiries.* Direct all inquiries to the appropriate ETA Regional Office.

Directive: General Administration Letter No. 15-90, Change 2
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Interstate Trade Adjustment Assistance (TAA) and Trade Readjustment Allowances (TRA)

1. *Purpose.* To clarify and issue revised procedures affecting interstate approval/denial for TAA training, issuance/revocation of waivers, and TRA payment and appeals.

2. *References.* The Omnibus Trade and Competitiveness Act of 1988 (OTCA), Public Law 100-418; Sections 231, 234, and 236 of the Trade Act of 1974; 20 CFR Part 617; and GAL 15-90 (55 FR 48774).

3. *Background.* The OTCA substantially amended the Trade Act of 1974 to require that, in order to be eligible to receive TRA, an adversely affected worker must be either participating in TAA approved training, enrolled in TAA training, have completed TAA training, or have obtained a waiver of the TAA training requirement. The amendment, which made training both an entitlement and an eligibility requirement for TRA, has increased the training activities of State agencies administering the program.

Regulations published at 20 CFR 617.26(b) provide that the agent State shall be responsible for the selection and approval of training and pay any training related cost including subsistence and transportation; the liable State is responsible for determining eligibility for TRA, job search and relocation allowances, as well as assisting the individual in applying for such allowances.

Requirements published at 20 CFR 617.50 and 617.51 specify that determinations, redetermination and appeals are issued and/or subject to review under the "applicable State law." Generally, the "applicable State law" is the law of the liable State. Although the respective roles of the agent/liable State for TAA approved training are listed in 20 CFR 617.26, the legal relationship between the agent/liable States is not addressed.

This change 2 to GAL 15-90 intends to clarify the roles and the legal relationships between the agent and liable States, and the term "applicable State" in accord with the Trade Act, as amended by the OTCA of 1988. The liable and agent States' administrative procedures are being clarified and/or revised to address the additional interstate activities stemming from the OTCA amendments.

4. *Definitions.* For the purposes of the TAA program, the following additional definitions shall be applicable.

a. *"Agent State"* means the State other than the applicable State in which the adversely affected worker files a TAA application or a TRA claim.

b. *"Applicable State"* means: (1) If the adversely affected worker is currently entitled to UI, (or would be entitled if the worker applied therefor) or has most recently exhausted UI (or would have if the worker had applied therefor), the State whose State law is the "applicable State law" as provided in 20 CFR 617.16; or (2) If the adversely affected worker is not currently entitled to UI in any State (whether or not the worker has filed a claim for UI) and has not exhausted UI in any State subsequent to the worker's first qualifying separation under a single certification, the applicable State is the one in which such worker was totally or partially separated from adversely affected employment. The applicable State so determined under this definition shall remain applicable to an adversely affected worker until such time as the worker becomes entitled to UI (or would be entitled if a claim were filed) under another State's law.

c. "Liable State" means the "Applicable State" as defined in Section 4.b. above.

5. *Rules.* After examining State practices as affected by the OTCA amendments, the Department has concluded that the agent State should continue to be responsible for the payment of TAA approved training related costs, including subsistence and transportation as required by 20 CFR 617.26. Agent States are in a better position to monitor the worker's participation in the training because they have generally established review procedures for their schools.

The Department has also concluded that the liable State shall be responsible for all determinations, redetermination, and appeals pertaining to any worker's eligibility for or entitlement to any program benefit under 20 CFR part 617. This includes determinations relating to training approval, disapproval, waivers, and revocation of waivers for training, and training related costs including subsistence and transportation. This requirement will preclude due process issues which can be raised if workers were required to appeal some issues under the agent State's law and other issues under the liable State's law. This requirement assures that all determinations are issued by the liable State and subject to review solely under that State's law.

6. *Responsibilities.*

a. *Liable State.* The State agency which administers the applicable State law shall be responsible for:

—Furnishing information and assistance to workers;
—Making/issuing all determinations/redeterminations and hearing all appeals on claims/applications for TAA program benefits;
—Furnishing reemployment services under subparts C, D, and E of 20 CFR part 617;
—Carrying out the activities and functions entered into in the Agreement under section 239 of the Act and 20 CFR 617.59.

b. *Agent State.* The agent State shall be responsible for assisting the liable State in carrying out its responsibilities for any claim/application filed under the Interstate Benefit Payment Plan; in addition the agent State shall be responsible for:

—Taking interstate applications/claims;
—Assisting the liable State by providing reemployment services in accordance subparts C, D, and E of 20 CFR part 617 and GAL 15-90;
—Assisting the liable State by furnishing the interstate claimant with information and assistance;
—Assisting the applicant/claimant with filing claims/applications for benefits under subparts B, C, D, and E of 20 CFR part 617 and GAL 15-90;
—Cooperating with and providing information required by the liable State for issuing determinations, and redeterminations and adjudicating appeals, including recommendations and reasons for such recommendations of approval or disapproval of training and waivers or revocation of waivers, and transportation and subsistence;
—Assisting with the applicant's/claimant's filing of appeals, and cooperating with the liable State in conducting appeals; and
—Paying the costs of any approved training, including subsistence and transportation pursuant to a determination issued by the liable State.

7. *Examples.*

a. *Claimant is entitled to UI (or TRA) in liable State, and TAA approved training is conducted in a State other than the applicable State.* The claimant becomes an interstate claimant for the purpose of this program. The State in which the training is conducted becomes the agent State, responsible for all the services described in section 6.b. of this directive.

b. *Claimant files interstate UI (or TRA) claim from an agent State and TAA approved training is conducted in another State.* The State in which the training is conducted becomes the agent State, and thus responsible for all the services described in section 6.b. of this directive. The liable State should coordinate with the new agent State in carrying out their respective responsibilities.

c. *Worker is not currently entitled to UI (or TRA) in any State and the TAA approved training is conducted in a State other than the applicable State.* The liable State is the applicable State as determined under the definitions in section 4 above. The State in which the training is conducted becomes the agent State, responsible for the services and payments described in section 6.b. of this directive.

8. *Authority.* The operating instructions in this document are issued to the States and the cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the TAA Program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in this document (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor. Pending the issuance of final regulations implementing the amendments to the TAA program made by the OTCA, after the date of this GAL the operating instructions in this document (and any subsequent and supplemental operating instructions) shall constitute the controlling guidance for the State and the cooperating State agencies in implementing and administering the TAA program as amended by OTCA, pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in this document and any subsequent or supplemental operating instructions including GAL 6-88 and the prior

operating instructions for the periods they were in effect.

9. *Action Required.* Administrators of cooperating State agencies are requested to convey the information contained in this directive to appropriate staff and assure that it is understood and applied throughout their agencies.

10. *Inquiries.* Direct questions to the appropriate Regional Office.

Training and Employment Information Notice No. 13-90, Change 1

To: All State JTPA Liaisons, State Worker Adjustment Liaisons, and State Wagner-Peyser Administering Agencies
From: Robert T. Jones, Assistant Secretary of Labor
Subject: Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988 Amendments to the Trade Adjustment Assistant Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement

Purpose

A. To inform the State JTPA Liaisons, State Worker Adjustment Liaisons, and State Wagner-Peyser administering agencies of changes to the operating instructions for implementing the 1988 Amendments affecting the Trade Adjustment Assistance for Workers (TAA) program.

B. To inform States of the issuance of the General Administration Letter (GAL) No. 15-90, Change 2, "Interstate Trade Adjustment Assistance (TAA) and Trade Readjustment Allowance (TRA)" which clarifies the interstate responsibilities and procedures for training, waivers, payment and appeals.

2. *References.* The Omnibus Trade and Competitiveness Act of 1988 (OTCA), Public Law 100-418; sections 231, 234, and 236 of the Trade Act of 1974; 20 CFR part 617; and GAL 15-90 (55 FR 48774).

3. *Background.* In GAL 15-90, Change 2, the Department announced a clarification of interstate responsibilities for the approval/denial of TAA training, issuance/revocation of waivers and TRA payment and appeals. The clarification relates the regulations at 20 CFR 617.26 with those at 20 CFR 617.50 and 617.51 to assure that the liable State shall be responsible for all determinations, redeterminations, and appeals pertaining to a worker's eligibility for or entitlement to any program benefit under 20 CFR part 617. This requirement will preclude due process issues which can be raised if workers were required to appeal some issues under the agent State's law and other issues under the liable State's law.

As the operating instructions are also important in furnishing guidance to the State JTPA and Worker Adjustment agencies and Wagner-Peyser Administering Agencies, GAL 15-90, Change 2 is forwarded as an attachment to this Information Notice and shall constitute binding operating instructions for such administering and other cooperating State agencies.

4. *Inquiries.* Direct questions to the appropriate Regional Office.

5. *Attachment.* General Administration Letter No. 15-90, Change 2.

Directive: General Administration Letter No. 15-90, Change 3
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator, for Regional Management
Subject: Revised Operating Instructions for Criteria for Approval of Trade Adjustment Assistance (TAA) Training

1. *Purpose.* To amend criterion (E) in Section G.1. of Attachment A to GAL 15-90 by adding "financial resources" to the worker qualifications to undertake and complete TAA approved training.

This change requires State agency staff to explain to workers seeking approval of training, in which the duration of training exceeds their remaining weeks of UI and TRA payments, that in the absence of other financial resources such training may not be appropriate. This is intended to enhance the worker's ability to complete training by stressing that the duration of approved training should be commensurate with the worker's financial resources.

2. *References.* Section 236 of the Trade Act of 1974, as amended; GAL 15-90, Attachment A; and regulations at 20 CFR part 617.

3. *Background.* Section 617.22(f)(2) provides that training may be approved for a duration not to exceed 104 weeks. Combined Unemployment Insurance (UI) and Trade Readjustment Allowance (TRA) entitlement generally is available to workers up to a maximum of 78 weeks. When the duration of training exceeds the remaining weeks of UI and TRA payments, a worker's income support may end or be substantially reduced before completing training. This may cause some workers to drop out before completing the training program.

Section G.1. of Attachment A to GAL 15-90, lists six criteria that must be met for approval of training. These are intended to assure that training will lead to suitable employment. Criterion (E) deals with a worker's qualifications to undertake and complete such training. This Change 3 to GAL 15-90 amends the Department's interpretation of criterion (E) on page 35 of Attachment A to GAL 15-90, by adding financial resources to the existing physical and mental capabilities to undertake and complete training.

When the worker's financial resources cannot be matched with a training program suitable to the worker, section C.3. of Attachment A of GAL 15-90 provides for waiving the training requirement because training is "not appropriate." Clause (B) on page 15 of Attachment A, provides for a waiver when "The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments."

4. *Change to Attachment A to GAL 15-90.* Section G.1 of Attachment A to GAL 15-90 is revised by substituting the following for the interpretation of criterion (E):

(E) *The worker is qualified to undertake and complete such training.*

This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

Evaluation of the worker's financial ability should include an analysis of the worker's remaining weeks of UI and TRA payments in relation to the duration of the training program. If the worker's UI and TRA payments are exhausted before the end of the training program, the State agency staff should ascertain that personal or family resources are available to complete the training. The State agency staff must note on the worker's record that financial resources were discussed with the worker before the training was approved.

When a worker reports that adequate financial resources are not available to complete a training program which exceeds the duration of UI and TRA payments, the worker and State agency staff should consider other training options suitable to the worker.

5. *Supplement Operating Instructions.* The operating instructions in this Change 3 to GAL 15-90, are issued to States and cooperating State agencies as supplemental guidance provided by the Department of Labor in its role as the principal in the TAA Program. As agents of the United Sates, the States and cooperating State agencies may not vary from the operating instructions in GAL 15-90, and in Change 2 and this Change 3 to GAL 15-90, without the prior approval of the Department.

Pending the issuance of final regulations implementing the 1988 Amendments to the TAA program, after the date of this Change 3, the operating instructions in this Change 3 (and GAL 15-90 and Change 2) shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the TAA program. The provisions of § 617.52(c) shall apply regarding the carrying out of the operating instructions in this document.

6. *Action Required.* Administrators of cooperating State agencies are requested to convey the information contained in this directive to appropriate staff and assure that it is understood and applied throughout their agencies.

7. *Inquiries.* Direct questions to the appropriate Regional Office.

Training and Employment Information Notice No. 13-90, Change 2

To: All State JTPA Liaisons, State Worker Adjustment Liaisons, and State Wagner Peyser Administering Agencies
From: Roberts T. Jones, Assistant Secretary of Labor
Subject: Change 3 to GAL 15-90, Operating Instructions for the Trade Adjustment Assistance Program

1. *Purpose.*

A. To inform the State JTPA Liaisons, State Worker Adjustment Liaisons, and State Wagner-Peyser administering agencies of changes to the operating instructions for implementing the 1988 Amendments affecting the Trade Adjustment Assistance for Workers (TAA) program.

B. To inform States of the issuance of the General Administration Letter (GAL) No. 15-90, Change 3, "Revised Operating Instructions for Criteria for approval of Trade Adjustment

Assistance (TAA) Training" which adds a new interpretation to the approval criteria for the worker's qualifications to undertake and complete training.

