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Tuesday
January 28, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Presidential Documents

Title 3—

The President

Memorandum of January 21, 1992

Transportation of Humanitarian Assistance to the Former Soviet Union

Memorandum for the Secretary of Defense

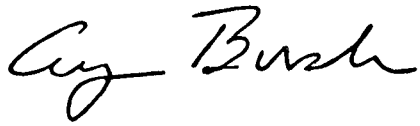
Pursuant to the laws of the United States, including section 109 of the "Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992" (Public Law 102–229):

1. I designate as emergency requirements, pursuant to the terms of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the full amount for which section 109 provides.

2. Effective upon satisfaction of applicable congressional notification requirements, I direct the Secretary of Defense to transfer funds under section 109 as it incorporates by reference section 301(b) of H.R. 3807 as passed the Senate on November 25, 1991.

3. The authorities and duties of the President under section 301 of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 109 (except the designation of emergency relating to funding addressed in paragraph 1 and the direction addressed in paragraph 2) are hereby delegated to the Secretary of Defense.

You are directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
January 21, 1992.

[FR Doc. 92–2211
Filed 1–24–92; 4:26 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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Tuesday, January 28, 1992

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206-AE21

Aggregate Limitation on Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing revised interim regulations governing the administration of the aggregate limitation on pay under the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990), as amended by section 2 of Public Law 102-77, July 26, 1991. These revisions clarify the types of payments that are subject to the Executive Level I aggregate limitation on pay for most Federal employees during any calendar year.

DATES: Interim rules effective January 28, 1992. Comments must be received on or before March 30, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (FEPCA) established an aggregate limitation on pay that applies to most Federal employees. The purpose of the aggregate limitation on pay is to limit the pay of any "allowance, differential, bonus, award, or other similar cash payment" under title 5, United States Code, so that such payment would not cause an employee's total annual compensation to exceed the rate payable for Executive Level I (currently 143,800). The amendments made by Public Law 102-77 clarify the coverage and applicability of the aggregate limitation.

These clarifying amendments became effective on July 26, 1991. However, the aggregate limitation on pay applies to payments that would otherwise cause an employee's total pay to exceed the annual rate of basic pay payable for Executive Level I as of the end of the calendar year. Therefore, payments made on or after February 3, 1991 (the effective date of the aggregate limitation, as enacted by FEPCA), are subject to the amended aggregate limitation law, regardless of whether the payments were made before or after July 26, 1991.

As clarified by Public Law 102-77, the aggregate limitation applies to the total of basic pay, plus (1) premium pay and most other payments made under chapter 55, except back pay for unjustified personnel actions, severance pay, and lump-sum payments for annual leave; (2) recruitment and relocation bonuses, supervisory and post differentials, retention allowances, danger pay allowances, physicians comparability allowances, and environmental allowances for employees outside the continental United States or in Alaska; and (3) continuation of pay under the Federal Employees' Compensation Act.

The amended law also specifies that employees of Executive agencies who are not covered by the General Schedule may receive lump-sum payments at the beginning of the following calendar year for performance-based cash awards under 5 U.S.C. 4505a(d), as well as recruitment and relocation bonuses and retention allowances under 5 U.S.C. 5753(e) and 5754(e), respectively, that otherwise would cause the employee's aggregate compensation to exceed the rate for Executive Level I during the calendar year in which they were awarded or authorized. Such lump-sum payments will be subject to the carryover provisions in 5 U.S.C. 5307(b)(2). Consequently, 5 CFR 530.204(d) has been removed. (Prior to this amendment, only General Schedule employees were entitled to receive, in a subsequent calendar year, lump-sum payments attributable to performance-based cash awards, recruitment and relocation bonuses, and retention allowances.)

The revised interim regulations amend the interim regulations published on March 28, 1991 (56 FR 12833), to prescribe how the aggregate limitation is to be applied during calendar year 1991. For calendar year 1991 only, the aggregate limitation applies to payments received on or after February 3, 1991, and before January 1, 1992. (See 5 CFR 530.206.)

Finally, a paragraph has been added to provide that, if the continuing and noncontinuing payments to which an employee is entitled, or has received, during a calendar year exceed the rate payable for Executive Level I, any discretionary continuing payments that would cause the employee's aggregate compensation to exceed the limitation must be discontinued. (See 5 CFR 530.203(g).) These discontinued discretionary payments normally will become payable at the beginning of the next calendar year and will be included in the computation of the employee's aggregate compensation for the year in which they were paid. Corresponding changes also have been made in 5 CFR 530.203(f).

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the amended provisions of law at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending part 530 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748; Subpart B also issued under sec. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively.

2. In § 530.202, the definitions of *Aggregate compensation* and *Continuing payment* are revised to read as follows: the definition of *Lump-sum payment* is removed; and a new definition of *Noncontinuing payment* is added to read as follows:

§ 530.202 Definitions.

* * * * *

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;

(2) Locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under sections 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively;

(3) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code;

(4) Premium pay under subchapter V of chapter 55 of title 5;

(5) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;

(6) Recruitment and relocation bonuses under 5 U.S.C. 5753;

(7) Retention allowances under 5 U.S.C. 5754;

(8) Supervisory differentials under 5 U.S.C. 5755;

(9) Post differentials under 5 U.S.C. 5925;

(10) Danger pay allowances under 5 U.S.C. 5928;

(11) Allowances based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);

(12) Physicians comparability allowances under 5 U.S.C. 5948;

(13) Continuation of pay under 5 U.S.C. 8118; and

(14) Other similar payments authorized under title 5, United States Code, excluding back pay due to an unjustified personnel action under 5 U.S.C. 5596; overtime pay under the Fair Labor Standards Act of 1938, as amended, and part 551 of this chapter; severance pay under 5 U.S.C. 5595; and lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552.

* * * * *

Continuing payment means basic pay and any other form of pay included in an employee's aggregate compensation that is paid in the same manner and at the same time as basic pay, including, but not limited to, locality-based comparability payments, interim geographic adjustments, special pay adjustments for law enforcement officers, annual premium pay under 5 U.S.C. 5545(c), retention allowances, supervisory differentials, post differentials, danger pay allowances, allowances based on environmental conditions outside the continental United States or in Alaska, remote work site allowances, and physicians comparability allowances.

* * * * *

Noncontinuing payment means—

(1) An amount of pay included in an employee's aggregate compensation that is paid to an employee not in the same manner or at the same time as basic pay, including, but not limited to, incentive awards, performance awards, Senior Executive Service Presidential rank awards, recruitment and relocation bonuses, and excess amounts paid under § 530.205(a) of this part;

(2) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code; and

(3) Premium pay under subchapter V of chapter 55 of title 5, United States Code, other than annual premium pay under 5 U.S.C. 5545(c).

3. In § 530.203, paragraphs (d), (e), and (f) are revised and a new paragraph (g) is added to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(d) At the time a noncontinuing payment is made to an employee, the employee may not receive any portion of such payment that, when added to the annual rate of any continuing payments to which the employee is then entitled and any noncontinuing payments the employee may have received earlier in the same calendar year, would exceed the rate then payable for level I of the Executive Schedule. Any portion of a noncontinuing payment not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

(e) Nondiscretionary continuing payments may not be discontinued or deferred for any period of time in order to make a noncontinuing payment or discretionary continuing payment that would otherwise cause an employee's pay to exceed any of the limitations described in or established by this section.

(f) If the annual rate of all nondiscretionary continuing payments to which an employee is entitled and any previously authorized physicians comparability allowance at any time exceeds the rate then in effect for level I of the Executive Schedule, the agency shall immediately discontinue any such payments (other than basic pay) that would cause the aggregate compensation actually received by the employee during the calendar year to exceed the limitation described in paragraph (a) of this section. To determine which payments shall be discontinued, the agency shall make such payments in the following order: Basic pay; locality-based comparability payments, interim geographic adjustments, or special pay adjustments for law enforcement officers; other nondiscretionary continuing payments, in chronological order of their authorization; and any previously authorized physicians comparability allowance. Any portion of a nondiscretionary continuing payment or physicians comparability allowance not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

(g) If the annual rate of all discretionary and nondiscretionary continuing payments to which an employee is entitled, plus any noncontinuing payments the employee may have received during the same calendar year, at any time exceeds the rate then payable for level I of the Executive Schedule, the agency shall immediately discontinue any discretionary continuing payments that would cause the aggregate compensation actually received by the employee during the calendar year to exceed the limitation described in paragraph (a) of this section. Any portion of a discretionary continuing payment not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

§ 530.204 [Amended]

4. In § 530.204, paragraph (d) is removed.

5. A new § 530.206 is added to read as follows:

§ 530.206 Application of aggregate limitation on pay in calendar year 1991.

In calendar year 1991, the aggregate limitation on pay shall be applied to aggregate compensation received by the employee on or after February 3, 1991, and before January 1, 1992.

[FR Doc. 92-2034 Filed 1-27-92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest; Exemption of Positions and Designation of Additional Agency Components for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule (1) to exempt certain senior employee positions for purposes of 18 U.S.C. 207(c); and (2) to designate certain additional departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h).

EFFECTIVE DATE: January 28, 1992.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Exemption of Positions and Designation of Additional Agency Components

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. Pursuant to the procedures prescribed in 5 CFR 2641.201(d) (56 FR 3964, February 1, 1991), the Designated Agency Ethics Official at the Securities and Exchange Commission forwarded a letter to OGE dated October 15, 1991, requesting that the Director exempt two senior employee positions: (1) The Office of General Counsel's Solicitor, and (2) the Division of Enforcement's Chief Litigation Counsel.

After carefully reviewing that letter and other relevant information, the Director determined to exempt the two positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). Although these exemptions became effective on October 29, 1991, the date of the Director's written response to the Securities and Exchange Commission, 5 CFR 2641.201(d)(3)(iii) provides that the Director "shall annually publish in appendix A to this part an updated compilation of all exempted positions * * *." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of these two exemptions in the CFR.

Appendix A of this part includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation of Executive Agency Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c). The one-year representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Initial component designations applicable with respect to employees terminating senior service on or after January 1, 1991, were published in appendix B of 5 CFR part 2641 last year (56 FR 3965, February 1, 1991). Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have subsequently forwarded letters to OGE requesting the designation of additional distinct and separate components for purposes of that statutory provision.

By letter dated April 9, 1991, the Alternate Designated Agency Ethics Official at the Department of Justice requested that the Director clarify that the Office of Justice Programs (including its five previously designated constituent bureaus) should be treated as one single distinct and separate component for purposes of 18 U.S.C. 207(c). The letter also requested that the Executive Office for United States Attorneys and the Executive Office for United States Trustees each be treated as distinct and separate from the rest of the Justice Department. In each case, however, the particular Executive Office would not be treated as separate from any of the district offices served by it. In a subsequent letter dated October 15, 1991, the Department's Alternate Designated Agency Ethics Official requested that the Office of the Pardon Attorney also be designated as a distinct and separate component.