2. *References.* Section 236 of the Trade Act of 1974, as amended; GAL 15-90, Attachment A; and regulations at 20 CFR part 617.

3. *Background.* In GAL 15-90, Change 3, the Department amended criterion (E), in section G.1. of Attachment A to GAL 15-90, by adding "financial resources" to the worker's personal qualifications to undertake and complete training. When the duration of an approved training program exceeds the worker's entitlement to Unemployment Insurance (UI) and Trade Readjustment Allowances (TRA) payments, workers often drop out when TRA payments stop, and thus do not complete the training program. Implementation of the amended operating instructions should enhance the worker's opportunity to complete training and to obtain suitable employment.

As the operating instructions are also important in furnishing guidance to the State JTPA and Worker Adjustment Agency Liaisons and to Wagner-Peyser administering agencies, GAL 15-90, Change 3 is forwarded as an attachment to this Training and Employment Information Notice. They constitute controlling guidance for administering and other cooperating State agencies.

4. *Attachment.* GAL 15-90, Change 3.

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BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8648, et al.]

Proposed Exemptions; The Agway Inc. Group Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issue to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Agway Inc. Group Trust (the Trust) Located in DeWitt, NY

[Application No. D-4648]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406 (a) and (b) of the Act shall not apply, effective January 1, 1991, to the reinsurance of risks and the receipt of premiums therefrom by Agway Insurance Company (AIC) in connection with an insurance contract issued by the Prudential Insurance Company of America (Prudential) to provide life and health insurance benefits to participants of the Trust, provided the following conditions are met:

(a) AIC—

(1) Is a part in interest with respect to the employee benefit plans that purchase insurance through the Trust by reason of a stock or partnership affiliation with the trustee of the Trust that is described in section 3(14) (E) or (G) of the Act.

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act.

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, New York, which has been renewed each year and has not been rescinded, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, New York) by the Insurance Commissioner of the State of New York within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Trust pays no more than adequate consideration for the insurance contract;

(c) No commissions are paid with respect to the acquisition of insurance by the Trust from Prudential or the acquisition of reinsurance by Prudential from AIC; and

(d) For each taxable year of AIC, the gross premiums and annuity considerations received in that taxable

year by AIC for life and health insurance or annuity contracts for the Trust and all employee benefit plans (and their employers) with respect to which AIC is a party in interest by reason of a relationship to the trustee of the Trust described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by AIC. For purposes of this condition (d):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transaction as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to the Trust and such plans (and their employers) by AIC. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by AIC.

(2) all premium and annuity considerations written by AIC for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective January 1, 1991.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41) 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

One of the conditions of PTE 79–41 is that the insurance company making the sale is a party in interest with respect to the plan by reason of a stock or partnership (including a joint venture) affiliation with the employer establishing or maintaining the plan that is described in section 3(14) (E) or (G) of the Act (the Affiliation Condition). The applicant represents that AIC is affiliated with the employee benefit plans that purchase insurance through the Trust only by reason of a stock or partnership affiliation described in section 3(14)(G) of the Act with the trustee of the Trust rather than by virtue of an affiliation with the employers maintaining the plans that purchase insurance through the Trust.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Agway, Inc. (Agway) is a cooperative organization incorporated in Delaware which is engaged in the business of selling farm supplies and marketing farm products in 12 northeastern states. It is owned by over 90,000 farmer-members and employs over 8,000 persons in the conduct of its businesses. The principal offices of Agway are located in DeWitt, New York.

2. AIC, indirectly owned by Agway, is a stock insurance company which sells property and casualty insurance. AIC was organized in 1954 under the laws of the State of New York and is now qualified to do business in 17 states. AIC has a capitalization of $2,650,000 and a current surplus of about $10,800,000. AIC had premium income in 1990 of approximately $29 million, and total assets at the end of 1990 of about $45 million.

3. In 1966, Agway established the Trust for the purpose of making available group life and health insurance to persons involved in agriculture. Numerous Agway members and other persons engaged in the business of agriculture have participated in the Trust. Currently, approximately 30,000 lives are insured under coverage obtained through the Trust, which has provided these persons with the opportunity to secure needed life and health coverage on a group basis.

4. Most of the participants in the Trust are individual farmers and their families. Some participants, however, are employers who purchase insurance for their employees through the Trust. Thus, approximately 690 welfare benefit plans (the Plans) representing approximately 7% of the Trust accounts, 31% of the enrollees and 32% of the covered lives, purchase insurance through the Trust. Agway, as trustee of the Trust, and AIC as Agway's subsidiary, are parties in interest with respect to the Plans.

5. The Trust will fully disclose the details of the insurance and reinsurance arrangements to all employers maintaining the Plans. Each employer maintaining a Plan is in a position to evaluate independently the costs and benefits of participation in the Trust and is free to purchase insurance elsewhere.

6. The applicant represents that Prudential is incorporated under the laws of New Jersey and is unrelated to Agway. Prudential is the largest carrier of group health and life insurance products in the United States. Agway, as trustee of the Trust, has entered into an arrangement with Prudential whereby Prudential will underwrite the Trust for 1991.[1] Pursuant to this arrangement, the Trust will continue to offer a comprehensive hospital and major medical plan, was well as life and accident benefits, and a continuing program for Medicare-eligible participants. One of the terms of the arrangement is that AIC will share in the risk by reinsuring 10% of that risk. In effect, Prudential will pay AIC 10% of the premiums received from the Trust, in exchange for which AIC will assume the exposure for 10% of the losses plus related expenses and required reserves. As an indemnity agreement between Prudential and AIC, the reinsurance will in no way affect Prudential's direct and complete liability for all of the benefits under its insurance contract with the Trust, and Prudential will retain ultimate authority to grant or deny all claims. Annual premiums from the reinsurance will constitute approximately $3,500,000. The applicant represents that the arrangement will provide the Trust with the most favorable benefits and rates available.

7. The applicant represents that the subject transaction will meet the

[1] In this proposed exemption, the Department is expressing no opinion as to whether the selection by Agway of Prudential as an insurer is prudent within the meaning of Act section 404.

following conditions imposed by PTE 79–41 with respect to direct insurance transactions except the Affiliation Condition:

(a) AIC is a party in interest with respect to the Plans by reason of a stock affiliation with Agway, the trustee of the Trust, that is described in section 3(14)(G) of the Act.

(b) AIC is licensed to sell insurance or conduct reinsurance operations in 17 states.

(c) AIC has received a Certificate of Compliance from the Insurance Commissioner of the State of New York which has been automatically renewed each year and has never been rescinded.

(d) AIC has undergone (and will continue to undergo in the future) an annual examination by an independent certified public accountant.

(e) AIC has undergone a financial examination by the Insurance Commissioner of the State of New York, and is currently undergoing a routine examination.

(f) The subject reinsurance transaction does not in any way affect the cost to the Trust of the insurance contract, and the Trust will pay no more than adequate consideration for the insurance.

(g) No commissions are paid in connection with the acquisition of insurance by the Trust from Prudential or the acquisition of reinsurance by Prudential from AIC.

(h) The gross premiums from reinsurance received in any one calendar year by AIC for group life and health contracts for the Trust and all employee benefit plans (and employers) with respect to which AIC is a party in interest will not exceed 50% of the gross premiums and annuity considerations received by AIC for all lines of insurance in the same calendar year.

8. In summary, the applicant represents that the subject transaction meets the statutory criteria of section 408(a) of the Act because: (1) The participants and beneficiaries of the Plans are provided insurance protection by Prudential, an unaffiliated entity, at competitive rates arrived at through arm's-length negotiations; (2) AIC does a substantial amount of direct public business outside the Trust; (3) the independent employers maintaining the Plans individually determine whether purchasing (or continuing to purchase) insurance through the Trust is in the best interest of the Plans and their participants and beneficiaries; and (4) the protections provided to the Plans by PTE 79–41 will be present because all the conditions of PTE 79–41 (except for the Affiliation Condition) will be satisfied.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Eckler Industries, Inc., Retirement & Savings Plan (the Plan) Located in Titusville, FL

[Application No. D–8623]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loan of $265,000 from the Plan to Eckler Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan covering approximately 137 participants as of January 29, 1991. As of December 31, 1990, the Plan's assets totalled $1,150,242.63 and were invested primarily in bonds and notes. Except for a loan to a Plan participant, none of the Plan's assets are invested in loans to any party in interest involved in the proposed exemption transaction, in property leased to such a party in interest, or in securities issued by any such party in interest.

2. Sun Bank, N.A. (the Trustee) is the trustee of the Plan. The Trustee states that it is a nationally chartered banking association with officers experienced in administering qualified retirement plans in the capacity of trustee. The Trustee represents that it and its officers are not related in any way to the Employer, its principals or affiliates, except that a related entity, Eckler Enterprises, does have a $2,150,000 loan with the Trustee. The Trustee states that it is one of the largest banking institutions in the South, so that this loan represents substantially less than one percent of all of the Trustee's loan investments. The Trustee further represents that no funds of the parties involved in the exemption transaction are deposited with the Trustee and that the Trustee has not provided any goods or services to these parties during any of the past three years. The Trustee states that it understands and acknowledges its duties, responsibilities, and liabilities under the Act in acting as a fiduciary with respect to the Plan. As independent trustee of the Plan, the Trustee's fiduciary responsibilities with respect to the Plan include, among other duties, investing Plan assets and monitoring all Plan investments, including the proposed loan (see 7, below). Although the Trustee's fee is paid by the Employer, the applicant represents that the Trustee will not be discharged, except for cause.

3. The Plan proposes to make one loan (the Loan) to the Employer in the amount of $65,000 (less than 25% of the Plan's total assets). The Loan will be repaid in 36 equal monthly installments of interest and principal over the three year period beginning on the date that the Loan is made; however, the Loan may be prepaid in full at time without penalty. If the proposed exemption is granted, the Loan would be made 15 days after the grant date. Interest will accrue on the Loan at a fixed rate two percentage points above the prime rate published in the Wall Street Journal on the date the Loan is made. Additionally, a loan origination fee of one percent of the Loan amount ($2,650) would be assessed upon making the Loan. The Loan will be secured by a first mortgage on two separate parcels of vacant, unimproved land (the Property) located in Brevard County, Florida. Such mortgage shall be recorded in the Brevard County Public Records simultaneously with the making of the Loan, and such mortgage shall not be subordinated. The Employer, at its sole expense, will maintain casualty and liability insurance on the Property, naming the Plan as payee to receive any insurance proceeds.

4. The applicant has submitted a letter dated April 15, 1991 from Peter B. Rochester, Vice President of The Citizens & Southern National Bank of Florida (C&S), in Melbourne, Florida, which the applicant states is independent of the Employer and its officers, directors, shareholders, and their immediate families. In this letter, Mr. Rochester states that for a three-year mortgage loan, C&S would typically lend up to 65% of the appraised value of the Property at an interest rate of 200 basis points over C&S' cost of funds (then 7.94%) on a fixed basis and one percent over C&S' prime rate (then 9.0%) on a floating basis [2] and would charge a

[2] For comparison purposes, we note that the prime rate published in the Wall Street Journal on

Continued

loan fee of one percent of the loan amount. Mr. Rochester cautions that although these rates and terms may be used by the Department in evaluating the proposed exemption transaction, any offer of funding by C&S would be subject to a review of the appraisal and current financial information. As mentioned in 7, below, the Trustee reviewed the appraisal and current financial information before making its determination regarding the appropriateness of the proposed loan as a Plan investment.

5. The Property consists of two parcels of vacant land adjacent to the Employer's place of business at 5200 S. Washington Avenue, Titusville, Florida, on the west side of U.S. Highway 1, near Riveredge Drive. One of the parcels in the Property contains 2.72 acres; the other contains 1.12 acres. As of April 20, 1991, the market value of the two parcels comprising the Property was $285,600 and $123,200, respectively, according to the appraisal reports described below.

6. The Property was appraised by Alfred A. Hamilton, MAI, and Russell J. Hamilton (the Appraisers), of Hamilton Appraisal Service, Inc. as of April 20, 1991. The Appraisers certify, among other things, that they have no personal interests or bias with respect to the parties involved and that they have no present or prospective interest in the Property, which they personally inspected, and that Mr. Alfred A. Hamilton, MAI, is currently certified under the voluntary continuing education program of the Appraisal Institute. The Appraisers' experience includes, among other things, appraisal and counseling regarding acreage and vacant lots. The Appraisers prepared two separate appraisal reports: one for each of the two parcels comprising the Property (and both dated April 23, 1991). The appraisal reports state the Appraisers' opinion that the highest and best use of the Property is to hold it for future commercial/industrial development.

7. The Trustee states that after reviewing the Appraisers' reports and the current financial information regarding the Employer, it determined that the proposed exemption transaction is in the best interests of the Plan and its participants and beneficiaries for the following reasons:

(a) The terms of the Loan will be at least as favorable to the Plan than the terms for similar transactions between unrelated parties.

(b) This short-term investment, which comprises no more than 25% of the Plan's assets, will not subject the Plan to liquidity problems.

(c) The proposed loan is consistent with the Plan's investment objectives and policies, which focus on high income, restricting investments to fixed income, cash equivalents, and equity commingled trust funds maintained by the Trustee.

(d) The Trustee will monitor the Loan throughout its duration.

8. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because:

(a) The Trustee, which is not related to the Employer or its principals or affiliates, believes that the proposed loan is in the best interests of the Plan and its participants and beneficiaries;

(b) The Trustee will monitor the Loan throughout its duration;

(c) The Loan will be secured by a first mortgage on the Property, whose fair market value exceeds 150% of the amount of the Loan;

(d) The interest rate under the Loan will be no less than the interest rate generally charged by an unrelated commercial lender, C&S; and

(e) The Loan represents less than 25% of the Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Gary Resnik (the Plan) Located in Beachwood, OH

[Application No. D-8630]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) shall not apply to the proposed loan (the Loan) of $38,100 to Gary E. Resnik, D.D.S. (the Employer), a sole proprietorship, by the individually-directed account (the Account) in the Plan of Dr. Gary E. Resnik, provided the terms of the Loan are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan providing for participant-directed investments. As of December 31, 1990, the Plan had three participants, one of whom is Dr. Resnik, and total assets of $368,369. Of the total assets, Dr. Resnik's individual account in the Plan held aggregate assets of $339,124. The trustee of the Plan is Dr. Resnik, a dentist who maintains a general dental practice in Beachwood, Ohio as a sole proprietor.

2. Dr. Resnik requests an administrative exemption from the Department in order that his Account in the Plan may lend money to the Employer. The Employer will use the entire loaned funds to repay a portion of a pre-existing loan, in the amount of $85,000, that is owed to an unrelated party, the Dworken and Bernstein Company, L.P.A. Profit Sharing Trust (the D and B Plan) of Painesville, Ohio.

3. The note evidencing the D and B loan (the D and B Note) was entered into by the Employer and the D and B Plan on March 6, 1990. The D and B Note carries interest at the rate of 11 percent per annum and requires interest only payments for a five year term. Upon its maturity, the entire outstanding principal balance of the note and accrued interest will become due and payable. The D and B Note is secured by certain equipment, furniture, fixtures and tenant improvements belonging to the Employer and it contains no prepayment penalties. Dr. Resnik represents that all payments due under the D and B Note have been made in a timely manner and there have never been any defaults or delinquencies thereunder.

4. The proposed Loan, which will also be evidenced by a promissory note, will be in the original principal amount of $38,190. The terms of the Loan are identical to those that would be provided to the Employer by Society National Bank (SNB) of Beachwood, Ohio, an unrelated lending institution for a comparable loan secured by comparable collateral. In this regard, the Loan will have a maximum duration of five years. It will carry the floating rate of interest that will fluctuate with the prime rate of SNB plus 1½ percent. Initially, the Loan will require a monthly principal and interest payment of $950 based upon SNB's current interest rate of 10 percent (1½ percent above SNB's current prime rate of 8½ percent). If SNB's prime rate changes, Dr. Resnik, as Plan trustee, will make adjustments to the Loan payments.

April 15, 1991 (the date of the letter from Mr. Rochester, of C&S) was 8¾%-9%. On August 16, 1991, the Wall Street Journal reported that the prime rate for August 15, 1991 was 8½%.

5. The proposed Loan will be secured by first lien interests in certain dental, telephone and computer equipment that is owned by the Employer (the Collateral). To perfect the Account's respective security interests in the Collateral, Dr. Resnik, as Plan trustee, will file UCC Financing Statements with the appropriate state authority. In addition, Dr. Resnik will cause the Collateral to be insured against casualty loss and he will designate his Account as the loss payee of such insurance. Moreover, Dr. Resnik's Account will not be required to pay any servicing fees that are incidental to the administration of the proposed Loan.

6. The Collateral for the proposed Loan, which presently has an aggregate fair market value of $76,380, has been appraised as follows:

a. The dental equipment that will secure the proposed Loan consists of dental office furniture, X-ray equipment and dental apparatus. Such equipment has been appraised by Mr. Vince Hlinovsky, V.P. of Personal Dental Service and Equipment Company of Cleveland, located in Warrensville, Ohio. Mr. Hlinovsky represents that he has been involved in the business of purchasing, selling and appraising dental equipment for over 14 years and that he and his firm are independent of the parties involved in the proposed Loan transaction. As of April 8, 1991, Mr. Hlinovsky has determined that the dental equipment has a liquidation value of $67,209. Mr. Hlinovsky also notes that the equipment will depreciate at the rate of 5 percent per annum over the term of the Loan.

b. The Employer's telephone equipment that will also be pledged as Collateral for the proposed Loan, consists of 5 telephones and related apparatus. Such equipment has been appraised by Mr. Steven M. Fien, President of Davissa Telephone Systems, Inc. of Cleveland, Ohio. Mr. Fien represents that he has over 15 years of experience in the telecommunications industry, specifically in the buying and selling of used telecommunications equipment, and that he and his firm are completely unrelated to the parties involved in the proposed transaction. As of April 3, 1991, Mr. Fien has determined that the telephone equipment has a fair market value of $2,000. Mr. Fien also asserts that over the next five years, the telephone equipment will depreciate at the rate of 5 percent per year.

c. The Employer's computer equipment that will serve as further security for the proposed Loan consists of a "Perfect Manager" turnkey system and related software. Such equipment has been appraised by Mr. Ralph V. Frasca, Jr., Vice President of Dental Computer Alternatives, Inc. (DCA) of Columbus, Ohio. Mr. Frasca has over 15 years of involvement in medical and dental computer technologies. DCA, which has been in existence for 8 years deals exclusively in the development, distribution, sale and servicing of turkey computer systems. Both DCA and Mr. Frasca have no ownership interest in the Employer or other affiliation with the Employer aside from providing a software service contract to the Employer for a fee of $125 per month as well as to 150 dental practices in the State of Ohio.

In a letter dated March 29, 1991, Mr. Frasca represents that there is no market for the Employer's computer software because a proprietary software license contractually prohibits its sale, transfer or reproduction. He notes, however, that in the event Dr. Resnik is required to sell his dental practice, this software product would enhance the value of the practice. Additionally, Mr. Frasca notes that based on generally accepted industry practices, computer hardware products depreciate at the rate of 15 percent per annum. Consequently, he has determined that the present value of the computer equipment, exclusive of the proprietary software, is $7,171 as of March 29, 1991.

7. Dr. Resnik represents that at all times throughout the term of the proposed Loan, the fair market value of the Collateral will represent at least 200 percent of the outstanding balance of the Loan. However, if the fair market value of the Collateral should ever fall below this level, Dr. Resnik represents that the Employer will be required to reduce the amount of the Loan in order to bring the collateral to loan ratio within the 200 percent level.

8. In summary, it is represented that the proposed transaction will satisfy the provision of section 408(a) of the Act because: (a) The Loan will not represent more than 25 percent of the assets that are held in Dr. Resnik's Account; (b) the loan will be secured by first lien interests in the Collateral of the Employer which consists of certain dental, telephone and computer equipment that the Employer uses in its practice; (c) the Collateral for the Loan will, at all times, represent 200 percent of the outstanding balance of the Loan otherwise Dr. Resnik will cause the Employer to reduce the amount of the Loan to bring the collateral to loan ratio within 200 percent level; (d) the terms of the Loan are no less favorable to the Account than those obtainable from SNB, a third party lending institution; (e) Dr. Resnik's Account will not be charged any servicing fees in connection with the administration of the Loan; and (f) Dr. Resnik, the only participant in the Plan whose account will be affected by the Loan, has determined that the proposed transaction will be in the best interests of the Account and he desires that the proposed transaction be consummated.

Notice to Interested Persons

Because Dr. Resnik is the only participant in the Plan whose account will be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, all written comments and requests for a public hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transactions which is the subject of the exemption.

Signed at Washington, DC, this 6th day of September, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-21820 Filed 9-10-91; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 91-49; Exemption Application No. D-8489, et al.]

Grant of Individual Exemptions; Hudson Enterprises Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Hudson Enterprises Profit Sharing Plan (the Plan) Located In Newport Beach, CA

[Prohibited Transaction Exemption 91-49; Exemption Application No. D-8489]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of $450,000 from the Plan to the Orange Grove Shopping Center, a disqualified person with respect to the Plan, provided the terms of this transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 22, 1991, at 56 FR 33467.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

[1] Since David Klein is the sole stockholder and employee of Hudson Enterprises, the Plan sponsor, and the only participant in the Plan, the Plan is not subject to title I of the Act, pursuant to 29 CFR 2510.3-3(b) and (c)(1). However, the Plan is subject to Title II of the Act, which includes section 4975 of the Code.

Profit Sharing Plan & Trust of Spartanburg Radiological Associates, P.A. (the Plan) Located in Spartanburg, SC

[Prohibiterd Transaction Exemption 91-50; Exemption Application No. D-8524]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of undeveloped real property (the Property) by the individually directed account (the Account) of Dr. Robert E. Mitchell in the Plan to Dr. Mitchell provided that the sales price is the greater of (1) the original purchase price paid by the Account for the Property plus all additional expenses incurred by the Account in holding the Property, or (2) the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 5, 1991 at 56 FR 37238.

For Further Information Contact: Allison Padams of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

Givens Profit Sharing Plan and Trust (the Plan) Located in Chesapeake, Virginia

[Prohibited Transaction Exemption 91-51; Exemption Application No. D-8639]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of 92 units (the Units) of Southeastern Income Properties (the Partnership), a Virginia limited partnership, by the Plan to Givens, Incorporated (the Buyer) for $36,800.00 provided: (1) the sale price is not less than the fair market value of the units at the time of the sale, and (2) the Buyer pays all costs of the sale plus the amount of the Plan's share in any increase in the capital account of the Partnership such that no economic loss °is incurred by the Plan on the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 8, 1991, at 56 FR 30938.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Texapol Corporation Employees' Profit Sharing Plan (the Plan) Located In Bethlehem, PA

[Prohibited Transaction Exemption 91-52; Exemption Application No. D-8631]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the code, shall not apply to cash sale by the Plan to Texapol Corporation, a party in interest with respect to the Plan, of the Plan's interest (the Interest) in Realmark Investors Limited Partnership VI-A, a real estate limited partnership, provided the sale price is not less than the greater of (a) the fair market value of the Interest as of the sale date, or (b) the Plan's aggregate cost of acquiring and holding the Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 8, 1991, at 56 FR 30940.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 6th day of September, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-21819 Filed 9-10-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Underserved Set-Aside Advisory Group; Establishment and Meeting

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that establishment of the Underserved Set-Aside Advisory Group has been approved by the Chairman of the National Endowment for the Arts for a period of two years until September 5, 1993. The Committee's objective and scope of activities is to aid the Endowment in implementation of its legislated responsibility to "establish and carry out a program of contracts with or grants to States for the purpose of * * * broadening public access to the arts in rural and inner city areas and other areas that are underserved artistically." The Group will discuss guiding principles for categories utilizing the set-aside funds in FY 93 and beyond; survey the process and results of the first-year of this effort; and begin planning the evaluation process for assessing the reach and impact of set-aside grants. This Group shall report to the Chairman of the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

The function of this advisory committee cannot be performed by the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither the agency nor any existing advisory committee possesses sufficient expertise or breadth of representation regarding this field to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the establishment and use of this advisory committee is in the public interest.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

The first meeting of this Advisory Group will be held on September 24, 1991, from 10 a.m.-4 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be introductions and opening remarks, first year experience with the set-aside, future goals, future obstacles and solutions, Endowment/state arts agency relationship, project effectiveness, grantee information, FY 93 guidelines, and summation.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 91-21739 Filed 9-10-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION. Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 2, 1991, the National Science Foundation published notice in the **Federal Register** of permit applications received. Three separate permits were issued to the following individual on September 4, 1991:

William Fraser.

Charles E. Myers,

Permit Office, Division of Polar Program.

[FR Doc. 91-21781 Filed 9-10-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave the intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for a licenses to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning these applications follows.

NRC EXPORT LICENSE APPLICATIONS

Name of applicant, date of appl., date received, application number	Description	Value	End use	Country of destination
ABB Combustion Eng., Inc., 08/02/91, 08/05/91, XR160.	2 (two) Nuclear Power Reactors 1300 MWe (ea) Unnamed.	$600,000,000	Commercial Generation of Electricity.	Czech and Slovak Federal Republic.
ABB Combustion Eng., Inc., 08/02/91, 08/05/91, XR161.	2 (Two) Nuclear Power Reactors 1300 MWe (ea) Sellafield and Chapelcross.	$500,000,000	Commercial Generation of Electricity.	United Kingdom.
ABB Combustion Eng., Inc., 08/02/91, 08/05/91, XR162.	2 (Two) Nuclear Power Reactors 1000 MWe (ea) Nuclear Units 15 and 16.	$300,000,000	Commercial Generation of Electricity.	Republic of Korea.