By letter dated November 6, 1991, the Designated Agency Ethics Official at the Department of the Interior requested designation of ten components as distinct and separate from the rest of the Interior Department. The bureaus proposed for designation were the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Mines, the Bureau of Reclamation, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Territorial and International Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Department's Designated Agency Ethics Official noted that there are five Assistant Secretaries that have responsibility for one or more of the ten bureaus proposed for designation. These Assistant Secretaries are subject to 18 U.S.C. 207(c), but are not eligible to benefit from the narrowing effect of component designation. For purposes of determining the scope of the post-employment restriction in the case of an eligible senior employee serving on an Assistant Secretary's immediate staff, the Department's Designated Agency Ethics Official recommended that all bureaus under the jurisdiction of a particular Assistant Secretary should be treated as a single component.

By letter dated November 26, 1991, the Designated Agency Ethics Official at the Department of Commerce requested designation of three additional components as distinct and separate from the rest of the Commerce Department. The bureaus proposed for designation were the Bureau of Export Administration, the Technology Administration, and the United States Travel and Tourism Administration. Similarly, the Designated Agency Ethics Official at the Department of Health and Human Services forwarded a letter to

the Director of OGE dated November 29, 1991, requesting that the Administration for Children and Families be designated as an additional district and separate component of that Department.

After carefully reviewing the letters from the Department of Justice, the Department of the Interior, the Department of Commerce, and the Department of Health and Human Services in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director has determined to designate distinct and separate components as requested in that correspondence. As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of each designation is indicated in appendix B of this part. (Note that the effective date of the designation of the entire Office of Justice Programs—now listed as a single entity—is January 1, 1991.)

At the request of the Department of Defense, appendix B of this part has also been amended to indicate that the name of the Defense Communications Agency has been changed to the Defense Information Systems Agency.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation by OGE of exempted positions and separate agency components be published in the **Federal Register** as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflicts of interests, Government employees.

Approved: January 8, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, secs. 402 and 404); 18 U.S.C. 207; E.O. 12674; 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix A is amended by adding the text to read as follows:

Appendix A to 5 CFR Part 2641—Positions Exempted From 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C), each of the following positions is exempt from the provisions of 18 U.S.C. 207(c). All exemptions are effective as of the date indicated.

Agency: Securities and Exchange Commission.

Positions: Solicitor, Office of General Counsel (effective October 29, 1991); Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

3. In appendix B, the introductory text is revised and the component listings are amended as set forth below:

A. Revising the listing for the Department of Commerce;

B. Revising the listing for the Department of Defense;

C. Revising the listing for the Department of Health and Human Services;

D. Adding in alphabetical order a listing for the Department of the Interior; and

E. Revising the listing (including the footnotes) for the Department of Justice:

The revisions and additions read as follows:

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce
Components:
- Bureau of the Census
- Bureau of Export Administration (effective January 28, 1992)
- Economic Development Administration
- International Trade Administration
- Minority Business Development Administration
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Patent and Trademark Office
- Technology Administration (effective January 28, 1992)
- United States Travel and Tourism Administration (effective January 28, 1992)

Parent: Department of Defense
Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Mapping Agency
- Defense Nuclear Agency
- National Security Agency

* * * * *

Parent: Department of Health and Human Services
Components:
- Administration for Children and Families (effective January 28, 1992)
- Health Care Financing Administration
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent: Department of the Interior
Components:[1]
- Bureau of Indian Affairs (effective January 28, 1992)
- Bureau of Land Management (effective January 28, 1992)
- Bureau of Mines (effective January 28, 1992)
- Bureau of Reclamation (effective January 28, 1992)
- Minerals Management Service (effective January 28, 1992)
- National Park Service (effective January 28, 1992)
- Office of Surface Mining (effective January 28, 1992)
- Office of Territorial and International Affairs (effective January 28, 1992)
- U.S. Fish and Wildlife Service (effective January 28, 1992)
- U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

Components:
Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for United States Attorneys [2] (effective January 28, 1992)
Executive Office for United States Trustees [3] (effective January 28, 1992)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel
Office of Justice Programs
Office of the Pardons Attorney (effective January 28, 1992)
Offices of the United States Attorney (94) [4]
Offices of the United States Marshal (94) [5]
Offices of the United States Trustee (21) [6]
Tax Division
United States Parole Commission

* * * * *

[FR Doc. 92-1809 Filed 1-27-92; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-156]

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to require that the seed of certain barberry plants be produced only at properties where it has been verified that no wild or domesticated rust-susceptible barberry plants are growing at or within one-half mile of the property. This action is necessary to help delay and minimize infestations of black stem rust. We are also allowing the issuance of compliance agreements by States that are not protected areas or that do not encompass protected areas. This action is warranted to remove unnecessary restrictions on the issuance of compliance agreements.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR part 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of being infected by and spreading black stem rust; rust-susceptible plants do pose such a risk.

Currently, many small grain varieties are resistant to existing races of black stem rust. However, during the sexual stage of black stem rust organisms, spores from different black stem rust organisms can combine to produce entirely new hybrid races of black stem rust. Some of these hybrid races could successfully attack grain varieties that are not harmed by the "parent" black stem rust races. For this reason, an important factor in controlling infestations of black stem rust is the elimination of rust-susceptible host barberry plants. Additionally, the presence of rust-susceptible barberry plants can cause infestations to occur earlier in the year than if the plants were not present. These "early" infestations are especially damaging because they affect grains at a stage when the grains are most vulnerable to effects of black stem rust.

The regulations provide criteria for "protected areas." (Movement of regulated articles into or through protected areas is restricted.) Protected areas are those in which rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* have been eradicated, and in which States conduct periodic inspections, as specified by the regulations, to ensure that rust-resistant nursery stock of those genera do not come into proximity to rust-susceptible plants that might become present in the area. The danger from rust-resistant barberry plants being in proximity to rust-susceptible plants is not that the rust-resistant plants will become hosts to black stem rust organisms capable of spreading. Rather, it is that the rust-susceptible plants could pollinate the rust-resistant plants, and the rust-resistant plants could then produce seeds that would be used to propagate rust-susceptible plants.

In a document published in the **Federal Register** on September 16, 1991 (56 FR 46737-46739, Docket Number 90-038), we proposed to revise the regulations to require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property.

We also proposed to allow States that are not, or that do not encompass, protected areas to issue compliance agreements. Prior to the effective date of this final rule, the only States that may issue compliance agreements are those that are either protected areas or that encompass protected areas. In non-protected areas, we are responsible for issuing compliance agreements. However, this provision is unnecessarily restrictive, and there will be no increased risk of infestations of black stem rust if compliance agreements are issued by States that are not, or that do not encompass, protected areas.

The proposed rule as published contained two typographical errors. On September 25, 1991, a document was published in the **Federal Register** (FR 56 48611) to correct these errors.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Attorney for a judicial district shall not be considered separate from the Office of United States Marshal for the same judicial district.

[5] Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Marshal for a judicial district shall not be considered separate from the Office of United States Attorney for the same judicial district.

[6] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

Comments on our proposed rule were required to be received on or before October 16, 1991. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as published, with the exception of several nonsubstantive editorial changes we are making for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

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

Federal restrictions on interstate movements of plants and plant parts of *Berberis, Mahoberberis,* and *Mahonia* are limited to protected areas, which include 15 States and part of a 16th State. The amendments to the regulations in this document require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property. The principal group affected by this rule will be the seed growers producing seed to be used in the production of certified plants, and in the production of plants in protected areas. The effect will be to eliminate some markets for seed producers who continue to grow rust-susceptible plant varieties at their seed production facilities, and to eliminate some markets for seed producers who are located within one-half mile of rust-susceptible plants that for some reason cannot be destroyed.

Based on Small Business Administration (SBA) statistics and the 1982 Census of Agriculture statistics, the most recent statistics available to us, we estimate that 71 percent of the 13,217 growers of nursery products in the United States (9,394) are located in non-protected areas, and that 29 percent (3,833) are in protected areas. Our projections indicate that of all growers of nursery products, 96 percent are small businesses, as classified by the SBA in its Standards (those with $500,000 or less in annual receipts). We do not have statistics indicating the number of small nursery growers dealing in plants of the restricted genera and the proportion of their revenues derived from these plants. Nevertheless, we believe that most growers of nursery products grow rust-resistant varieties primarily, and will not be affected. Until 1989, the regulations prohibited the movement of rust-susceptible plants from quarantined areas. Because of this restriction, it was standard practice, and we believe that it continues to be standard practice, for growers to propagate rust-resistant varieties.

The provisions in this rule also allow persons who grow or handle regulated articles, including seed growers, to enter into a compliance agreement with State regulatory authorities in States that are not protected. Until the effective date of this rule, growers or other persons who handle regulated articles in States that are not protected who wish to enter into a compliance agreement must do so with the Animal and Plant Health Inspection Service. The change we are making will, in certain cases, make it easier for these persons to have their regulated articles certified. However, in States that are not protected, we have received relatively few requests for compliance agreements. We therefore do not expect the change we are making to affect a significant number of entities.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Black stem rust, Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38-3 [Amended]

2. In § 301.38–3, paragraph (a), the last sentence, including the footnote reference, is removed.

3. In § 301.38–3, paragraph (b)(3), the last sentence, including the footnote reference, is removed.

4. In § 301.38–3, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively.

5. In § 301.38–3, a new paragraph (c) is added and footnote 4 is revised to read as follows:

§ 301.38-3 Protected areas.

* * * * *

(c) All seed used to propagate plants of the genera *Berberis, Mahoberberis,* and *Mahonia* in protected areas, and all seed used to propagate plants of the genera *Berberis, Mahoberberis,* and *Mahonia* that are certified as rust-resistant for interstate movement into protected areas, must be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at or within one-half mile of the property.[4]

* * * * *

§ 301.38-6 [Amended]

6. In § 301.38–6, paragraph (a) is amended by removing the words "that is a protected area or that encompasses a

[4] Persons performing the inspections must be able to recognize rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia.* Inspectors must work side by side, 10 to 20 feet apart, and walk outward away from the property a distance of one-half mile measured from the edge of the property, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range, depending upon the visibility of the plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Inspectors must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the property to the circumference of an imaginary circle having the property as its mid-point, is visually inspected in this manner.

protected area"; and by removing the words "the protected area" both times they appear and adding in their place the words "a protected area".

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2012 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 319

[Docket No. 91-176]

Importation of Pummelo from Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to allow the importation of pummelo from Israel, subject to completion of the Animal and Plant Health Inspection Service prescribed cold treatment for the Mediterranean fruit fly. We believe this action is warranted because there appears to be no significant pest risk associated with the importation of pummelo from Israel under these circumstances.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On October 17, 1991 we published in the **Federal Register** (55 FR 52004-52005), Docket No. 91-126) a proposal to amend the regulations by allowing the importation of "pomelo" (*Citrus grandis*) from Israel, subject to completion of the Animal and Plant Health Inspection Service (APHIS) prescribed cold treatment for the Mediterranean fruit fly.