Dated this 4th day of September 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director, for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-21814 Filed 9-10-91; 8:45 am]

BILLING CODE 7590-01-M

Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the receipient nation of the material to be exported. The information concerning these applications follows.

NRC EXPORT LICENSE APPLICATIONS

Name of Applicant, date of appl., dated received, application number	Description of items to be exported	Country of destination
UCAR Carbon Company, Inc., 08/06/91, 08/07/91, XMAT0387	298,035.0 kgs of Nuclear Grade Graphite blocks for use as permanent side reflectors and plenum blocks.	Japan.
Brookhaven National Lab., 08/12/91, 08/19/91, XMAT0388	136,919.0 kgs of Heavy Water to Canada for upgrading and return to U.S. for use as primary coolant in BNL's heavy water moderated research reactor.	Canada.

Dated this 4th day of September 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-21815 Filed 9-10-91; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next meeting on Thursday and Friday, September 19-20, 1991, at the Grand Hotel, 2350 M Street, NW., Washington, DC. On Thursday, the meeting will be held in the Ballroom; on Friday, the meeting will be held in room V. The meetings will begin at 9 a.m.

ADDRESSES: The Commission is located at 2120 L Street, NW. in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653/7220.

SUPPLEMENTARY INFORMATION: The discussions will include review of specialty societies' comments on HCFA's Notice of Proposed Rule Making for the Medicare Fee Schedule, practice expense, malpractice reform, practice guidelines, physician supply and distribution, access to care in the inner city, and the Commission's work plan for the rest of 1991.

Information about the exact agenda can be obtained on Thursday, September 12, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91-21808 Filed 9-10-91; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

UNC Incorporated
Common Stock, $.20 Par Value (File No. 7-7208)
AT&T Capital Corporation
Yen/Deutsche Mark Cross Currency Warrants expiring October 30, 1992 (File No. 7-7209)
Merrill Lynch & Co., Inc.
U.S. Dollar/Deutsche Mark Currency Put Warrants expiring September 30, 1992 (File No. 7-7210)
Wheeling Pittsburgh Corp.
Common Stock, $.01 Par Value (File No. 7-7211) Warrants to Purchase Common Stock expiring January 3, 1996 (File No. 7-7212)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21763 Filed 9-10-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Sterling Software
Common Stock, $0.10 Par Value (File No. 7-7213)
Homeplex Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7-7214)
Sabine Royalty Trust
Shares of Beneficial Interest (File No. 7-7215)
Berkshire Realty
Common Stock, $.01 Par Value (File No. 7-7216)
Municipal High Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7217)
Ellsworth Convertible Growth & Income Fund
Common Stock, $.01 Par Value (File No. 7-7218)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21737 Filed 9-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18297; File No. 812-7737]

Liberty Life Assurance Company of Boston, et al.

September 5, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Liberty Life Assurance Company of Boston ("Liberty Life"), Liberty Life Assurance Company of Boston Variable Account I (the "Account") and Keyport Financial Services Corp. ("KFSC").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATIONS: Applicants seek an order permitting the deduction from the assets of the Account of an asset based sales charge and mortality and expense risk charges imposed under certain deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on June 12, 1991.

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 Commission by 5:30 p.m., on September 30, 1991. 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 Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Lee R. Rabkin, Esq., Counsel, Liberty Life Assurance Company of Boston, 175 Berkeley Street, Boston, Massachusetts 02117. Copies to Robert R. Baird, Esq., President and General Counsel, Keyport Financial Services Corp., 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Liberty Life, is a stock life insurance company organized under the laws of Massachusetts. Liberty Life is jointly owned by Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company. Liberty Mutual Insurance Company is also the ultimate owner of Keyport Life Insurance Company, which is the parent of KFSC.

2. Liberty Life established the Account to fund the Contracts. The Account is registered with the Commission as a unit investment trust under the 1940 Act. The Account is divided into sub-accounts with each sub-account investing solely in the shares of one of several corresponding portfolios of the SteinRoe Variable Investment Trust, a registered open-end management investment company.

3. The Contract is an individual flexible purchase payment deferred variable annuity contract. It is to be used for retirement benefits for persons covered under Qualified and Non-Qualified Plans. The minimum initial purchase payment under a Contract is $5,000. A contract owner may transfer account value accumulated under the Contract among sub-accounts of the Account and/or Liberty Life's general account. The Contracts will also offer a guaranteed minimum death benefit after the death of the primary contract owner or certain annuitants and a waiver of any contingent deferred sales charges if the Contract is surrendered within 90 days of such death. The guaranteed minimum death benefit will be the greater of the sum of purchase payments less prior partial surrenders, or the account value on the seventh policy anniversary plus any subsequent purchase payments.

4. KFSC will serve as the principal underwriter for the Contracts.

5. Liberty Life will charge a fee of $30 per contract year for administration of the Contract and the Account ("Contract Maintenance Charge"). Prior to the annuity date the Contract Maintenance Charge may be changed, but will never exceed the costs of administering the Contract. The deduction of the Contract Maintenance Charge is subject to the provisions of rule 26a-1(b) under the 1940 Act. The Contract Maintenance Charge for an annuity will be the same as the yearly amount in effect immediately before annuity payments begin and Liberty Life may not later change the amount.

6. A sales charge will not be deducted from a Contract's purchase payments when initially received. A contingent deferred sales charge may be deducted upon a partial or full surrender of a Contract. A surrender will not incur the contingent deferred sales charge to the extent that the amount of the surrender does not exceed the Contract's increase in value at the time of surrender or, after the contract year, 10 percent of the Contract's value on the prior contract anniversary, if the 10 percent amount is greater. The amount of the surrender in excess of the earnings amount will be deducted from the purchase payments in chronological order from the oldest to the most recent until such amount is fully deducted. These amounts will be subject to the contingent deferred sales charge which is 7 percent during the first year after a purchase payment is made. The charge scales down to 0 on withdrawals of premium payments made more than seven years prior to the withdrawal. The total of the individual contingent deferred sales charges for each purchase payment will be deducted from the account value to the extent the total does not exceed 8.5 percent of total purchase payments minus the sum of all prior contingent deferred sales charges and the sum of the asset based sales charge. After each surrender, Liberty Life will adjust its records to reflect any deductions it made from the applicable purchase payments.

7. During each year of the accumulation period of a Contract, Liberty Life will assess each sub-account of the Account with a daily sales charge that will amount to an aggregate of .15% annually of the assets of each sub-account ("Asset Based Sales Charge"). The Asset Based Sales Charge will only be deducted so long as the sum of such charge plus any previously deducted contingent deferred sales charge, does not exceed 8.5% of total purchase payments under each Contract. Liberty Life will establish and apply procedures for monitoring the applicable sales charges. No Asset Based Sales Charge will be assessed during a Contract's annuity period. The amount obtained from the contingent deferred sales charge and the Asset Based Sales Charge will be used to reimburse Liberty Life for expenses for the sale of the Contract, including compensation paid to KFSC.

8. To compensate it for assuming certain mortality and expense risks, Liberty Life will deduct from each sub-account of the Account a mortality and expense risk charge equal on an annual basis to 1.25% of the average daily net asset value of each such sub-account (currently estimated to consist of .70% for mortality risks and .55% for expense risks). The charge will be deducted during both the accumulation and annuity periods.

9. According to Applicants, Liberty Life will assume a mortality risk because variable annunity payments will not be affected by the mortality experience of persons receiving such payments or the general population. In addition, Liberty Life guarantees a death benefit equal to the surrender value upon the death of contract owners and annuitants and a minimum death benefit upon the death of primary contract owners and certain annuitants that may exceed the surrender value at the time

of death. Any death benefit payment will not be reduced by any contingent deferred sales charge if the surrender occurs within 90 days of the death of the primary contract owner or certain annuitants. Liberty Life will assume an expense risk because the maintenance responsibilities both before and after the date on which annuity payments begin will be the same and the Contract Maintenance Charge may not be sufficient to reimburse Liberty Life for its costs. Liberty Life also assumes the risk that the expenses of administering the Contract after annuity payments begin may exceed the charge in effect at the time of annuitization.

10. Applicants submit that, although the proposed Asset Based Sales Charge may not fall within the literal terms of section 2(a)(35) of the 1940 Act, the charge is consistent with the intent and definition of sales load in the 1940 Act. The Asset Based Sales Charge and the contingent deferred sales charge are designed to reimburse Libery Life for the costs of selling the Contract. Applicants submit that such costs are within the definition of "sales load," and, except for the timing of the imposition of the Asset Based Sales Charge, would otherwise comply with section 2(a)(35) of the 1940 Act. Applicants also submit that the deduction of the sales charges under the Contracts will be more favorable to a contract owner than the deduction of the sales charges from purchase payments because the amount of purchase payments that will be allocated to the Account will be greater and, among other things, the death benefit may be greater since the death benefit may be based, in part, on a contract owner's total accumulation value under the Contract as of the seventh policy anniversary.

11. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: Guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under the Contract; and availability to fund individual Qualified and Non-Qualified Plans. Based upon this review, Applicants have concluded and represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. Applicants represent that they will maintain at their administrative office, and make available to the Commission, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Liberty Life's comparative review.

12. Applicants acknowledge that the Asset Based Sales Charge and the contingent deferred sales charge may be insufficient to cover all costs related to the distribution of the Contracts and that if a contribution to surplus is realized from the mortality and expense risk charge, all or a portion of such contribution to surplus may be offset by distribution expenses not reimbursed by the Asset Based Sales Charge and contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Liberty Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made wirh respect to the Contracts will benefit the Account and contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Liberty Life at its administrative office and will be available to the Commission.

13. Liberty Life represents that the Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under rule 12b-1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21844 Filed 9-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18295; File No. 812-7749]

Merrill Lynch Life Insurance Company, et al.

September 4, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch Life Insurance Company ("Merrill Lynch Life"); Merrill Lynch Variable Life Separate Account (the "Merrill Life Account"); Merrill Lynch Variable Annuity Separate Account (the "Merrill Annuity Account"); Tandem Insurance Group, Inc. ("Tandem"); Tandem Variable Life Separate Account (the "Tandem Life Account"); Tandem Variable Annuity Separate Account (the "Tandem Annuity Account"); and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Order requested under section 17(b) of the Act exempting Applicants from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the combination of the Merrill Life Account with the Tandem Life Account and the Tandem Annuity Account with the Merrill Annuity Account, which is to be effected after the merger of Tandem into Merrill Lynch Life.

FILING DATE: The application was filed on July 5, 1991.

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 September 27, 1991. Request a hearing in writing, giving the nature of your request, 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 notification 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, Merrill Lynch Life Insurance Company, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Senior Attorney, (202) 272-2622, or Heidi Stam, Assistant Chief, (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Merrill Lynch Life is a stock life insurance company organized under the laws of the state of Washington. Merrill Lynch Life is a wholly-owned subsidiary of Merrill Lynch Insurance Group, Inc., which is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.

2. Merrill Lynch Life has established the Merrill Life Account pursuant to Washington law to support variable life insurance contracts. The Merrill Annuity Account is registered with the Commission as a unit investment trust under the Act. Registration statements covering two classes of variable life insurance contracts to be issued through the Merrill Annuity Account (the "Merrill Life Contracts") have been filed with the Commission under the Securities Act of 1933 Act (the "1933 Act").

3. Merrill Lynch Life also has established the Merrill Annuity Account pursuant to Washington law to support variable annuity contracts. The Merrill Annuity Account is registered with the Commission as a unit investment trust under the Act, and registration statements covering two classes of variable annuity contracts to be issued through the Merrill Annuity Account (the "Merrill Annunity Contracts") have been filed with the Commission under the 1933 Act. The two classes of variable annuity contracts are identical in all respects to two classes of variable annuity contracts ("Family Life Contracts") issued by Family Life Insurance Company ("Family Life") and currently outstanding, except for the identity of the separate account, insurance company issuer of the contracts and the components (but not the aggregate amount) of an asset-based charge imposed under the contracts. The registration statements for the Merrill Annuity Contracts pertain to an assumption reinsurance agreement among Family Life, as the ceding insurer, and Merrill Lynch Life, Tandem and another affiliated insurance company, as the reinsurers, pursuant to which certain outstanding Family Life Contracts will be converted to Merrill Annuity Contracts. It is expected that the assumption reinsurance of Family Life Contracts will be completed some time before the proposed merger of Tandem into Merrill Lynch Life is consummated and that at the time of the merger both the Merrill Annuity Account and the Tandem Annuity Account (as described below) will support contracts converted in connection with the assumption reinsurance of Family Life Contracts. It is anticipated that approximately $154 million of assets will be transferred to the Merrill Annuity Account in connection with the assumption reinsurance transaction.

4. Tandem is a stock life insurance company organized under the laws of the State of Illinois. Like Merrill Lynch Life, Tandem is a wholly-owned subsidiary of Merrill Lynch Insurance Group, Inc., which is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. Tandem is therefore an affiliated person (as that term is defined in the Act) of Merrill Lynch Life.

5. Tandem has established the Tandem Life Account to support variable life insurance contracts. The Tandem Life Account is registered with the Commission as a unit investment trust under the Act, and ten classes of variable life insurance contracts issued through the Tandem Life Account (the "Tandem Life Contracts") have been registered with the Commission under the Securities Act. All of the Tandem Life Contracts currently outstanding were originally issued by Monarch Life Insurance Company and were converted to Tandem Life Contracts pursuant to an assumption reinsurance transaction.

6. Tandem also has established the Tandem Annuity Account pursuant to Illinois law to support variable annuity contracts. The Tandem Annuity Account has been registered with the Commission as a unit investment trust under the Act, and registration statements covering two classes of variable annuity contracts to be issued through the Tandem Annuity Account (the "Tandem Annuity Contracts") have been filed with the Commission under the 1933 Act. The two classes of Tandem Annuity Contracts are identical to the two classes of Merrill Annuity Contracts described above except for the identity of the separate account and insurance company depositor. As in the case of the Merrill Annuity Contracts, certain Family Life Contracts will be converted to Tandem Annuity Contracts in connection with the assumption reinsurance of Family Life Contracts described above. However, because Family Life Contracts will be reinsured with Tandem only with respect to those states in which Merrill Lynch Life is not then authorized to issue variable annuity contracts, it is expected that the Tandem Annuity Account will acquire fewer assets than the Merrill Annuity Account in connection with the assumption reinsurance transaction.

7. The Tandem Life Account consists of 29 investment divisions, ten of which invest in shares of a corresponding portfolio of Merrill Lynch Series Fund, Inc. (the "Life Fund"), a Maryland corporation registered under the Act as an open-end investment company of the series type, and 19 of which invest in units of corresponding portfolios of The Merrill Lynch Fund of Stripped ("Zero") U.S. Treasury Securities (the "Zero Trust"), a trust created under New York law and registered as a unit investment trust under the Act. The Merrill Life Account will consist of 30 investment divisions, 29 of which will invest in shares of the same portfolios of the Life Fund and the Zero Trust as the investment divisions of the Tandem Life Account. The additional investment division will invest in a new portfolio of the Life Fund which is to be established in connection with the offering of the Merrill Life Contracts.

8. The Tandem Annuity Account will consist of eight subaccounts, each investing in shares of a corresponding portfolio of Merrill Lynch Variable Series Fund, Inc. (the "Annuity Fund"), a Maryland corporation registered under the Act as an open-end investment company of the series type. The Annuity Fund is the investment vehicle for the Family Life separate account through which the Family Life Contracts were issued. The Merrill Annuity Account also will consist of eight sub-accounts, investing in shares of the same portfolios of the Annuity Fund as the subaccounts of the Tandem Annuity Account.

9. Merrill Lynch Asset Management, Inc. serves as investment adviser to both the Life Fund and the Annuity Fund (collectively, the "Funds," individually, a "Fund"), and MLPF&S is the sponsor of the Zero Trust.

10. MLPF&S is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. and therefore an "affiliated person" (as that term is defined in the Act) of Merrill Lynch Life and Tandem. MLPF&S is the principal underwriter of the Tandem Life Contracts and also has agreed to act as the principal underwriter of Tandem Annuity Contracts, Merrill Annuity Contracts and Merrill Life Contracts. MLPF&S, a broker-dealer registered under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers.

11. Merrill Lynch Life and Tandem intend to adopt an agreement and plan of merger (the "Merger Agreement") under which, pursuant to applicable state law, Tandem will be merged with and into Merrill Lynch Life, with Merrill Lynch Life as the surviving corporation. Upon consummation of the merger, expected to occur on or about October 1, 1991, Tandem's separate corporate existence will cease by operation of law and the business currently conducted by Tandem (including any business that may be acquired prior to the merger) will thereafter be conducted by Merrill Lynch Life. Merrill Lynch Life will thereby assume legal ownership of all of the assets of Tandem, including the Tandem Life Account and the Tandem Annuity Account (together, the "Tandem

Accounts") and their respective assets. By virtue of the merger, Merrill Lynch Life also will become responsible for all of Tandem's liabilities and obligations, including those created under the Tandem Life Contracts and Tandem Annuity Contracts outstanding at the time of the Merger (collectively, the "Tandem Contracts"). The Tandem Contracts will thereby become contracts issued through separate accounts of Merrill Lynch Life.

12. Because the Tandem Life Account and Tandem Annuity Account once acquired by Merrill Lynch Life will be duplicative of the Merrill Life Account and Merrill Annuity Account (together the "Merrill Accounts"), respectively, Merrill Lynch Life intends, immediately after the merger is consummated, to combine each of the smaller separate accounts with the larger corresponding separate account. Accordingly, pursuant to a plan of combination, the Merrill Life Account will be combined with the Tandem Life Account, with the Tandem Life Account surviving, and the Tandem Annuity Account will be combined with the Merrill Annuity Account, with the Merrill Annuity Account surviving (referred to herein as the "Combination", and the Tandem Life Account and Merrill Annuity Account, as they will exist after the Combination, are referred to herein as the "Surviving Accounts").

13. The transfer of the Tandem Accounts to Merrill Lynch Life pursuant to the merger will be effected by transferring ownership of shares or units in the underlying investment vehicles held by Tandem, as depositor for the Tandem Accounts, to Merrill Lynch Life, as the new depositor for these accounts. The Combination will be effected by transferring attribution of such ownership from the Merrill Life Account and Tandem Annuity Account to the Tandem Life Account and Merrill Annuity Accounts, respectively. These transfers will be effected at the respective net asset values of the shares or units involved, and no charges will be imposed or other deductions made in connection with the transfers. All costs of the merger and Combination will be borne by Merrill Lynch Life and Tandem.

14. Prior to consummation of the merger, the Merger Agreement will have been approved by the respective Boards of Directors of Merrill Lynch Life and Tandem, as well as by their respective shareholders, in accordance with applicable state law. Prior to consummation of the Combination, the Combination will have been approved by the Board of Directors of Merrill Lynch Life in accordance with applicable state law. Prior approval of the merger and Combination also will have been obtained from the appropriate state insurance department and any other applicable regulatory authority.

15. No vote of owners of Tandem Contracts or Merrill Annuity Contracts or Merrill Life Contracts (collectively, the "Merrill Contracts") will be solicited with respect to the merger or the Combination because Applicants believe that under applicable law no contract owner vote, consent, or exercise of any other right is required to consummate the merger or the Combination. No payments will be required or charges imposed under the Tandem Contracts or Merrill Contracts (together, the "Contracts") in connection with, or by virtue of, the merger or the Combination that otherwise would not be required or imposed. When Merrill Lynch Life succeeds Tandem as the insurance company co-issuing the Tandem Contracts, there will be no change at the time of succession in the net asset values of the Tandem Accounts or the values under the Tandem Contracts. Moreover, the succession of Merrill Lynch Life to Tandem's obligations and liabilities under the Tandem contracts will not dilute or otherwise adversely affect the economic interests of the Tandem Contract owners. The Combination also will have no effect on the values under the Contracts. The unit values and method for computing unit values thereunder will not change as a result of the Combination.

16. The investment objectives, policies and restrictions of each Fund are not proposed to be changed in connection with the merger or the Combination, nor will they be changed by virtue of the merger or the Combination. No investment portfolios are proposed to be added, terminated or substituted in connection with the merger or the Combination. There will be no change in the investment adviser for either Fund nor any change in the assets of either Fund or the charges imposed on either Fund or on their respective shareholders in connection with, or by virtue of, the merger or the Combination. There also will be no change in the Zero Trust or in its assets, charges or sponsor in connection with, or by virtue of, the merger or the Combination.

17. After the merger and Combination, Merrill Lynch Life intends both to accept additional payments under previously issued Contracts that permit such payments and to offer variable contracts supported by the surviving accounts. Variable life insurance contracts and variable annuity contracts will be offered through the Tandem Life Account and the Merrill Annuity Account, respectively, pursuant to new registration statements filed under the Securities Act.

18. The Combination of the Tandem Accounts with the corresponding Merrill Accounts may be deemed to be a purchase and/or sale transaction between an investment company and an affiliated person. Applicants therefore request that the Commission issue an order pursuant to section 17(b) of the Act to the extent necessary to exempt the Combination of the Merrill Life Account with the Tandem Life Account and the Tandem Annuity Account with the Merrill Annuity Account from section 17(a) of the Act.

19. Applicants represent that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair, and do not involve overreaching; are consistent with the investment policies of each of the Accounts; and are consistent with the general purposes of the Act.

20. Although the proposed transaction does not come within the parameters of rule 17a-8 under the Act, Applicants submit that, as a standard for judging the reasonableness and fairness of the proposed transaction, the Commission can look to the factors identified in the proposing release for rule 17a-8 under the Act. The Applicants assert that because the Tandem Accounts invest in the same underlying investment vehicles as the corresponding Merrill Accounts, the investment objectives of the Accounts to be combined are not only compatible, they are identical.

21. The Combination of each Tandem Account with the corresponding Merrill Account will be effected simply by transferring attribution of ownership of shares or units in the underlying investment vehicle. This transfer will be made at the relative net asset values of the shares or units involved in conformity with section 22(c) of the Act and rule 22c-1 thereunder. The net asset value of the transferred shares or units, as the case may be, will not change as a result of the Combination. From the contract owners' perspective, no dilution of, or increase in, their Contract values will occur as a result of the Combination. The Combination will not result in any change in charges, costs, fees or expenses borne by contract owners. No charge will be assessed in connection with the Combination that would not otherwise be assessed that day. In addition, the Combination will

not impose any federal income tax liability on Contract owners. Values under the contracts immediately after the Combination will be identical to those immediately before the Combination.

22. None of the direct or indirect expenses incurred in connection with the Combination, including legal, accounting and other fees and expenses, will be borne by the Tandem Accounts or Merrill Accounts.

23. The Combination does not involve overreaching on the part of any person concerned. The purpose of the Combination is to aggregate the Merrill Life Contract and Tandem Annuity Contracts with other similar contracts, namely the Tandem Life Contracts and Merrill Annuity Contracts, respectively, to allow for administrative efficiencies and cost savings on Merrill Lynch Life's part. Furthermore, Applicants will provide disclosure of the Combination to contract owners.

24. The proposed transaction is consistent with the investment policies recited in the registration statements filed for the Tandem Accounts and the Merrill Accounts under the Act. The Tandem Life Account will continue to invest in the Life Fund and the Zero Trust after the Combination. Accordingly, the Tandem Life Account, as the surviving account, will have the same investment policy as the Merrill Life Account.

25. Similarly, the Merrill Annuity Account will continue to invest in the Annuity Fund after the Combination. Accordingly, the Merrill Annuity Account, as the surviving account, will have the same investment policy as the Tandem Life Account.

26. Based on the foregoing, Applicants request that the Commission issue an order pursuant to section 17(b) of the Act exempting the proposed transaction from the provisions of section 17(a), to the extent necessary. Applicants submit that, for the reasons stated above, the proposed transaction meets the requirements of section 17(b) of the Act and is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21738 Filed 9-10-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (TSI Corporation, Common Stock, $0.02 Par Value) File No. 1-10225

September 5, 1991.

TSI Corporation ("Company") has filed an application with the Securities and Exchange 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 securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective as of June 4, 1991, the Company's Common Stock has been designated for inclusion in the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). The Company does not see any significant advantage in the dual listing of its Common Stock on the NASDAQ/NMS and the BSE and believes such dual listing would incur unnecessary costs and expenses and fragment the market for its Common Stock. The Company's Board of Directors has authorized the withdrawal of its Common Stock from listing on the BSE.

Any interested person may, on or before September 26, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21735 Filed 9-10-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Ocala Municipal Airport, Ocala, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise compatibility Program submitted by the City of Ocala, Florida under the provisions of title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 9, 1991, the FAA determined that the noise exposure maps submitted by the City of Ocala, under part 150, were in compliance with applicable requirements. On August 13, 1991, the Administrator approved the Ocala Municipal Airport Noise Compatibility Program. Four (4) of the five (5) recommendations for the program were approved, however, one (1) recommendation was disapproved pending submission of additional information.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ocala Municipal Airport Noise Compatibility Program is August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Ocala Municipal Airport, effective August 13, 1991. Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and

affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision of the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The City of Ocala submitted to the FAA on January 4, 1991 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study. The Ocala Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 14, 1991, and Notice of this determinations was published in the **Federal Register** on March 7, 1991.