"Pomelo" and "pummelo" are both accepted common names for *Citrus grandis*. However, "pomelo" is also the Spanish word for grapefruit (*Citrus paradisi*). In order to avoid confusion, "pummelo" will be used to refer to *Citrus grandis* in this final rule.

Prior to the effective date of this final rule, the regulations in § 319.56 did not provide for the importation of pummelo from Israel. Both the Mediterranean fruit fly (*Ceratitis capitata*) and the Oriental red spider mite (*Eutetranychus orientalis*) are known to attack citrus in Israel. These are considered potentially destructive pests by APHIS, and neither is present nor widely distributed in the United States.

As explained in the proposed rule, the plant protection service of Israel requested that we consider allowing the entry of pummelo from Israel. Although both the Mediterranean fruit fly (Medfly) and the Oriental red spider mite (ORSM) are known to attack citrus in Israel, research done by the Israelis and accepted by APHIS demonstrates that the cold treatment specified in § 319.56-2d(a)(2)(i) for Medfly is also effective against the ORSM. Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by the pummelo would be readily detectable by a USDA inspector.

We therefore proposed to add a new § 319.56-2u to allow the importation of pummelo from Israel, subject to completion of the cold treatment in § 319.56-2d(a)(2)(i) and to all other applicable requirements of title 7 of the Code of Federal Regulations, "Subpart—Fruits and Vegetables."

Comments on the proposed rule were required to be received on or before November 18, 1991. We received one comment, from a State agency, by this date. The commenter supported the proposed rule as it addressed Medfly and ORSM, but had a reservation concerning the fungal disease mal secco (*Phoma tracheiphila*), which he said is not known to occur in the United States but is known to infect several citrus species and cultivars in many Mediterranean countries (including Israel). He was concerned that the fungus may be found in a sporulating condition on short stems which may be attached to the fruit being transported to the United States, thus entering this country. The commenter suggested that APHIS evaluate the pest introduction risk associated with this organism.

APHIS studies of scientific literature indicate that the mal secco organism causes a systemic infection in susceptible plants resulting in shedding of the leaves and eventual dieback of the infected branches. Rapid yellowing of the fruit and premature fruit fall result from the movement of the fungus through the branch toward the fruit. Dead or badly affected branches are not likely to retain fruit, and the occasional fruit which may remain on dead or badly affected branches is not of harvestable quality. The mal secco organism sporulates only after the branch has died and the fungus has invaded the bark.

The presence of healthy appearing fruit, even on affected limbs, indicates that the fungus is not yet near the fruit and definitely has not entered the stem of the fruit. Therefore, APHIS concludes that it is extremely unlikely that the fungus would be found in a sporulating condition on the stem of healthy fruit. This negligible risk does not justify a more restrictive position towards the importation of pummelo from Israel.

The commenter was also concerned that the fungus spores may be carried as contaminants on the surface of the fruit, including the calyces. APHIS recognizes that spores of the mal secco fungus (and many other organisms) may be present as surface contaminants on fruit and possibly under the calyces of fruit. The question becomes whether spore contamination is likely to result in the introduction of the organism and whether the risk justifies prohibiting or restricting fruit for spore contamination if the organism is not sporulating on the fruit. Experience and scientific evidence do not suggest that spore contamination provides a viable pathway for the introduction of fungus organisms.[1] As a result, APHIS believes that to regulate commercially harvested fruit for spore contamination is not reasonable or justified, and would result in a precedent with far reaching negative impacts.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for pummelos from Israel is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon signature.

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[1] Information concerning the scientific evidence may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

Executive Order 12291 and Regulatory Flexibility Act

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

We are changing the regulations to allow the importation of pummelo from Israel, subject to completion of an APHIS-prescribed cold treatment for the Medfly and the ORSM. Embassy officials anticipate that initial annual pummelo shipments from Israel to the United States will average between 200 and 300 metric tons and increase to approximately 1,000 metric tons within several years. The initial retail value of Israeli pummelo shipments will range from approximately $373,600 to $747,000. As Israel increases annual exports, the total retail value of pummelo shipments to the United States will be expected to increase to between $1.5 million and $2.1 million.

In the United States, pummelos represent an extremely small portion of the domestic citrus industry. There are only a handful of commercial pummelo producers in the United States—approximately two to three in Florida, with some additional production occurring in California. Current estimates indicate that there are fewer than 1,000 pummelo trees in the United States. Domestic producers grow pummelo as a small part of large-scale citrus operations, and it is expected that they will continue to grow pummelo at the same rate. Thus domestic production of pummelo is not expected to be affected by increased imports from Israel.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are amending 7 CFR part 319 as follows:

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

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

2. In Subpart—Fruits and Vegetables, a new § 319.56–2u is added to read as follows:

§ 319.56–2u Conditions governing the entry of pummelo from Israel.

Pummelo from Israel may be imported into the United States only if cold treated in accordance with § 319.56–2d(a)(2)(i) of this subpart and if all other applicable requirements of this subpart are met. Entry is limited to North Atlantic ports north of and including Baltimore, MD, if treatment is to be completed in the United States. Entry may be through any port if treatment has been completed prior to arrival in the United States.

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–2014 Filed 1–27–92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 89F-0451]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 12-hydroxystearic acid-polyethylene glycol block copolymers as surfactants for dispersions of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard. This action responds to a petition filed by ICI Americas, Inc.

DATES: Effective January 28, 1992. Written objections and requests for a hearing by February 27, 1992.

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

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-335), 200 C Street SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 17, 1989 (54 FR 47828), FDA announced that a petition (FAP OB4179) had been filed by ICI Americas, Inc., Concord Pike and Murphy Rd., Wilmington, DE 19803, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of polyethylene glycol (MW 1500–4000)/poly (12-hydroxystearic acid) copolymers as surfactants for dispersions of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard intended to contact aqueous and fatty foods.

The filing notice proposed that the molecular weight of the polyethylene glycol reactant be 1500 to 4000. FDA concludes, however, that it is unnecessary to specify an upper molecular weight range for the polyethylene glycol reactant because the safety of the additive prepared using polyethylene glycol with an average molecular weight of 1500 has been established by this petition and copolymers prepared using polyethylene glycol with higher average molecular weights are generally known, based on agency experience, to be less toxic than lower molecular weight compounds. Therefore, in this regulation, the agency is only specifying 1500 as the minimum molecular weight for the polyethylene glycol components. FDA also has determined that the additive is best described by the nomenclature 12-

hydroxystearic acid-polyethylene glycol block copolymers. The agency is therefore using this name for the additive in the regulation.

FDA, in its evaluation of the safety of 12-hydroxystearic acid-polyethylene glycol block copolymers, reviewed the safety of the additive, including impurities that might be present in the additive. The agency is not aware of any data that show that the additive, 12-hydroxystearic acid-polyethylene glycol block copolymers, is a cancer-causing chemical. However, ethylene oxide and 1,4-dioxane, which could be present as impurities in the polyethylene glycol, have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause," a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of 12-hydroxystearic acid-polyethylene glycol block copolymers will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of 12-hydroxystearic acid-polyethylene glycol block copolymers based on several factors, including the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles. The estimated daily intake for the additive is no greater than 39 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing in this case. On the basis of available acute toxicity data and the low level of exposure to the 12-hydroxystearic acid-polyethylene glycol block copolymers, the agency concludes that there is an adequate margin of safety for the proposed use of this additive.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals, ethylene oxide and 1,4-dioxane, that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that 1,4-dioxane is present in the finished polymer, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of the additive to be no greater than 19 picograms (pg) per person per day (Ref. 3). The agency used data from a carcinogenesis bioassay conducted by the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from the proposed use of the additive. The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the

extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 19 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of the subject additive is 6.7×10^{-13}, or 6.7 in 10 trillion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake and, therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethylene oxide is present at the limit of detection (Ref. 3), FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be no greater than 7.5 pg per person per day. The agency used data from a carcinogenesis bioassay on ethylene oxide performed by the Institute of Hygiene, University of Mainz, Germany (Ref. 6) to estimate the upper-bound level of lifetime human risk from the proposed use of the additive. The results of the bioassay on ethylene oxide indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas in situ of the forestomach and carcinoma in situ of the glandular stomach.

The committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The committee further concluded that the ethylene oxide bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 7.5 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 1.5×10^{-11}, or 1.5 in 100 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

III. Need for Specifications and Conclusion on Safety

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to either of these impurities, even under worst-case assumptions, is very low, 1.5 in 100 billion.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

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

IV. Environmental Impact

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

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto.

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

VI. References

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

1. Carr, G.M., "Carcinogen Testing Programs," in *Food Safety: Where Are We?*, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C.J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by Homburger, F., J.K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.
3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, dated May 18, 1990.
4. "Bioassay of 1,4-dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.
5. Memorandum from the Quantitative Risk Assessment Committee, dated April 11, 1991, Re: FAP OB4179.
6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

List of Subjects in 21 CFR Part 176

Food additives. Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* *
12-Hydroxystearic acid-polyethylene glycol block copolymers (CAS Reg. No. 70142-34-6) produced by the reaction of polyethylene glycol (minimum molecular weight 1500) with 12-hydroxystearic acid.	For use only as a surfactant for dispersions of polyacrylamide retention and drainage aids employed prior to the sheet forming operation in the manufacture of paper and paperboard.
* * *	* *

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Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1990 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 89F-0171]

Indirect Food Additives; Poly(Phenyleneterephthalamide) Resins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(phenyleneterephthalamide) resins and various adjuvants used in the resin production, when used in repeated contact with food. The additive is the subject of a petition filed by E.I. du Pont de Nemours & Co.

DATES: Effective January 28, 1992; written objections and requests for a hearing by February 27, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, 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 June 6, 1989 (54 FR 24264), FDA announced that a food additive petition (FAP 8B4101) had been filed by E.I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended for the safe use of poly(p-phenyleneterephthalamide) resins intended to produce articles for repeated use in the processing and handling of food. The filing notice announced that the processing and finishing of the resins may include the following optional adjuvant substances:

Diundecylphthalate
Mono-and dipotassium salts of lauryl phosphate
o-Phenylphenol
Poly(oxyethylene/oxypropylene)monobutylether
Polyethylene glycol mono(nonylphenyl)ether
Polyvinylmethyl ether
Poly(oxyethylene) sorbitol monolaurate tetraoleate
Poly(oxyethylene) sorbitol hexaoleate
4,4'-Butylidenebis(6-*tert*-butyl-*m*-cresol)

To be consistent with current acceptable nomenclature, polyethylene glycol mono(nonylphenyl)ether has been changed to read poly(oxyethylene) mono(nonylphenyl)ether and poly(p-phenyleneterephthalamide) resin has been changed to read poly(phenyleneterephthalamide) resin.