The Ocala Municipal Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on February 14, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five (5) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 13, 1991. The approval action was for the following program elements:

Measure	Description	NCP pages
	Operational elements	
1	Preferential Runway Use. Establishes that the use of runway 18-36 is preferred and should be maintained. FAA Action: *Approved*	Page IV-2
2	Preferential Departure Flight Tracks. Establishes criteria for pilots to initiate their turns. FAA Action: *Approved*	Page IV-2
3	Three Degree Approach. The use of a three-degree approach should be maintained at this airport. FAA Action: *Approved*	Page IV-2
	Operational Elements	
4	Runup Procedure Changes. If runup noise becomes a problem in the future, a formal runup procedure should be established. Operators should be restricted from performing runups at night (10 p.m. to 7 a.m.). Operators performing runups should provide shielding devices. FAA Action: *Disapproved, pending submission of additional information.* The NCP states that aircraft maintenance runups are not currently a problem at the airport. The NCP, therefore, does not document any noise benefits that would result from this measure. If runups do present a noise problem in the future, the FAA would need information on the scope of the problem, the anticipated noise benefit of the proposed measure, and the impact on aviation users to make an informed determination under part 150.	Page IV-2
	Land Use Management	
5	Comprehensive Plan Update. Establish development controls to prevent the construction of noise sensitive uses near the airport. FAA Action: *Approved.*	Page IV-2

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 13, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Ocala Municipal Airport.

Issued in Orlando, Florida on August 30, 1991.

James E. Sheppard,

Manager, Orlando Airports, District Office.

[FR Doc. 91-21789 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief form specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 1, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 4, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25940.
Petitioner: Air Transportation.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To renew Exemption No. 5149 which allows Air Transportation, as the operator of a Cessna 182-C aircraft that is operated under FAR part 135, to perform the preventive maintenance function of removing and replacing passenger seats.

Docket No.: 26548.
Petitioner: Mr. Joseph S. Davis, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow Mr. Joseph S. Davis, Jr. to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 26559.
Petitioner: Helicopter Association International.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow properly trained personnel to exchange medical oxygen cylinders after such cylinders have been depleted.

Docket No.: 26571.
Petitioner: Sun Country Airlines.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought: To extend Sun Country Airlines' deadline, until December 31, 1995, for compliance with § 121.358, which mandates the installation of windshear detection equipment in one half of a carrier's fleet by December 30, 1991, and the remaining aircraft by December 30, 1993.

Docket No.: 26607.
Petitioner: Blue Skies Aviation.
Sections of the FAR Affected: 14 CFR 125.225(a) and 91.609(a).
Description of Relief Sought: To allow Blue Skies Aviation to operate a BAC 1-11, series 401AK aircraft until May 11, 1993, without complying with the digital flight data recorder retrofit rule applicable to part 125 operators of multi-engine, turbine-powered airplanes that were type-certificated before October 1, 1969.

[FR Doc. 91-27190 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on October 1, 1991, at 9 a.m.

ADDRESSES: The meeting will be held in the L'Enfant Plaza Hotel, 490 E. Building, third floor, L'Enfant Plaza SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Etta Schelm, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on October 1, 1991, at the L'Enfant Plaza Hotel, 490 E. Building, third floor, L'Enfant Plaza SW., Washington, DC. The agenda for this meeting will include progress reports from the Airport Noise Assessment Working Group, Fuel Requirements Working Group, Wet Leasing Working Group, and Autopilot Engagement Requirements Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on September 4, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-21786 Filed 9-10-91; 8:45 am]

BILLING CODE 4920-13-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 24, 1991, at 9 a.m. Arrange for oral presentations by September 13, 1991.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20006-5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence

Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on September 24, 1991, at the Air Transport Association of America Headquarters, 1709 New York Avenue, NW., Washington, DC 20006-4000. The agenda for this meeting will include:

• A briefing from the Chair of the Performance Standards Working Group, which is considering whether new or revised standards for emergency evacuation can and should be stated in terms of safety performance, rather than as specific design requirements. The Chair will report on the organization and membership of the working group, the tasks completed thus far, the tasks planned for the future, and the timetable for completion of those tasks.

• A discussion of the presentation, consideration of new tasks resulting from those discussions, and the formation or modification of working groups to perform existing or new tasks identified during the discussion.

• A briefing from the staff of the FAA Aircraft Certification Transport Airplane Directorate on the Directorate's emergency evacuation rulemaking projects, including any harmonization activities and the relevant priorities for those projects.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by September 13, 1991, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on September 4, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-21787 Filed 9-10-91; 8:45 a.m.]

BILLING CODE 4910-13-M

Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 30, 1991, at 9 a.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel-Crystal City, Lincoln Room, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Designated Federal Official, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202-267-8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Traffic Subcommittee to be held on September 30, 1991, at the Hyatt Regency Hotel-Crystal City, Lincoln Room, 2799 Jefferson Davis Highway, Arlington, VA. The agenda for this meeting will include:

• A report of the General Aviation Mode S Working Group.

• A briefing on future systems.

• Possible additional working group tasks.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the subcommittee at any time by providing 30 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on September 5, 1991.

Aaron Boxer,

Executive Director, Air Traffic Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-21788 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

Environmental Impact Statement on the Phase I Airport Busway Between Downtown Pittsburgh and the Borough of Carnegie in Allegheny County, Pennsylvania

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA), and Port Authority of Allegheny County hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), on the proposed construction of an exclusive busway between downtown Pittsburgh and Carnegie. In addition to the Phase I Airport Busway, the EIS will evaluate the No-Action, Transportation System Management (TSM), and High Occupancy Vehicle (HOV) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through two public meetings.

DATES: Written comments on the scope of alternatives and impacts to be considered should be sent to Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233 by Friday, October 4, 1991. Public scoping meetings will be held on Thursday, September 19, 1991 at 1:30 p.m. in rooms South 11 and 12 at the David L. Lawrence Convention Center and at 7:30 p.m. in the Ingram Borough Community Room.

ADDRESSES: Written comments on project scope should be sent to Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233. Scoping meetings will be held at the David L. Lawrence Convention Center, 1001 Penn Avenue, Pittsburgh, PA 15222 and at the Ingram Borough Building, 40 West Prospect Avenue, Ingram, PA 15205.

FOR FURTHER INFORMATION CONTACT: John Garrity, Senior Transportation Representative, UMTA Region III, 841 Chestnut Street, suite 714, Philadelphia, PA 19107. Phone: (215) 597-8098.

SUPPLEMENTARY INFORMATION:

Scoping

UMTA and the Port Authority of Allegheny County invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected

federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233 at the address above or by calling him at (412) 237-7327. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See the **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233 as previously described.

Description of Study Area and Project Need

The study area consists of all the boroughs and townships in western Allegheny County south of the Ohio River (including Neville Township) and the western neighborhoods and the Central Business District in the City of Pittsburgh. The proposed Phase I Airport Busway is intended to improve mobility and transit accessibility in the rapidly growing and increasing congested Airport Corridor. The project should also contribute to improving regional air quality by attracting commuters out of single occupant vehicles and into higher capacity buses.

Alternatives

Transportation alternatives proposed for consideration in the corridor are the following:

1. Null alternative—Existing transit service with level of service expanded as appropriate to meet projected year 2005 demand;

2. Transportation System Management (TSM) Alternative—Low cost transit improvements that include actions such as expanded park and ride lots with accompanying express bus service;

3. Phase I Busway Alternative—The construction of a two-lane roadway for the exclusive use of buses similar to the Martin Luther King, Jr. East Busway. The alignment begins in downtown Pittsburgh, crosses the Monongahela River to Station Square, and then parallels the Monongahela and Ohio Rivers to the Corliss Street area using excess right-of-way owned by the Consolidated Rail Corporation. The alignment then heads in a southwesterly direction along an abandoned rail right-of-way through the City of Pittsburgh neighborhoods of Sheraden and East Carnegie and the Boroughs of Ingram, Crafton, Rosslyn Farms and Carnegie. This section of the alignment includes several bridges and one tunnel. At Carnegie, the Busway would connect to the Parkway West and West Main Street. Included with this alternative are a series of park-and-ride lots to serve the Busway passenger stations and a feasibility analysis of incorporating an exclusive bikeway within the Busway alignment.

4. High Occupancy Vehicle (HOV) Facility Alternative—This alternative is similar to Alternative 3, except that private vehicles with multiple occupants would be permitted to use the facility along with buses.

Probable Effects

UMTA and the Port Authority of Allegheny County plan to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geologic forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be explored.

UMTA Procedures

In accordance with the Urban Mass Transportation Act and UMTA policy the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, Port Authority of Allegheny County will select a locally preferred alternative and seek approval from UMTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: August 28, 1991.

Peter N. Stowell,

Director, UMTA Southeastern Area.

[FR Doc. 91-21734 Filed 9-10-91; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 11 in room 600, 301 4th Street, SW., Washington, DC from 11:30 a.m. to 12:30 p.m.

The Commission will meet with the Honorable Chase Untermeyer, Associate Director, Bureau of Broadcasting, USIA, to discuss Voice of America programming and modernization.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: September 4, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91-21969 Filed 9-9-91; 3:44 pm]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 176
Wednesday, September 11, 1991

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 ENERGY REGULATORY COMMISSION

Notice

(September 9, 1991)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 4 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 7, 1991, 9:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: FERC and State Public Utility Commissioners will discuss issues concerning Integrated Resource Planning and Market-Based Pricing.

CONTACT PERSON FOR MORE INFORMATION: Patrick O. Goss, Division of Public and Intergovernmental Affairs, Telephone (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 91–22032 Filed 9–9–91; 3:58 pm]

BILLING CODE 6717-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, September 24, 1991.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:00 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 3:00 p.m.):

1. President's Report
2. Finance Project in Argentina
3. Insurance Project in Hungary
4. Insurance Project in Colombia
5. Insurance Project in Philippines
6. Joint Finance and Insurance Project in Chile
7. Joint Finance and Insurance Project in Equatorial Guinea
8. Legislative Proposal Reauthorization
9. Country List Changes
10. Claims Report
11. Approval of 7/23/91 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:00 p.m.)

1. Approval of 7/23/91 Minutes (Open Portion)
2. Allocation of Retained Earnings
3. Financial Statements as of August 31, 1991, and for the eleven months ending August 31, 1991
4. Recommendation for meeting through end of September 1992

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457–7007.

Dated: September 6, 1991.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 91–21933 Filed 9–9–91; 10:18 am]

BILLING CODE 3210-01-M

PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine act

(Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:00 a.m. to 12:00 p.m., Tuesday, September 17, 1991.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:.

1. Appeals to the Commission of approximately 9 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. Section 2.17. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: September 4, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91–22019 Filed 9–9–91; 3:42 pm]

BILLING CODE 4410-01-M

PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice United States Parole Commission.

TIME AND DATE: 1:00 p.m., Tuesday, September 17, 1991.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Program Coordinator and Administrative Sections.
3. Supervision Monitoring Reviews Update.
4. The right to appointed counsel after parole has been revoked, and a further hearing has been ordered.
5. Commission Voting Rights.
6. Proposed Changes to Informant Letter.
7. Proposed Amendment to Section 2.43(e)(2), Early Termination of Parole Supervision.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 4, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91–22020 Filed 9–9–91; 3:42 pm]

BILLING CODE 4410-1-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 25, 1991, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: September 5, 1991.

M.J. Brodie,

Executive Director.

[FR Doc. 91-21970 Filed 9-9-91; 1:17 pm]

BILLING CODE 7630-01-M

Corrections

Federal Register
Vol. 56, No. 176
Wednesday, September 11, 1991

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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-120]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

Correction

In notice document 91-20842 beginning on page 42972 in the issue of Friday, August 30, 1991, make the following correction:

On page 42972, in the table, in the fourth column, in the fourth paragraph, in the first line "Released" should read "Rapeseed".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 308

[Docket No. 87-028P]

RIN No. 0583-AA88

Preventing Cross-Contamination of Meat Products of 130°F. or Higher and Poultry Products Heat Processed to 155°F. or Higher By Other Products not Similarly Heat Processed

Correction

In proposed rule document 91-19226 beginning on page 40274 in the issue of Wednesday, August 14, 1991, make the following correction:

§ 308.17 [Corrected]

On page 40277, in the third column, in § 308.17(c)(1), in the first line, "200 ppm" should read "20 ppm".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6871

[CO-930-4214-10: COC 13447]

Withdrawal of National Forest System Lands for the Protection of the Lower Rampart Range Scenic Zone; Colorado

Correction

In rule document 91-20554 appearing on page 42539 in the issue of Wednesday, August 28, 1991, in the second column, in paragraph 2, in the sixth line, insert "or" after "mineral".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6873

[CO-070-4920-10-4555-10; COC-51600]

Transfer of Public Land for Estes Gulch Disposal Site; Colorado

Correction

In rule document 91-20555 beginning on page 42540 in the issue of Wednesday, August 28, 1991, make the following correction:

On page 42541, in the first column, in the land description, in Sec. 14, the second line from the bottom should read "W½NW¼SE¼, and W½E½N".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 91 and 189

[CGD 88-032]

RIN 2115-AD05

Incorporation and Adoption of Industry Standards

Correction

In rule document 91-17642 beginning on page 35817 in the issue of Monday, July 29, 1991, make the following corrections:

§ 91.55-5 [Corrected]

1. On page 35825, in the first column, in § 91.55-5(b)(11), footnote 1 was omitted and should appear at the bottom of the column to read as follows:

"[1]The asterisk (*) indicates items which may require approval by the the American Bureau of Shipping for vessels classed by that society."