I. The Additive

FDA has reviewed the safety of these additives, as well as the starting materials. Four of the additives reviewed, poly(oxyethylene/oxypropylene)monobutylether, poly(oxyethylene) mono(nonylphenyl)ether, poly(oxyethylene) sorbitol monolaurate tetraoleate, and poly(oxyethylene) sorbitol hexaoleate may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities from their production. These chemical impurities have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including some food additives.

II. Prior Action

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney clause, of the food additive amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that development in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will

result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

III. Safety of Petitioned Use

FDA estimates that the petitioned use of the additive poly(phenylene-terephthalamide) resins and its adjuvants diundecylphthalate, mono- and dipotassium salts of lauryl phosphate, *o*-phenylphenol, poly(oxyethylene/oxypropylene) monobutylether, poly(oxyethylene) mono(nonylphenyl)ether, polyvinyl methyl ether, poly(oxyethylene) sorbitol monolaurate tetraoleate, poly(oxyethylene) sorbitol hexaoleate, and 4,4'-butylidenebis (6-*tert*-butyl-*m*-cresol) will result in extremely low levels of exposure to these substances. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. Because the additive has not been shown to cause cancer, the anticancer clause does not apply.

FDA has evaluated the safety of these additives under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the ethylene oxide and 1,4-dioxane that may be present as impurities in the additives. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities. (See, e.g., 49 FR 13018 at 13019, April 2, 1984.) This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with articles containing the four ethoxylated additives, as well as the level of 1,4-dioxane that may be present in these additives, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of the ethoxylated additives in repeated-use articles would not exceed 7 nanograms (ng) per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on 1,4-dioxane, conducted for the National Cancer Institute (Ref. 4), to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the Committee) has reviewed this bioassay and other relevant data available in the literature and concludes that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Committee further concludes that an estimate of the upper bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the four ethoxylated additives in repeated-use articles could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the four ethoxylated additives.

Based on a worst-case exposure of 7 ng per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of these ethoxylated additives is 2.5×10^{-10}, or less than 2.5 in 10 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime average individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that might result from the proposed use of the four ethoxylated additives.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with articles containing the four ethoxylated additives, as well as the level of ethylene oxide that may be present in the additives, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the ethoxylated additives in repeated-use articles would not exceed 7 ng per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, Germany (Ref. 6), to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

The Committee has reviewed this bioassay and other relevant data available in the literature and concludes that the findings of carcinogenicity were supported by this information on ethylene oxide. The Committee further concludes that an estimate of the upper bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the four ethoxylated additives in repeated-use articles could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. As discussed above, this estimate can be used with the confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the ethoxylated additives.

Based on a worst-case exposure of 7 ng per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the four ethoxylated additives is 1.3×10^{-8}, or less than 1.3 in 100 million (Ref. 5). Because of numerous conservatisms in

the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethylene oxide that might result from the proposed use of these additives.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,4-dioxane and ethylene oxide in the four ethoxylated additives and in the finished poly(phenyleneterephthalamide) resins. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the ethoxylated additives and the finished resin, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1.3 in 100 million and 2.5 in 10 billion for ethylene oxide and 1,4-dioxane, respectively.

D. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculations for the intended use of the poly(phenyleneterephthalamide) resin and its adjuvant additives and has determined that they are safe for their proposed use. Accordingly, FDA is amending Part 177 by adding new § 177.1632. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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

V. References

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

1. Carr, G.M., "Carcinogen Testing Programs," in "Food Safety: Where are we?", Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by F. Hombruger and J.K. Marquis, *S. Karger*, New York, NY, pp. 24–33, 1985.

3. Memorandum dated December 30, 1988, from Food And Color Additives Review Section to Indirect Additives Branch "FAP 8B4101—DuPont. Polymer of Terephthaloyl Chloride and *p*-Phenylenediamine," submission of July 7, 1988.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated October 31, 1990, "Report of the Quantitative Risk Assessment Committee."

6. Dunkelber, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. New § 177.1632 is added to subpart B to read as follows:

§ 177.1632 Poly (phenyleneterephthalamide) resins.

Poly(phenyleneterephthalamide) resins identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated contact with food.

(a) *Identity.* For the purpose of this section, the poly(phenylene-terephthalamide) resins (CAS Reg. No. 26125–61–1) are produced by the polymerization of terephthalolyl chloride with *p*-phenylenediamine. The poly(phenyleneterephthalamide) resin fibers and yarns may contain optional adjuvant substances required in their preparation and finishing.

(b) *Optional adjuvant substances.* The poly(phenyleneterephthalamide) resins identified in paragraph (a) of this section may contain the following optional adjuvant substances, subject to any limitation on their use:

(1) Optional adjuvant substances authorized for this use in accordance with § 174.5 of this chapter.

(2) Optional finish components, total weight not to exceed 1 percent by weight of the base polymer, as follows:

List of substances	Limitations
Diundecylphthalate (CAS Reg. No. 3648–20–2).	
Mono- and dipotassium salts of lauryl phosphate (CAS Reg. No. 39322–78–6).	
o-Phenylphenol (CAS Reg. No. 90–43–7).	For use as a fungicide for finish coating materials. Not to exceed 0.01 percent by weight of the base polymer.

List of substances	Limitations
Poly(oxyethylene/oxypropylene)monobutylether (CAS Reg. No. 9038-95-3).	
Poly(oxyethylene) mono(nonylphenyl)ether (CAS Reg. No. 9019-45-9).	
Polyvinyl methylether (CAS Reg. No. 9003-09-2).	
Poly(oxyethylene) sorbitol monolaurate tetraoleate (CAS Reg. No. 71243-28-2).	
Poly(oxyethylene) sorbitol hexaoleate (CAS Reg. No. 57171-56-9).	
4,4'-Butylidenebis (6-*tert*-butyl-*m*-cresol) (CAS Reg. No. 85-60-9).	For use only as an oxidation inhibitor for finish coating materials. Not to exceed 0.01 percent by weight of the base polymer.

(c) *Specifications.* (1) Poly(phenyleneterephthalamide) resins in the form of continuous filament yarns or fibers that have been scoured in accordance with paragraph (d)(1) of this section, when refluxed in a 50 percent ethanol/water mixture for 24 hours, yields total extractables not exceeding 0.5 percent by weight of the sample.

(2) Poly(phenyleneterephthalamide) resins in the form of pulp, when refluxed in a 50 percent ethanol/water mixture for 24 hours, yields total extractables not exceeding 0.65 percent by weight of the sample.

(d) *Conditions of use.* (1) Poly(phenyleneterephthalamide) resins in the form of continuous filament yarns and fibers may be used as components of articles intended for repeated use in contact with food at temperatures not to exceed 260 °C (500 °F). All items are scoured prior to use by agitation in a water bath containing 0.5 gram/liter of tetrasodium pyrophosphate and 0.5 percent detergent. The items are agitated at 80 °C (180 °F) for 20 minutes, and then subjected to a cold water rinse.

(2) Poly(phenyleneterephthalamide) resins in the form of pulp may be used as gaskets and packing for food processing equipment at temperatures not to exceed 260 °C (500 °F).

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92-1987 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 89F-0462]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyurethane resins derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol as rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by The Dow Chemical Co., E. I. du Pont de Nemours & Co., and B. F. Goodrich.

DATES: Effective January 28, 1992; written objections and requests for a hearing by February 27, 1992.

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

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, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 17, 1989 (54 FR 47828), FDA announced that a food additive petition (FAP OB4182) had been filed by The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, and B. F. Goodrich, 3925 Embassy Pkwy., Akron, OH 44313, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) of the food additive regulations be amended to provide for the safe use of polyurethane resins derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol, as rubber articles intended for repeated use in contact with food.

In its evaluation of the safety of these resins, FDA has reviewed the safety of the proposed additives themselves, their starting materials, and the byproducts of the starting materials used to manufacture the additives. Although polyurethane resins have not been found to cause cancer, some have been found to contain minute amounts of methylenedianiline (MDA) which has been shown to cause cancer in test animals. MDA is produced when diphenylmethane diisocyanate (MDI), a starting material used in the manufacture of polyurethane resins, is reacted with water. Residual amounts of reactants or their reaction products and manufacturing aids are commonly found as contaminants in chemical products, including food additives. Therefore, the agency has evaluated the safety of the use of polyurethane resins that may contain residual amounts of the carcinogenic reaction product MDA and that are intended for repeated use in contact with food.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2234, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney provision of the general safety clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive itself has not been shown to cause cancer. The agency now believes however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use

of numerous color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

This position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984), a case that involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Food Additives

FDA estimates that the petitioned use of the polyurethane resins will result in extremely low levels of exposure to these additives. The agency has calculated the estimated daily intake of the migrants from the additives (polyurethane oligomers and cylic polytetramethylene ether glycol oligomers) under the most severe conditions of the intended use of the additives and the probable concentrations of the migrants in the daily diet from the additives' use in contact with food. The agency estimated the potential daily intakes of the polyurethane oligomers and the cyclic polytetramethylene ether glycol oligomers to be 27 nanograms per person per day and 99 nanograms per person per day, respectively.

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and the agency has not required such testing here. However, the agency has reviewed available data from acute and subacute oral toxicity data in rats. Based on the very low level of exposure to the migrants from the use of these additives and the available toxicity data, the agency concludes that the food contact use of the additives is safe under the proposed conditions of use.

Because polyurethane resins, which may contain MDA, have not been shown to cause cancer, the Delaney anticancer provision of section 409(c)(3)(A) of the act does not apply to them. FDA, therefore, has evaluated the safety of these additives under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic impurity MDA, which may be present in the additives. Based on this evaluation, the agency has concluded that the polyurethane resins are safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, MDA, has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additives; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Methylenedianiline (MDA)

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyurethane resins, and on the level of MDA resulting from the hydrolysis of MDI in the resins, FDA estimated the worst-case exposure to MDA from the use of the additive to be 20 picograms (pg) per person per day (Ref. 3). The agency used data in a National Toxicological Program technical report (No. 248; 1983) on a carcinogenesis bioassay on MDA (also referred to as 4,4'-diphenylmethane-diamine in this bioassay) to estimate the upper-bound limit of lifetime human risk stemming from the proposed use of the additives (Ref. 4). The results of the bioassay on MDA demonstrated that MDA was carcinogenic for rats and mice of both sexes. The test material caused a significantly increased incidence of follicular cell tumors of the thyroid in male rats, hepatocellular carcinomas in mice, follicular cell carcinomas in mice and female rats, pheocytochromo-cytomas in male mice, malignant lymphomas in female rats, and neoplastic nodules in the liver of male rats. In addition, several rare tumors (bile duct adenoma in male rats, and ovarian granulosa-cell tumors and urinary bladder transitional cell papillomas in female rats) were observed in this study.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on MDA. The Quantitative Risk Assessment Committee of the Center for Food Safety and Applied Nutrition further concluded that an estimate of the upper-bound human risk from exposure to MDA stemming from the proposed use of the polyurethane resins could be calculated from the MDA bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal study to the very low doses encountered under the proposed conditions of use of the polyurethane resins. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of less than 20 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to MDA from the proposed use of the polyurethane resins is 1.6×10^{-11}, or less than 1.6 in 100 billion (Ref. 5). Because of the numerous conservatisms in the exposure estimate, actual lifetime averaged individual exposure to MDA is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to MDA that might result from the proposed use of the polyurethane resins.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of MDA in the polyurethane resins. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which MDA may be expected to remain as an impurity following production of the additives, the agency would not expect MDA to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1.6 in 100 billion.

III. Conclusion on Safety

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the polyurethane resins as rubber articles intended for repeated use in

contact with food is safe. Based on this information the agency has also concluded that the additives will have their intended technical effect, and, therefore, that § 177.2600 should be amended in paragraph (c)(4) as set forth below.

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

IV. Environmental Impact

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

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

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

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by Homburger F., J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated February 2, 1990, from the Food and Color Additives Review Section (HFF–415) to the Indirect Additives Branch (HFF–335), FAP OB4182—Dow DuPont, and B. F. Goodrich—Exposure to methylenedianiline.

4. Carcinogenesis bioassay of 4,4'-methylenedianiline dihydrochloride (CAS Reg. No. 1355–44–8) in F344/N Rats an $B6C3F_1$, Mice, National Toxicology Program Technical Report Series, No. NTP TR248, 1983.

5. Memorandum dated April 1, 1991, from the Quantitative Risk Assessment Committee; Upper-Bound Lifetime Risk for Methylenedianiline (MDA) in Polyurethane Resins Used as Rubber Articles, FAP OB4182 (Dow, DuPont, and B. F. Goodrich).

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.2600 is amended in paragraph (c)(4)(i) by alphabetically adding a new entry to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Polyurethane resins (CAS Reg. Nos. 37383–28–1 or 9018–04–6) derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol.

* * * * *

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1986 Filed 1–27–92; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 720

[Docket No. 89P–0180]

Modification in Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying the program it maintains for cosmetic companies to voluntarily file cosmetic product formulations and raw material compositions. FDA is eliminating the reporting of semiquantitative ingredient information, integrating information on raw materials into cosmetic product formulation statements, and discontinuing the forms for reporting raw material compositions. This action responds to a citizen petition filed by the Cosmetic, Toiletry and Fragrance Association (CTFA). The changes that are being made in the regulations are expected to facilitate participation in the cosmetic filing program.

EFFECTIVE DATE: Effective January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–444), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–245–1707.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 25, 1990 (55 FR 42993), FDA proposed to modify the program for voluntary filing of cosmetic product formulations and raw material compositions by eliminating the reporting of semiquantitative ingredient information (Forms FDA 2512 and 2512a), integrating raw material composition disclosures into cosmetic product formulation statements and discontinuing the forms for reporting raw material compositions (Forms FDA 2513 and 2513a). The proposal was in response to a citizen petition filed by the CTFA. FDA also proposed clarifying changes to update and to remove references from its regulations that would be obsolete if the proposal

became final. Interested persons were given until December 24, 1990, to comment on the proposal.

FDA received one comment in response to the proposal. That comment was from a trade association in support of the proposal. Accordingly, FDA is amending the voluntary filing of cosmetic product ingredient regulation (21 CFR part 720) to eliminate the reporting of semiquantitative ingredient information, to integrate raw material composition disclosures into cosmetic product formulation statements, and to discontinue the forms for reporting raw material compositions. FDA also is correcting the inadvertent omission in the proposal of the word "Product" in the heading for part 720.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

Paperwork Reduction Act of 1980

Sections 720.4 and 720.6 of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0030.

List of Subjects in 21 CFR Part 720

Confidential business information, Cosmetics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 720 is amended as follows:

1. The heading for part 720 is revised to read as follows:

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT STATEMENTS

2. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: Secs. 201, 301, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 361, 362, 371, 374).

3. Sections 720.1, 720.2, and 720.3 are revised to read as follows:

§ 720.1 Who should file.

Either the manufacturer, packer, or distributor of a cosmetic product is requested to file Form FDA 2512 ("Cosmetic Product Ingredient Statement"), whether or not the cosmetic product enters interstate commerce. This request extends to any foreign manufacturer, packer, or distributor of a cosmetic product exported for sale in any State as defined in section 201(a)(1) of the Federal Food, Drug, and Cosmetic Act. No filing fee is required.

§ 720.2 Times for filing.

Within 180 days after forms are made available to the industry, Form FDA 2512 should be filed for each cosmetic product being commercially distributed as of the effective date of this part. Form FDA 2512 should be filed within 60 days after the beginning of commercial distribution of any product not covered within the 180-day period.

§ 720.3 How and where to file.

Forms FDA 2512 and FDA 2514 ("Discontinuance of Commercial Distribution of Cosmetic Product Formulation") are obtainable on request from the Food and Drug Administration, Department of Health and Human Services, Washington, DC 20204, or at any Food and Drug Administration district office. The completed form should be mailed or delivered to: Cosmetic Product Statement, Food and Drug Administration, Department of Health and Human Services, Washington, DC 20204, according to the instructions provided with the forms.

4. Section 720.4 is amended in the introductory texts of paragraphs (a) and (b) by removing "FD-2512" and replacing it with "FDA 2512"; by removing paragraph (b)(5); by revising paragraphs (c)(12)(iii) through (c)(12)(v), (c)(12)(ix), and (c)(12)(x); by removing paragraphs (c)(12)(xi) and (c)(12)(xii); by revising the paragraph heading in the introductory text of paragraph (c)(13); by revising paragraph (d); by removing in paragraph (e) "FD-2512" in the first and second sentences and replacing it with "FDA 2512"; and by adding a parenthetical statement at the end of the section to read as follows:

§ 720.4 Information requested about cosmetic products.

* * * * *

(c) * * *

(12) * * *

(iii) Face and neck (excluding shaving preparations).

(iv) Body and hand (excluding shaving preparations).

(v) Foot powders and sprays.

* * * * *

(ix) Skin fresheners.

(x) Other skin care preparations.

(13) *Suntan preparations.* * * *

* * * * *

(d) Ingredients in the product should be listed as follows:

(1) A list of each ingredient of the cosmetic product in descending order of predominance by weight (except that the fragrance and/or flavor may be designated as such without naming each individual ingredient when the manufacturer or supplier of the fragrance and/or flavor refuses to disclose ingredient data).

(2) An ingredient should be listed by the name adopted by the Food and Drug Administration (FDA) for the ingredient pursuant to § 701.3(c) of this chapter.

(3) In the absence of a name adopted by FDA pursuant to § 701.3(c) of this chapter, its common or usual name, if it has one, or its chemical or technical name should be listed.

(4) If an ingredient is a mixture, each ingredient of the mixture should be listed in accordance with paragraphs (d)(2) and (d)(3) of this section, unless such mixture is a formulation voluntarily registered on Form FDA 2512, in which case such mixture should be identified as "fragrance," "flavor," "fragrance and flavor" or "base formulation," as appropriate, and by stating its FDA-assigned cosmetic product ingredient statement number.

(5) When the manufacturer or supplier of a fragrance and/or flavor refuses to disclose ingredient data, the fragrance and/or flavor should be listed as such. The nonconfidential listing of the product name and/or trade name or name of the manufacturer or supplier of each proprietary fragrance and/or flavor mixture is optional.

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0030)

§ 720.5 [Removed]

5. Section 720.5 *Information requested about cosmetic raw materials* is removed and reserved.

6. Sections 720.6 and 720.7 are revised to read as follows:

§ 720.6 Amendments to statement.

Changes in the information requested under §§ 720.4 (a)(3) and (a)(5) on the ingredients or brand name of a cosmetic product should be submitted by filing an amended Form FDA 2512 within 60 days after the product is entered into commercial distribution. Other changes do not justify immediate amendment, but should be shown by filing an amended Form FDA 2512 within a year after such changes. Notice of discontinuance of commercial distribution of a cosmetic product formulation should be submitted by Form FDA 2514 within 180 days after discontinuance of commercial distribution becomes known to the person filing.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0030)

§ 720.7 Notification of person submitting cosmetic product ingredient statement.

When Form FDA 2512 is received, FDA will either assign a permanent cosmetic product ingredient statement number or a Food and Drug Administration (FDA) reference number in those cases where a permanent number cannot be assigned. Receipt of the form will be acknowledged by sending the individual signing the statement an appropriate notice bearing either the FDA reference number or the permanent cosmetic product ingredient statement number. If the person submitting Form FDA 2512 has not complied with §§ 720.4 (b)(1) and (b)(2), the person will be notified as to the manner in which the statement is incomplete.

7. Section 720.8 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 720.8 Confidentiality of statements.

(a) Data and information contained in, attached to, or included with Forms FDA 2512 and FDA 2514, and amendments thereto are submitted voluntarily to the Food and Drug Administration (FDA). * * *

* * * * *

8. Section 720.9 is revised to read as follows:

§ 720.9 Misbranding by reference to filing or to statement number.

The filing of Form FDA 2512 or assignment of a number to the statement does not in any way denote approval by the Food and Drug Administration of the firm or the product. Any representation in labeling or advertising that creates an impression of official approval because of such filing or such number will be considered misleading.

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1989 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8390]

RIN 1545-AP37

Tax Treatment of Salvage and Reinsurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of salvage and reinsurance in computing the deduction for losses incurred of insurance companies other than life insurance companies. Changes to the applicable law were made by the Revenue Reconciliation Act of 1990. The regulations are necessary to provide these insurance companies with guidance needed to comply with these changes.

EFFECTIVE DATE: The regulations apply to taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky (202) 566-4336 (not a toll-free call) or Michael J. Douglass (202) 566-3603 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1227. The estimated average burden per respondent is 2 hours.

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

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and 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.

Background

This document sets forth final income tax regulations relating to the treatment of salvage and reinsurance under section 832(b)(5)(A) of the Internal Revenue Code. Section 832(b)(5)(A) was amended by section 11305 of the Revenue Reconciliation Act of 1990, 104 Stat. 1388 ("the 1990 Act"). Proposed regulations under section 832(b)(5)(A) were published in the **Federal Register** on March 15, 1991 (56 FR 11127) [FI-104-90]. Written comments were received from the public. No public hearing was held because there were no requests for a hearing. After consideration of all the written comments received, the proposed regulations under section 832(b)(5)(A) are adopted as modified by this Treasury decision.