§ 189.55-5 [Corrected]

2. On page 35829, in the first column, in § 189.55-5(b)(11), in the second line, the footnote reference 1 should appear after "gear".

3. On the same page, in the same column, the paragraph appearing after the authority citation for part 190 should have footnote reference 1 in front of it and should appear at the bottom of the column. This is the footnote to § 189.55-5(b)(11).

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 178

[Docket No. HM-183, 183A; Amdt. Nos. 178-89, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Corrections

Correction

In rule document 91-13595 beginning on page 27872 in the issue of Monday, June 17, 1991, make the following corrections:

§ 178.337-3 [Corrected]

1. On page 27875, in the third column, in § 178.337-3(c) the formula following the first paragraph should read:

"$S = 0.5\,(S_y + S_x) \pm (0.25(S_y - S_x)^2 + S_s^2)^{0.5}$"

§ 178.338-3 [Corrected]

2. On page 27876, in the first column, in § 178.338-3(c) the formula following the first paragraph should read:

"$S = 0.5\,(S_y + S_x) \pm (0.25(S_y - S_x)^2 + S_s^2)^{0.5}$"

§ 178.345-7 [Corrected]

3. On page 27877, in the first column, in the fifth line "shall" should read "shell".

BILLING CODE 1505-01-D

federal register

Wednesday
September 11, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 965, and 990

Performance Funding System: Energy Conservation Savings, Audit Responsibilities, Miscellaneous Revisions; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 965 and 990

[Docket No. R-91-1453; FR-2504-F-02]

RIN 2577-AA71

Performance Funding System: Energy Conservation Savings, Audit Responsibilities, Miscellaneous Revisions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 118 of the Housing and Community Development Act of 1987 that require several modifications of the Performance Funding System (PFS) of calculating operating subsidy eligibility of Public Housing Agencies and Indian Housing Authorities (hereafter, collectively called PHAs) operating public housing and Indian housing rental projects. A proposed rule was published on this subject on December 19, 1989 (54 FR 52000).

The revisions to the PFS included in this final rule deal with:

(1) Sharing of energy rate reductions;

(2) Non-HUD financing of energy conservation measures;

(3) Combining of units; and

(4) Funding of audit costs.

The proposed rule on this subject covered another change to the PFS required by the statute: Establishing a formal review process for revision of allowable expense levels (AELs). The Department is still analyzing appropriate changes to that portion of the system and will issue a final rule on that subject separately. The proposed rule also included revisions to part 965 concerning what constitutes a financially sound and responsible insurance company. That subject too is being handled by a separate rulemaking.

EFFECTIVE DATE: This rule will become effective at the beginning of a PHA's first fiscal year that begins after the Office of Management and Budget has approved the information collections contained in this rule and a separate Notice of that fact has been published by the Department in the **Federal Register**. The first date on which this rule is expected to take effect is January 1, 1992. A document announcing the effective date will be published at a later date.

FOR FURTHER INFORMATION CONTACT: John Comerford, Director, Financial Management Division, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1872. A telecommunications device for hearing or speech-impaired persons is available at (202) 245-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 990.107(c)(4) and (g), 990.108(e), 990.110(c)(1)(i), (e) and (f) of this rule (and the corresponding sections of part 905) were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were approved under control number 2577-0125, which has expired. A new submission was made to obtain an extension of approval of these requirements. When these collections have been approved, a Notice will be published to that effect in the **Federal Register**. Until that time, no person may be subjected to a penalty for failure to comply with these information collection requirements.

II. Response to Comments

There were 16 public comments that were directed primarily to the energy savings issues contained in the proposed rule. The 15 commenters included three PHAs, one State agency, one public utility, two non-profit energy efficiency promotion organizations, and eight consultants or unclassified commenters.

A. Sharing of Energy Rate Reductions (Section 9(a)(3)(B)(i) of the 1937 Act)

Two comments objected to the limitation on retention of rate savings in § 990.110(c)(1)(i), authorized by section 9 of the United States Housing Act of 1937 (1937 Act), to that obtained by PHA action "beyond normal public participation in ratemaking proceedings". They indicated that PHA participation in ratemaking proceedings is beyond usual PHA activity, and therefore any such action should be recognized in the rate-based savings provisions. The language of the rule is intended to reward PHA action that results in savings accruing directly to the PHA, as opposed to savings to a general class of commercial customers. The latter type of general rate reduction might result from the action of several participants in the proceedings, whereas a specific reduction applicable to the circumstances of the PHA can more easily be traced to the PHA's actions, and therefore be justifiably rewarded.

The comments also included recommendations that the incentive relating to utility rate savings be made retroactive. The Department agrees that implementation of the rate incentive provided in the Housing and Community Development Act of 1987 need not await publication of this final rule because the rate incentive was sufficiently clear on its face to be self-implementing. Consequently, the Department will make adjustments for the rate incentive effective for PHAs in their first fiscal year after enactment of the Act, which was signed into law on February 5, 1988 (i.e., fiscal years beginning on or after April 1, 1988).

The Department did permit PHAs/IHAs to avail themselves of the energy conservation incentives prior to publication of this final regulation. On March 17, 1989, interim procedures were issued in HUD Notice 89-12, to accomplish this end.

B. Incentives for Non-HUD Financing of Energy Conservation Measures (Section 9(a)(3)(B)(ii))

Commenters objected to what they viewed as language unduly restricting the type of financing mechanisms for energy conservation measures. The preamble of the proposed rule listed examples of non-HUD funded energy conservation measures as if they were the exclusive list of possibilities. Performance contracts, shared savings agreements and loans were mentioned, but grants were not. If a PHA received a grant for energy conservation purposes, the PHA would benefit from the existing energy savings provisions (§§ 905.730 and 990.110), which are unchanged in this rule.

The Department would also like to clarify that the two possible incentives are offered in the alternative. The PHA may either: Freeze its rolling base and retain 100 percent of the cost savings resulting from reductions in energy consumption during the term of the financing agreement; or obtain additional operating subsidy, continuing the use of the rolling base, and retaining the right to keep 50 percent of the consumption savings. To the extent that an energy-savings contract makes a PHA's payments dependent on a percentage of the energy cost savings realized, the first incentive would apply. If the contract sets forth a fixed payment (e.g., a bank loan) that would be supported through additional operating subsidy, the second incentive would apply.

The first incentive of freezing the rolling base and permitting the PHA to retain all savings (§ 990.110(c)(2)(ii)), required that the savings be applied to payment of the contractor, then reimbursement of the PHA's direct costs related to the energy conservation measures, then retention of up to 30 percent of the savings for other eligible costs of the PHA, followed by prepayment of the amount due the contractor.

The proposed rule invited comment on whether the suggested 30 percent retainage by the PHA/IHA for discretionary purposes was adequate. Respondents recommended an increase to 50 percent as a more adequate number. The concern expressed was that the PHAs perceive the amount retained as a significant enough incentive to pursue energy conservation measures.

The Department is willing to accept this higher percentage but, in order to insure maintenance of the major thrust of these provisions, is restructuring the disposition of the total savings generated. The savings from the energy conservation measures proposed by the PHA must entail use of at least 50 percent of total savings as payment to the contractor or repayment of any contracted loan. Of the remaining 50 percent of the generated savings, the PHA is responsible for the payment of any of its directly related costs of the contract, with the balance to remain with the PHA for discretionary purposes. Among the discretionary purposes recognized is prepayment of the financing. (No contract will be approved that imposes a prepayment penalty on the PHA.)

The Department will be reviewing and approving PHA proposals. That review will evaluate the long-range effectiveness of the proposed improvements and the length of the proposed financing. The goal of this rule is to encourage PHAs to undertake coordinated energy improvements.

In the preamble to the proposed rule, the Department stated that a performance contract could provide that if energy savings in any year fell short of the amount needed to cover payment to the energy service contractor, the term could be extended automatically to the length necessary to amortize the remaining balance of the payments to the contractor, up to a maximum term of 12 years. The Department has reviewed this policy and determined that any such extension must be justified, based on a change in circumstances rather than a misperception of energy savings, and it must be approved by HUD. The contract term would be extended only to accommodate payment to the contractor and associated direct costs.

The second incentive (in § 990.110(f)) is phrased in terms of a PHA's eligibility for additional operating subsidy. All actual payments of operating subsidy are limited by the amount appropriated by Congress for that purpose, so eligibility for additional subsidy in a particular amount does not guarantee payment of additional subsidy in that full amount.

In connection with these incentives, the rule provides for computation of energy consumption levels with adjustments for Heating Degree Days. A number of respondents urged that this computation include adjustments for Cooling Degree Days, to accommodate the costs of air conditioning. The Department is obliged to reject this recommendation at this time, because a change in the utility consumption formulae to take into account Cooling Degree Days amounts to a major re-configuration of the structure of the Utilities Expense Level.

Although the Department intends to issue a rule to implement the change in the statute directing consideration of a Cooling Degree Day adjustment, this will require a separate rulemaking. The Department is considering various ways to integrate this adjustment into the PFS, to determine the best way.

The contract term was also the subject of comment. Several respondents urged use of contract periods longer than the 12-year maximum stated in the proposed rule. The 12-year maximum is a statutory limitation and cannot be changed in a rule. In establishing the contract term, the parties should be aware that, in approving a contract, HUD will assess its costs and benefits, weighing the amount of capital investment, the extent of savings, and the length of term and risk to the investor and to the PHA. HUD will look for arrangements that pay off the capital investment for the energy savings measures as rapidly as possible, consistent with providing incentives for private investment in PHA energy efficiency. It is anticipated that a PHA's annual payments to its contractor will be at least 50 percent of the anticipated annual gross savings, thereby defining the term of the contract as a function of the costs and the cost savings.

The preamble to the proposed rule invited public comment on the feasibility of various procurement methods for energy saving services or improvements, including the conditions under which non-competitive proposals would be appropriate. Respondents consistently stressed that the procurement process should emphasize the importance of obtaining the greatest overall value in undertaking energy conservation measures, not on quick payback. The purchase of these services probably should not be based solely on price, but on other factors, as well. The procurement system applicable to these services is found at 24 CFR 85.36.

The Department has concluded that, in performance contracting, it is unlikely that proposers will develop specific energy conservation measures and projected savings in an initial bid. Therefore, selection among energy conservation proposers may be based to a great extent on the PHA's evaluation of the proposer's experience and qualifications, particularly their history of achieving promised long-term objectives.

Consequently, in response to the public comments, the regulation now requires that the competitive proposals method of procurement be used, in which factors other than price are considered, instead of the sealed bidding method. This determination is consistent with § 85.36(d)(3) for PHAs and § 905.175(d) for IHAs. The regulation also mandates that technical factors be given paramount importance over price in the evaluation process.

The Department anticipates that the only exception to the use of competitive proposals would be instances where the utility company or its exclusive contractor for such services is the only source available, in which case the noncompetitive proposals method could be used, pursuant to § 85.36(d)(4)(i)(A) for PHAs and § 905.175(e)(2) for IHAs.

The other methods of procurement available under § 85.36(d) and § 905.175, for small purchases and sealed bidding, are not feasible for this type of procurement. The small purchase method is inappropriate because of the complexity of the services to be contracted, and sealed bidding is not appropriate because of the need to evaluate factors other than price, such as the offerors' experience and qualifications.

To help ensure proper implementation of these contracts, review of energy performance solicitations and contracts by the HUD Regional Office (Office of Public Housing or Office of Indian Programs, for PHAs and IHAs, respectively) will be required. This review is authorized by § 85.36(g)(1) and § 905.160(a)(3)(ii) for solicitations, and by § 85.36(g)(2)(ii) for noncompetitive contracts. IHA contracts for a period of more than two years require HUD approval under § 905.160(a)(3)(iii)(A). The additional review for PHA contracts

using the competitive proposals method is necessary because of the complexity of the services being procured, the unusually long duration of the contracts (up to 12 years), the financing commitment that may be required, and the significant impact of the implementation of the energy savings on the operations of the PHA. It is expected that the HUD Regional Contracting Officer will be consulted during the review of energy performance solicitations and contracts to provide advice and guidance on procurement.

Commenters suggested that the rule make it clear that energy conservation measures would apply to all utilities, e.g., water, fuel oil, electricity, and gas. The rule has been revised to clarify this broad coverage.

Other comments recommended that a separate utility advocacy unit for PHAs/IHAs be established within HUD; that HUD prequalify contractors and provide a list of them; and that additional guidance be provided on implementation of these energy conservation measures. The Department rejects the first two of these suggestions as an inappropriate allocation of limited HUD staff. However, the Department plans to issue additional guidance.