Guidance regarding certain implementation issues under section 832(b)(5)(A) also is provided in Rev. Proc. 91-48, 1991-34 I.R.B. 12.

Explanation of Provisions

In General

Section 832(b)(3) of the Code defines the "underwriting income" of an insurance company subject to tax under section 831 as premiums earned less losses incurred and expenses incurred. Under section 832(b)(5)(A), "losses incurred" are computed by taking into account paid losses, unpaid losses, and salvage and reinsurance. For taxable years beginning before January 1, 1990, salvage and reinsurance recoverable was taken into account as a reduction to paid losses. For those taxable years, the regulations required salvage recoverable to be taken into account only to the extent that the salvage recoverable could be treated as an asset for state statutory accounting purposes.

For taxable years beginning after December 31, 1989, the 1990 Act amended section 832(b)(5)(A) to require

all estimated salvage recoverable (including that which cannot be treated as an asset for state statutory accounting purposes) to be taken into account in computing the deduction for losses incurred. Under section 832(b)(5)(A), paid losses are to be reduced by salvage and reinsurance recovered during the taxable year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. An adjustment is then made to reflect any changes in discounted estimated salvage recoverable and in reinsurance recoverable.

The amendments to the regulations conform the regulations to the new treatment of estimated salvage recoverable required by the 1990 Act. The regulations clarify that estimated salvage recoverable includes estimates of salvage recoverable that may not be treated as assets for state statutory accounting purposes. See H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1071 (1990). The regulations also make clear that the term "salvage recoverable" includes anticipated recoveries on account of subrogation claims arising with respect to paid or unpaid losses.

Under section 846(b)(1), the starting point for determining discounted unpaid losses for Federal income tax purposes is the amount of unpaid losses reported to state regulatory authorities on the annual statement. This conformity of tax and annual statement amounts discourages companies from overstating unpaid losses for Federal tax purposes because the claiming of excess unpaid losses may have adverse consequences for state regulatory purposes.

Commentators noted that certain companies had taken estimated salvage recoverable into account in determining the unpaid losses on their annual statements. For these companies, the requirement in the proposed regulations that estimated salvage recoverable be taken into account separately in computing losses incurred may result in a double counting of salvage. In response to these comments, the final regulations permit a limited exception to the conformity requirement if there is adequate disclosure to state regulatory authorities to assure that the purposes of conformity are achieved. Under the final regulations, a company that has taken estimated salvage recoverable into account in determining the amount of unpaid losses reported on the annual statement may increase its unpaid losses for tax purposes by the amount of estimated salvage recoverable taken into account in determining those unpaid losses provided this amount is disclosed to the state regulatory authorities.

The final regulations provide rules for making the disclosure. Under the final regulations, a company is allowed, for any taxable year, to adjust the amount of unpaid losses shown on its annual statement by estimated salvage recoverable only if the company either (i) discloses on its annual statement, by line of business and accident year, the extent to which estimated salvage recoverable was taken into account in determining the amount of unpaid losses shown on the annual statement, or (ii) files a statement with the state regulatory authority of each state to which the company is required to submit an annual statement. The statement must disclose, by line of business and accident year, the extent to which estimated salvage recoverable was taken into account in computing the unpaid losses shown on the annual statement. Rules also are provided concerning the form of the statement and the time it must be filed.

Transitional Rules

By requiring insurance companies to take estimated salvage recoverable into account in computing losses incurred, the 1990 Act changed the method by which companies compute losses incurred. Section 11305(c)(2)(A) of the 1990 Act treats this change as a change in method of accounting. Section 11305(c)(2)(B) of the 1990 Act provides that an insurance company must take into account only 13 percent of the section 481 adjustment that would otherwise have been required as a result of the change in method of accounting.

Section 11305(c)(4) of the 1990 Act provides a rule for overestimates of the section 481 adjustment. Under this rule, an insurance company subject to tax under section 831 is required to include in gross income 87 percent of any amount (adjusted for discounting) by which the section 481 adjustment is overestimated. The rule is applied by comparing the amount of the section 481 adjustment (determined without regard to section 11305(c)(2) of the 1990 Act and any discounting) to the sum of the actual salvage recoveries and the remaining undiscounted estimated salvage recoverable that are attributable to losses incurred in accident years beginning before 1990. For any taxable year beginning after December 31, 1989, any excess of the section 481 adjustment over this sum is an overestimate for purposes of section 11305(c)(4) of the 1990 Act. To determine the amount to be included in income, it is necessary to discount this excess and multiply the resulting amount by 87 percent.

In the case of an insurance company subject to tax under section 831, section 11305(c)(3) of the 1990 Act allows the insurance company to deduct 87 percent of the discounted amount of estimated salvage recoverable that the company took into account under its method of accounting for the last taxable year beginning before January 1, 1990 ("special deduction"). In response to comments requesting clarification of the proposed regulations, the final regulations make clear that a company that claims the special deduction may not also claim the benefit of section 11305(c)(2)(B) of the 1990 Act.

The proposed regulations provide that an insurance company claiming the special deduction must be able to establish to the satisfaction of the district director that it took estimated salvage recoverable into account for the last taxable year before January 1, 1990. Under the proposed regulations, a company may not satisfy this requirement merely by stating that estimated salvage recoverable is reflected in the company's loss reserves, but may satisfy this requirement by disclosing to the relevant state regulatory authority the extent to which the company took into account estimated salvage recoverable in computing paid or unpaid losses (whichever is applicable) on its 1989 annual statement.

In response to comments concerning the scope of this disclosure provision, the final regulations clarify the circumstances under which disclosure to state regulatory authorities will satisfy this requirement. The final regulations provide that the amount of a special deduction will be deemed to have been established to the satisfaction of the district director if (i) by September 16, 1991, the company filed with its state regulatory authority a statement disclosing the extent to which losses incurred for each line of business shown on the 1989 annual statement were reduced by estimated salvage recoverable, and (ii) the company agreed, on a statement attached to its return for its first taxable year beginning after December 31, 1989, to apply the special rule for overestimates to the amount of estimated salvage recoverable for which it has taken the special deduction. If the company is a member of a consolidated group, each property and casualty insurance company that is a member of the consolidated group must join in the agreement to apply the special rule for overestimates.

The special deduction was designed to create parity between those taxpayers that took estimated salvage recoverable into account for the last taxable year beginning before January 1, 1990, and those taxpayers that did not take estimated salvage recoverable into account. If the inclusion of estimated salvage recoverable did not increase a company's taxable income, no special deduction is needed. Accordingly, the final regulations provide that an insurance company that claimed a "fresh start" benefit with respect to estimated salvage recoverable under section 1023(e) of the Tax Reform Act of 1986 may not claim the special deduction under section 11305(c)(3) of the 1990 Act to the extent the company has previously claimed the benefit of a fresh start.

Special Analyses

It has been determined that these 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 Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Katherine A. Hossofsky and Michael J. Douglass of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.831-1 Through 1.832-7T

Income taxes, Insurance companies.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the citation for § 1.832-4T and by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.832-4 also issued under 26 U.S.C. 832(b)(5)(A).

§ 1.832-4T [Redesignated as § 1.832-4]

Par. 2. Section 1.832-4T is redesignated as § 1.832-4.

Par. 3. Newly redesignated § 1.832-4 is amended as follows:

1. The section heading is revised.
2. The last sentence of paragraph (a)(5) is removed.
3. Paragraphs (b) through (e) are revised.
4. Paragraphs (f) and (g) are added.
5. The revised and added provisions read as follows:

§ 1.832-4 Gross income.

* * * * *

(b) *Losses incurred.* Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses. See section 846 for rules relating to the determination of discounted unpaid losses. These losses must be stated in amounts which, based upon the facts in each case and the company's experience with similar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of a fair and reasonable estimate will be disallowed as a deduction. The district director may require any insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) *Losses incurred are reduced by salvage.* Under section 832(b)(5)(A), losses incurred are computed by taking into account losses paid reduced by salvage and reinsurance recovered, the change in discounted unpaid losses, and the change in estimated salvage and reinsurance recoverable. For purposes of section 832(b)(5)(A)(iii), estimated salvage recoverable includes all anticipated recoveries on account of salvage, whether or not the salvage is treated, or may be treated, as an asset for state statutory accounting purposes. Estimates of salvage recoverable must be based on the facts of each case and the company's experience with similar cases. Except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin, estimated salvage recoverable must be discounted either—

(1) By using the applicable discount factors published by the Commissioner for estimated salvage recoverable; or

(2) By using the loss payment pattern for a line of business as the salvage recovery pattern for that line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). For purposes of section 832(b)(5)(A) and the regulations thereunder, the term "salvage recoverable" includes anticipated recoveries on account of subrogation claims arising with respect to paid or unpaid losses.

(d) *Increase in unpaid losses shown on annual statement in certain circumstances*—(1) *In general.* An insurance company that takes estimated salvage recoverable into account in determining the amount of its unpaid losses shown on its annual statement is allowed to increase its unpaid losses by the amount of estimated salvage recoverable taken into account if the company complies with the disclosure requirement of paragraph (d)(2) of this section. This adjustment shall not be used in determining under section 846(d) the loss payment pattern for a line of business.

(2) *Disclosure requirement.* (i) *In general.* A company described in paragraph (d)(1) of this section is allowed to increase the unpaid losses shown on its annual statement only if the company either—

(a) Discloses on its annual statement, by line of business and accident year, the extent to which estimated salvage recoverable is taken into account in computing the unpaid losses shown on the annual statement filed by the company for the calendar year ending with or within the taxable year of the company; or

(B) Files a statement on or before the due date of its Federal income tax return (determined without regard to extensions) with the appropriate state regulatory authority of each state to which the company is required to submit an annual statement. The statement must be contained in a separate document captioned "DISCLOSURE CONCERNING LOSS RESERVES" and must disclose, by line of business and accident year, the extent to which estimated salvage recoverable is taken

into account in computing the unpaid losses shown on the annual statement filed by the company for the calendar year ending with or within the taxable year of the company.

(ii) *Transitional rule.* For a taxable year ending before December 31, 1991, a taxpayer is deemed to satisfy the disclosure requirement of paragraph (d)(2)(i)(B) of this section if the taxpayer files the statement described in paragraph (d)(2)(i)(B) of this section before March 17, 1992.

(3) *Failure to disclose in a subsequent year.* If a company that claims the increase permitted by paragraph (d)(1) of this section fails in a subsequent taxable year to make the disclosure described in paragraph (d)(2) of this section, the company cannot claim an increase under paragraph (d)(1) of this section in any subsequent taxable year without the consent of the Commissioner.

(e) *Treatment of estimated salvage recoverable*—(1) *In general.* An insurance company is required to take estimated salvage recoverable (including that which cannot be treated as an asset for state statutory accounting purposes) into account in computing the deduction for losses incurred. Except as provided in paragraph (e)(2)(iii) of this section, an insurance company must apply this method of accounting to estimated salvage recoverable for all lines of business and for all accident years.

(2) *Change in method of accounting*—(i) If an insurance company did not take estimated salvage recoverable into account as required by paragraph (c) of this section for its last taxable year beginning before January 1, 1990, taking estimated salvage recoverable into account as required by paragraph (c) of this section is a change in method of accounting.

(ii) If a company does not claim the deduction under section 11305(c)(3) of the 1990 Act, the company must take into account 13 percent of the adjustment that would otherwise be required under section 481 for pre-1990 accident years as a result of the change in accounting method. This paragraph (e)(2)(ii) applies only to an insurance company subject to tax under section 831.

(iii) If a company claims the deduction under section 11305(c)(3) of the 1990 Act and paragraph (f) of this section, the company must implement the change in method of accounting for estimated salvage recoverable for post-1989 taxable years pursuant to a "cut-off" method.

(3) *Rule for overestimates.* An insurance company is required under section 11305(c)(4) of the 1990 Act to include in gross income 87 percent of any amount (adjusted for discounting) by which the section 481 adjustment is overestimated. The rule is applied by comparing the amount of the section 481 adjustment (determined without regard to paragraph (e)(2)(ii) of this section and any discounting) to the sum of the actual salvage recoveries and remaining undiscounted estimated salvage recoverable that are attributable to losses incurred in accident years beginning before 1990. For any taxable year beginning after December 31, 1989, any excess of the section 481 adjustment over this sum (reduced by amounts treated as overestimates in prior taxable years pursuant to this paragraph (e)(3)) is an overestimate. To determine the amount to be included in income, it is necessary to discount this excess and multiply the resulting amount by 87 percent.

(f) *Special deduction*—(1) *In general.* Under section 11305(c)(3) of the 1990 Act, an insurance company may deduct an amount equal to 87 percent of the discounted amount of estimated salvage recoverable that the company took into account in determining the deduction for losses incurred under section 832(b)(5) in the last taxable year beginning before January 1, 1990. A company that claims the special deduction must establish to the satisfaction of the district director that the deduction represents only the discounted amount of estimated salvage recoverable that was actually taken into account by the company in computing losses incurred for that taxable year.

(2) *Safe harbor.* The requirements of paragraph (f)(1) of this section are deemed satisfied and the amount that the company reports as bona fide estimated salvage recoverable is not subject to adjustment by the district director, if—

(i) The company files with the insurance regulatory authority of the company's state of domicile, on or before September 16, 1991, a statement disclosing the extent to which losses incurred for each line of business reported on its 1989 annual statement were reduced by estimated salvage recoverable,

(ii) The company attaches a statement to its Federal income tax return filed for the first taxable year beginning after December 31, 1989, agreeing to apply the special rule for overestimates under section 11305(c)(4) of the 1990 Act to the amount of estimated salvage recoverable for which it has taken the special deduction, and

(iii) In the case of a company that is a member of a consolidated group, each insurance company subject to tax under section 831 that is included in the consolidated group complies with paragraph (f)(2)(ii) of this section with respect to its special deduction, if any.

(3) *Limitations on special deduction*—(i) The special deduction under section 11305(c)(3) of the 1990 Act is available only to an insurance company subject to tax under section 831.

(ii) An insurance company that claimed the benefit of the "fresh start" with respect to estimated salvage recoverable under section 1023(e) of the Tax Reform Act of 1986 may not claim the special deduction allowed by section 11305(c)(3) of the 1990 Act to the extent of the estimated salvage recoverable for which a fresh start benefit was previously claimed.

(iii) A company that claims the special deduction is precluded from also claiming the section 481 adjustment provided in paragraph (e)(2)(ii) of this section for pre-1990 accident years.

(g) *Effective date.* Paragraphs (b) through (f) of this section are effective for taxable years beginning after December 31, 1989.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPER REDUCTION ACT

§ 602.101 [Amended]

Par. 4. The table of OMB Control Numbers in § 602.101 is amended by revising the entry for § 1.832–4 as follows:

"§ 1.832–4 . . . . 1545–1227".

December 24, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92–1942 Filed 1–27–92; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 87–313, FCC 91–344]

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissing petitions for further reconsideration as moot.

SUMMARY: On April 17, 1991, the Commission released the Price Cap Local Exchange Carrier Reconsideration Order in CC Docket No. 87–313, 56 FR 21612, which, *inter alia*, adopted new rules for evaluation of rates for new

services under price cap regulation. Petitions to Reconsider those rules were filed June 12, 1991. On June 13, 1991, the Commission adopted the part 69/Open Network Architecture Order in CC Docket Nos. 89-79 and 87-313, 56 FR 33879, which examined and modified the price caps new service rules. This action resolved the issues raised in the petitions for further reconsideration.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Spaeth, tel: (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: October 29, 1992; Released: December 20, 1991

By the Commission:

1. On April 17, 1991, this Commission released an Order on Reconsideration in the above-captioned proceeding, generally affirming and clarifying the previous order regarding price cap regulation for local exchange carriers (LECs).[1] Three parties petitioned for further reconsideration of that order on the single issue of the Commission's establishment of an interim approach for the evaluation of new services rates.[2]

2. In view of the subsequent adoption by the Commission of an Order resolving this issue and superseding the interim method,[3] these petitions for further reconsideration are moot.

3. Accordingly, *It Is Ordered*, That the petitions for further reconsideration submitted by BellSouth, Southwestern Bell, and the United States Telephone Association *Are Dismissed* As moot.

[1] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637 (1991), 56 FR 21612, May 10, 1990 (*LEC Price Cap Order on Reconsideration*); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), 55 FR 42375, October 19, 1990 and Erratum, 5 FCC Rcd 7664 (1990), 55 FR 50558, December 7, 1990 (*LEC Price Cap Order*), *appeal docketed, D.C. PSC* v. *FCC*, No. 91-1279 (D.C. Cir. June 13, 1991).

[2] Petitions for Further Reconsideration filed by BellSouth Telephone (BellSouth), Southwestern Bell Corporation (SWB), and the United States Telephone Association (USTA).

[3] Amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 88-89, and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, FCC 91-186, released July 11, 1991 (*ONA Order*), 56 FR 33891, July 24, 1991, paras. 38-44. The *ONA Order*, published in the Federal Register on July 24, 1991, became effective August 23, 1991.

Federal Communications Commissions.

Donna R. Searcy,

Secretary.

[FR Doc. 92-1988 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-306, RM-7824]

Radio Broadcasting Services; Safford, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231C for Channel 231C1 in Safford, Arizona, and modifies the construction permit of Station KXKQ(FM) in Safford in response to a petition for rule making filed by P & M Broadcasting, Inc., licensee of Station KXKQ(FM), Channel 231C1, Safford, Arizona. *See* 56 FR 56181, October 1, 1991. The coordinates for Channel 231C are 32-49-30 and 109-45-30. With this action the proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-306, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 231C and removing Channel 231C1 at Safford.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-2060 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-441; RM-6813]

Television Broadcasting Services; Calipatria, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 54 to Calipatria, California, as that community's first local television broadcast service, in response to a petition for rule making filed on behalf of Calipatria Television. See 54 FR 42809, October 18, 1989. Coordinates used for Channel 54 at Calipatria are 33-04-37 and 115-19-46. Since Calipatria is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government to this proposal was obtained.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-441, adopted January 10, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under California, is amended by adding Calipatria, Channel 54.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 92-1924 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-315; RM-7830]

Radio Broadcasting Services; Perham, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258A to Perham, Minnesota, in response to a petition filed by John A. Brush, Yvonne M. Brush and Amy C. Rutledge. *See* 56 FR 57302, November 8, 1991. The coordinates for Channel 258A are 46-35-42 and 95-34-24. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992. The window period for filing applications for Channel 258A at Perham, Minnesota, will open on March 10, 1992, and close on April 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-315, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 258A, Perham.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-2061 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-277; RM-7810]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229C3 for Channel 229A at Oxford, Mississippi, and modifies the license for Station WKLJ-FM to specify operation on the higher class channel, in response to a petition filed by Oxford Radio, Inc. See 56 FR 50548, October 7, 1991. The coordinates for Channel 229C3 are 34-20-05 and 89-43-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-277, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 229A and adding Channel 229C3 at Oxford.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-1921 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-274; RM-7802]

Radio Broadcasting Services; Piedmont, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C3 for Channel 285A at Piedmont, Missouri, and modifies the license for Station KPWB-FM to specify operation on Channel 285C3, in response to a petition filed by Hunt Broadcasting Group, Inc. See 56 FR 50549, December 9, 1991. The coordinates for Channel 285C3 are 37-13-32 and 90-48-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-274, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 285A and adding Channel 285C3 at Piedmont.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-1925 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-110; RM-7678]

Radio Broadcasting Services; Hastings and Milford, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bott Communications, Inc., reallots Channel 251C from Hastings, Nebraska, to Milford, Nebraska, as the community's first local FM service, and modifies Station KUHG(FM)'s construction permit to specify Milford as its community of license. See 56 FR 16051, April 19, 1991. Channel 251C can be allotted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 46.5 kilometers (28.9 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 40-48-00 and West Longitude 97-36-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-110, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 251C at Hastings and adding Milford, Channel 251C.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-1923 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-234; RM-7745]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Heartland Radio, Inc., substitutes Channel 268C for Channel 268C2 at Hastings, Nebraska, and modifies its license for Station KEZH(FM) to specify operation on the higher class channel. See 56 FR 40843, August 16, 1991. Channel 268C is allotted at Hastings 41.5 kilometers (25.8 miles) west of the community at coordinates 40-39-28 and 98-52-04. With this action, this proceeding is terminated.

EFFECTIVE DATES: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-234, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska is amended by removing Channel 268C2 and adding Channel 268C at Hastings.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-2062 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-31; RM-7535]

Radio Broadcasting Services; Kershaw, SC, and Waxhaw, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jeffrey C. Sigmon, substitutes Channel 291C3 for Channel 291A at Kershaw, South Carolina, reallots Channel 291C3 to Waxhaw, North Carolina, and modifies his construction permit for Station WLWN to specify operation on the higher class channel at Waxhaw. See 56 FR 8975, March 4, 1991. Channel 291C3 can be allotted to Waxhaw in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) southeast to avoid short-spacings to Station WRDX, Channel 293C, Salisbury, North Carolina, and the pending application of Station WZLI, Channel 291C1, Toccoa, Georgia (BPH-900301IE). With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-31, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Waxhaw, Channel 291C3.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Kershaw, Channel 291A.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-2063 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1853 and 1870

Change to NASA FAR Supplement Concerning Treatment of Performance Risk and Past Performance in Source Selection

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

ACTION: Final rule.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. This rule requires that Source Evaluation Board (SEB) specifically consider proposal risk in their deliberations. In addition, this rule establishes a Contract Performance Summary to report contractor performance on award fee contracts to support SEB evaluations of past performance.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas L. Deback, Procurement Analyst, Competition and Program Operations Division (Code HS), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2192.