C. Combining of Units (Section 9(a)(3)(B)(iv))

The reason for the change in the regulations, as was made clear in the statute, is to make sure that a PHA does not lose any PFS funds solely because of the need to consolidate two or more units into a single leasehold that can house the same number of people as were previously served.

The determination of "a unit that houses the same number of people as were previously served" will be based on a comparison of the bedroom count of project units before and after the conversion. We have determined that, in the absence of an objective method of comparing units, counting the number of people who happen to be in a unit before and after a conversion might be a way to determine the number of persons served. However, these counts could be distorted by vacancies, by situations where families are overcrowded or doubled-up, and by cases where families are temporarily assigned to larger than appropriate units. Therefore, the number of people served in a unit will be based on the formula [(2 x No. of Bedrooms) minus 1], which yields the average number of people that would be served. An efficiency unit is assumed to serve one person and, therefore, will be treated the same as a one bedroom unit for purposes of this calculation.

The subsidy amount computed under this provision (§ 990.108(e)) will be added to the PHA's annual PFS eligibility amount, and it will continue to be calculated and added to the eligibility in future fiscal years.

Two large PHAs made explicit recommendations that this provision should be applied retroactively, to assure that PHAs would be fully funded for previously-combined units. The Department agrees that, as with the energy savings provision, this mechanism should have been in effect for PHA fiscal years beginning on or after April 1, 1988, the first full fiscal year after enactment of the Housing and Community Development Act of 1987, which was signed into law on February 5, 1988. Interim procedures were published in HUD Notice 89-48 (November 14, 1989) to accomplish this end.

D. Audit Responsibilities (Section 9(a)(1))

A question arose about whether a PHA would be "billed" by HUD for pre-audit accounting services necessary to restore the PHA's books to an auditable condition. The rule text is clear that if these services are necessary where HUD has ordered an audit, the cost will be paid by HUD and deducted from the PHA's operating subsidy. No change is needed in the rule.

Another question raised was whether HUD could fund restoration of a PHA's books to an auditable condition where HUD is not contracting for an audit, but where the PHA's accountant changes. The Department sees no justification for intervention in a PHA's financial management, except in the extreme case where action is prescribed by statute, and by the rule.

E. Miscellaneous

Although the proposed rule would have amended parts 965 and 990, this final rule contains revisions to part 905, but not part 965. As discussed above, the provisions concerning insurance that are in 965 have been split off into a separate rulemaking. Part 905 is included in this rule because between the time the proposed rule was published and this final rule was prepared, an interim rule was published (and became effective) that consolidated provisions from part 990 dealing with Indian Housing Authorities into a new and comprehensive part 905.

There were no public comments on the technical amendment to § 990.101 of the rule that removes an outdated provision that a PHA's eligibility for operating subsidy be conditioned on charging aggregate rentals in any year of at least 20 percent of the sum of the monthly incomes of all the families. That amendment remains in this final rule without change.

III. Timing of Implementation

The PFS revisions of this rule will effect a particular PHA at the beginning of its new budget year after the rule is effective—a date expected to be well before January 1, 1992. Thus, each PHA is affected in the fiscal year that starts in Federal Fiscal Year 1992 (PHA fiscal years beginning on or after January 1992).

IV. Findings and Certifications

A. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. At its estimated cost of $3 million, it will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have 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.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule, as distinguished from the statute, would not have a significant economic impact on a substantial number of small entities. The rule would permit some modest increase in subsidy for PHAs that undertake certain energy saving measures.

The energy saving measures cost-sharing provisions would be unlikely to have any significant impact on small PHAs.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance or retained savings to HUD-assisted housing owned and operated by PHAs but will not interfere with State or local government functions.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves the amount of funding that a PHA should receive under a formula revised to satisfy statutory requirements.

F. Regulatory Agenda

This rule is listed as sequence number 1406 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on April 22, 1991 (56 FR 17360, 17410), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.145, 14.146, and 14.147.

H. Information Collection Requirements

As discussed above, the information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and public comments on the public reporting burden were solicited.

I. List of Subjects in 24 CFR

Part 905

Grant programs: Indians, Low and moderate income housing; Homeownership; Public housing.

Part 965

Energy conservation; Loan programs: housing and community development; Public housing; Utilities.

Part 990

Grant programs: housing and community development; Low and moderate income housing; Public housing.

Accordingly, 24 CFR parts 905, 965 and 990 are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 905.120, paragraph (g) is revised to read as follows:

§ 905.120 Compliance with other federal requirements.

* * * * *

(g) *Access to records; audits.* (1) HUD and the Comptroller General of the United States shall have access to all books, documents, papers, and other records that are pertinent to the activities carried out under this part, in order to make audit examinations, excerpts, and transcripts, in accordance with 24 CFR 85.42.

(2) IHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 44. If an IHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the IHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the IHA's books and records into auditable condition. The costs to place the IHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

* * * * *

3. In § 905.715, paragraph (b) is redesignated as paragraph (b)(1) and a new paragraph (b)(2) is added; the introductory text of paragraph (c) is revised and a new paragraph (c)(4) is added; paragraph (f) is revised; and a new paragraph (g) is added, to read as follows:

§ 905.715 Computation of utilities expense level.

* * * * *

(b) *Utilities rates.* (1) * * *

(2) If an IHA takes action, such as the well-head purchase of natural gas, or administrative appeals or legal action, to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the IHA will be permitted to retain part of the rate savings during the first 12 months that are attributable to its actions. See paragraph (f) of this section and § 905.730(c).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of an IHA for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the IHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (g)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4). The AUCL for all of an IHA's projects is the sum of the amounts determined using all of these paragraphs, as appropriate.

* * * * *

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if an IHA undertakes energy conservation measures that are approved by HUD under paragraph (g) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) See § 905.730(c)(2)(ii) for the method of adjusting the AUCL for heating degree days.

(iii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the IHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

* * * * *

(f) *Adjustments.* IHAs shall request adjustments of Utilities Expense Levels in accordance with § 905.730(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days in accordance with paragraph (d) of this section) and of utility rates.

(g) *Incentives for energy conservation improvements.* If an IHA undertakes energy conservation measures (including measures to save water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the IHA may qualify for one of two possible incentives under this part. For an IHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the IHA's payments to be dependent on the cost savings it realizes, the IHA must use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the IHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 905.730(c)(2)(ii).

(2) If the contract does not allow the IHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the IHA will be able to retain part of the cost savings, in accordance with § 905.730(c)(2)(i); and the IHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 905.730(f).

4. In § 905.720, a new paragraph (e) is added, to read as follows:

§ 905.720 Other costs.

* * * * *

(e) *Costs resulting from combination of two or more units.* When an IHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

5. In § 905.730, paragraph (a)(1) is amended by removing from the last sentence the words, "or $10.31"; paragraphs (c) (1) through (4) are revised; paragraphs (c) (5) and (6) are removed; paragraph (e) is redesignated as paragraph (f); and a new paragraph (e) is added; to read as follows:

§ 905.730 Adjustments.

* * * * *

(c) *Adjustments to Utilities Expense Level.* * * *

(1) *Rates.* (i) A decrease in the Utilities Expense Level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the IHA, such as well-head purchase of natural gas, or administrative appeals or legal action (beyond normal public participation in ratemaking proceedings), 50 percent of the decrease will be retained by the IHA for the 12-month period following the decrease (and the other 50 percent will be deducted from operating subsidy otherwise payable).

(ii) An increase in the Utilities Expense Level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption (adjusted for Heating Degree Days in accordance with § 905.715(d)), after adjustment for any utility rate change, will be retained by the IHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of an IHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 905.715(g)(1), the IHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined using a heating degree day adjustment for space heating utilities and by adjusting for any utility rate changes. The heating degree day experience during the frozen rolling base period will be used instead of the degree days in the year being adjusted. The documentation on the degree days must be supplied by the IHA and is subject to HUD approval. The savings realized must be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of IHA employees, counseling of tenants, IHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) An increase in the Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available. If residual receipts are not available and the increase would result in a reduction of the operating reserve below the authorized maximum, then 50 percent of the amount will be funded by increased operating subsidy payments, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, where an IHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the IHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, this

adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the IHA pending HUD audit.

* * * * *

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 905.715(g)(2), then the IHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for the Heating Degree Days experience for the year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(ii) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the IHA's operating subsidy eligibility for the IHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or IHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

* * * * *

6. A new § 905.825 is added, to read as follows:

§ 905.825 Energy Performance Contracts.

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see § 905.175(d)). In identifying the evaluation factors and their relative importance, as required by § 905.175(d)(1), the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see § 905.175(e)(2)).

(b) *HUD review.* Solicitations for energy performance contracts shall be submitted to the HUD Office of Indian Programs for review and approval before issuance. Energy performance contracts shall be submitted to the Office of Indian Programs for review and approval before award.

7. A new § 905.827 is added, to read as follows:

§ 905.827 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the IHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in case of projects still in development or for other available funds that HUD may designate to be used for energy conservation.

(b) If an IHA finances energy conservation measures from sources other than CIAP or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the IHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. To receive the benefit of this type of adjustment, an IHA's repayments may not exceed the cost of the energy saved as a result of the energy conservation measures during a period not to exceed 12 years. See § 905.730(e) of this chapter.

PART 965—PHA OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

8. In subpart C—Energy Audits and Energy Conservation Measures, § 965.307 is revised by designating the existing paragraph as paragraph (a), and adding a new paragraph (b), to read as follows:

§ 965.307 Funding.

* * * * *

(b) If a PHA finances energy conservation measures from sources other than CIAP or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidiy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. To receive the benefit of this type of adjustment, a PHA's repayments may not exceed the cost of the energy saved as a result of the energy conservation measures during a period not to exceed 12 years. See § 990.107(g) of this chapter.

9. A new § 965.315 is added, to read as follows:

§ 965.315 Energy Performance Contracts.

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see § 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by § 85.36(d)(3)(i), the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see § 85.36(d)(4)(i)(A)).

(b) *HUD review.* Solicitations for energy performance contracts shall be submitted to the HUD Regional Office through the appropriate HUD Field Office for review and approval before issuance. Energy performance contracts shall be submitted to the HUD Regional Office through the appropriate HUD Field Office for review and approval before award.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

10. The authority citation for part 990 continues to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 990.101 [Amended]

11. In § 990.101, paragraph (c)(4) is amended by removing the third sentence, and the parenthetical sentence that follows it.

12. In § 990.107, paragraph (b) is redesignated as paragraph (b)(1) and a new paragraph (b)(2) is added; the introductory text of paragraph (c) is revised and a new paragraph (c)(4) is added; paragraph (f) is revised; and a new paragraph (g) is added, to read as follows:

§ 990.107 Computation of utilities expense level.

* * * * *

(b) *Utilities rates.* (1) * * *

(2) If a PHA takes action, such as the well-head purchase of natural gas, or administrative appeals or legal action, to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain part of the rate savings during the first 12 months that are attributable to its actions. See pargapraph (f) of this section and § 990.110(c).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of PHA for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (g)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

* * * * *

(4) *Freezing the Allowable Utilities Consumption Level.*

(i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (g) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) See § 990.110(c)(2)(ii) for the method of adjusting the AUCL for heating degree days.

(iii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

* * * * *

(f) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days in accordance with paragraph (d) of this section) and of utility rates.

(g) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(c)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(c)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 990.110(f).

13. In § 990.108, a new paragraph (e) is added, to read as follows:

§ 990.108 Other costs.

* * * * *

(e) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

14. In § 990.110, paragraph (a)(1) is amended by removing from the last sentence the words, "or $10.31"; paragraphs (c) (1) through (4) are revised; paragraphs (c) (5) and (6) are removed; paragraph (e) is redesignated as paragraph (f); and a new paragraph (e) is added; to read as follows:

§ 990.110 Adjustments.

* * * * *

(c) *Adjustments to Utilities Expense Level.* * * *

(1) *Rates.* (i) A decrease in the Utilities Expense Level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as the wellhead purchase of natural gas, or administrative appeals or legal action (beyond normal public participation in ratemaking

proceedings), 50 percent of the decrease will be retained by the PHA for the 12-month period following the decrease (and the other 50 percent will be deducted from operating subsidy otherwise payable).

(ii) An increase in the Utilities Expense Level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption (adjusted for Heating Degree Days in accordance with § 990.107(d)), after adjustment for any utility rate change, will be retained by the PHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(g)(1), the PHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be determined using a heating degree day adjustment for space heating utilities and by adjusting for any utility rate changes. The heating degree day experience during the frozen rolling base period will be used instead of the degree days in the year being adjusted. The documentation on the degree days must be supplied by the PHA and is subject to HUD approval. The savings realized must be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of PHA employees, counseling of tenants, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) An increase in the Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available. If residual receipts are not available and the increase would result in a reduction of the operating reserve below the authorized maximum, then 50 percent of the amount will be funded by increased operating subsidy payment, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the PHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

* * * * *

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(g)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure has not been undertaken would be adjusted for the Heating Degree Days experience for this year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

* * * * *

15. Section 990.120 is revised to read as follows:

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 44. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

Dated: September 4, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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