SUPPLEMENTARY INFORMATION:

Background

NASA has recently re-evaluated its treatment of proposal risk in Source Evaluation Board procedures and has determined that it should be emphasized and strengthened. Further, the treatment of Relevant Experience and Past Performance should be strengthened by requiring that the Mission Suitability subfactors be specifically enumerated and evaluated under Relevant Experience and Past Performance.

A proposed rule was published in 56 FR 58885, November 22, 1991. In preparing the final rule, the public comments contained in seven letters, received during the comment period, have been considered.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certificates that this regulation 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.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1804, 1853 and 1870

Government procurement.

Darleen A. Druyun,

Assistant Administrator for Procurement

1. The authority citation for 48 CFR parts 1804, 1853 and 1870 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

2. Sections 1804.677, 1804.677-1, 1804.677-2, 1804.677-3, 1804.677-4, 1804.677-5, and 1804.677-6 are added to read as follows:

1804.677 Contractor Performance Summary Report (NASA Form 1651).

1804.677-1 Applicability and coverage.

(a) The purpose of the Contractor Performance Summary (CPS) system is to provide agency-wide contractor performance-data for use in source selections. The CPS's will be used as an aid in evaluating contractors' past performance and awarding contracts to contractors that provide quality products or services that conform to requirements within contract schedule and cost.

(b) The CPS summarizes a contractor's performance on a contract during a specific period of time. Each assessment will reflect the evaluations performed by the Performance Evaluation Board during the previous calendar year.

(c) The CPS will be completed once annually for award fee contracts in excess of $25M (total contract value including options) for which at least one award fee evaluation has been completed during the year prior to January 1 of the year in which the report is due. CPS's may also be submitted for significant non-award fee contracts at the center's discretion.

1804.677-2 Submission due dates.

(a) by February 28 of each year, the cognizant contracting officer will provide to the center CPS focal point a CPS for each applicable contract.

(b) By March 31 of each year, the center CPS focal point will distribute to all other center focal points CPS's for all applicable contracts being administered by that focal point.

1804.677-3 Contractor Performance Summary (CPS) Focal Points.

(a) A CPS focal point is the administrative location within each named NASA center which maintains the file of each CPS by contractor. Each contractor file will contain separate files for each division and subsidiary of the firm for which there is a separate contract. The focal point will retain each CPS report for five years.

(b) The procurement activities at the following centers will establish and maintain CPS focal points:

Ames Research Center, Moffett Field, CA 94035 (Attn: Mail Code 241-1/CPS Focal Point)

Goddard Space Flight Center, Greenbelt, MD 20771 (Attn: Mail Code 200/CPS Focal Point)

Lyndon B. Johnson Space Center, Houston, TX 77058 (Attn: Mail Code BB/CPS Focal Point)

John F. Kennedy Space Center, Kennedy Space Center, FL 32899 (Attn: Mail Code OP-CPS/CPS Focal Point)

Langley Research Center, Hampton, VA 23665 (Attn: Mail Code 144/CPS Focal Point)

Lewis Research Center, 21000 Brookpark Road, Cleveland Ohio 44135 (Attn: Mail Code 500-306/CPS Focal Point)

George C. Marshall Space Flight Center, Huntsville, AL 35812 (Attn: AP12/CPS Focal Point)

John C. Stennis Space Center, Stennis Space Center, MS 39529-6000 (Attn: DAOO/CPS Focal Point)

Headquarters Acquisition Division, National Aeronautics and Space Administration, Washington, DC 20546 (Attn: HWB/CPS Focal Point)

(c) Center CPS focal points are responsible for tracking and suspensing CPS's.

1804.677-4 Distribution of CPS's and interagency requests.

(a) Distribution of CPS's within the agency will only be made from one center focal point to another. Source Evaluation Board (SEB) members will contact their local CPS focal point for CPS's relevant to the selection in process.

(b) The Assistant Administrator for Procurement (Code HM) is the agency focal point for processing CPS requests from Government activities outside the agency. All such requests are to be forwarded to Code HM for action.

1804.677-5 CPS markings and protection.

The contracting officer is responsible for ensuring that CPS's are appropriately marked. All CPS forms, attachments and working papers must be marked "SOURCE SELECTION INFORMATION (SEE FAR 3.104)." CPS's have the unique characteristic of always being predecisional in nature. They will always be source selection information because they will be in constant use to support ongoing source selections. This predecisional nature of the CPS's is a basis for requiring that the CPS data be protected from unauthorized disclosure to personnel or entities outside the source selection process. Based on the nature of the CPS system, the following guidance applies to protection both internal and external to the Government.

(a) *Internal Government Protection.* CPS's must be treated as source selection information at all times. The flow of CPS's throughout the agency in support of source selections will be controlled by the CPS focal points and transmitted only from one CPS focal point to another. Outside of use in a source selection, information contained on the CPS's must be protected in the same manner as information contained in completed source selection files. The completed CPS forms shall not be used to support preaward surveys, debarment proceedings or other internal Government reviews.

(b) *External Government Protection.* Disclosure of completed CPS forms to other contractors or personnel outside the Government is not authorized. This information is considered pre-decisional pursuant to 5 U.S.C. 552(b)(5) of the Freedom of Information Act (FOIA). On those occasions when a FOIA request is received for CPS release, process the request through FOIA channels.

1804.677-6 Instructions for completing NASA Form 1651, Contractor Performance Summary Report—CPS.

(a) Type all information on the form.

(b) Item 1, Name/Address of Contractor. State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation.

(c) Item 2, Location of Contract Performance. Indicate the primary place of contract performance if different from Item 1.

(d) Item 3, Initial, Intermediate, Final Report. Indicate whether it is an initial, intermediate, or final report. An initial report is the first report submitted on a contract. A final report is the last report submitted on a contract.

(e) Item 4, Reporting Period. State what period is covered by the report. Except at the beginning and end of the contract, this will be a calendar year.

(f) Item 5, Contract Number/Contract Type. Self-explanatory.

(g) Item 6, Center. Self-explanatory.

(h) Item 7, Contract Period of Performance. State period of performance including all options.

(i) Item 8, Contract Percent Complete. For hardware contracts, state the percent of the work that is completed. Otherwise, enter "N/A".

(j) Item 9, Current Contract Dollar Value. State the current value of contract including options.

(k) Item 10, Competitive/Noncompetitive. Self-explanatory.

(l) Item 11, Program Title. Provide a short descriptive narrative of the program. Do not use abbreviations. Identify program phase, if applicable.

(m) Item 12, Program Description. Provide a short description of the contract effort that identifies key technologies, components, subsystems, requirements, services required, or task order areas. This section is of critical importance to SEBs to allow them to determine the relevancy of the contract being reviewed to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. A brief description of key milestone events that occurred in the review period may be beneficial (e.g., Preliminary Design Review, Critical Design Review).

(n) Item 13, Evaluate the Following Areas. (1) Each area assessment must accurately reflect the Performance Evaluation Board evaluations completed during the previous calendar year.

(2) Each applicable evaluation area will be evaluated as Excellent, Very Good, Good, Fair, Poor, or Unsatisfactory. The following definitions are provided as guidance in determining the appropriate rating:

Excellent: Of exceptional merit; exemplary performance in a timely, efficient, and economical manner—very minor deficiencies with no adverse effect on overall performance (Point Range: 93–100).

Very Good: Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part. Only minor deficiencies (Point Range: 85–92).

Good: Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance (Point Range: 77–84).

Fair: Meets or slightly exceeds minimum acceptable standards; adequate results. Reportable deficiencies with identifiable, but not substantial, effects on overall performance (Point Range: 69–76).

Poor: Meets most minimum acceptable standards; useful levels of performance, but remedial action required. Reportable deficiencies which adversely affect overall performance (Point Range: 61–68).

Unsatisfactory: Below minimum acceptable standards; inadequate results; requires prompt remedial action. Significant deficiencies (Point Range: 60 and below).

"N/A" will be indicated for any area clearly not evaluated by the PEB.

(3) The areas which are to be rated on the form, with a brief description, are as follows:

Understanding Requirements/Technical Performance. Evaluate the extent to which the contractor is meeting technical performance in terms of the contract requirements.

Technical Management Performance. Evaluate the contractor's management of the technical functions. This activity includes appropriate assignment of personnel, anticipating and resolving technical difficulties, and mitigating technical performance risks.

Excellence of Hardware Design. Evaluate the contractor's ability to develop a hardware design which meets all contractual requirements.

Corporate or Company Resources. Evaluate the contractor's ability to provide manpower, facilities, and materials to support the effort required under the contract.

Contract/Business Management. Evaluate the contractor's management of the business and contractual aspects of the effort. This activity includes timely and accurate reporting (including cost) and responsiveness to requests for information.

Subcontract Management. Evaluate the contractor's management of subcontracts. This includes efforts taken to identify subcontract problems and timely action to ensure that overall prime contract performance is not impacted.

Small and Disadvantaged Business Program. Evaluate the contractor's management of the small and disadvantaged business program. This includes efforts to identify and qualify small and disadvantaged businesses.

Key Personnel. Evaluate the contractor's ability to effectively staff key positions with qualified personnel. This activity includes promptly providing qualified replacements as required.

Cost Performance. Evaluate the contractor's ability to manage and control costs.

Adherence to Schedule. Evaluate the contractor's ability to meet contract schedules. This includes taking appropriate measures to regain on-schedule performance if delays occur.

Safety, Reliability, Maintainability, and Quality Assurance. Evaluate the contractor's ability to perform SRM&QA requirements of the contract. This includes providing adequate resources to these functions.

Other. The contracting officer may use the "Other" row to rate a critical area not included in Item 13. Specify the area being rated.

% Over (+) or Under (−) Target Cost. Specify the percentage of overrun or underrun currently being experienced on the contract.

% Available Award Fee Paid During Reporting Period. Specify the percentage of available award fee paid during the reporting period.

(4) If any area is rated "Good" or below, the contracting officer will provide a brief explanation of each such rating in Item 16.

(5) The completed form will be provided to the contractor. The contractor will be given 30 days to concur in the summary or provide any mitigating information. The mitigating information will be limited to the space permitted in Item 17 of the form. This opportunity to respond is not an opportunity to re-open the PEB evaluation.

(6) If as a result of contractor comments, ratings on the CPS are amended, pen and ink changes to the form may be made. The contractor will be provided a copy of the amended CPS rating for information only.

(7) The CPS will be approved by the Fee Determination Official or Project Manager.

(o) Item 14, Technical Point of Contact: Self-explanatory.

(p) Item 15, Contracting Point of Contact: Self-explanatory.

(q) Item 16, Contracting Officer Comments: The contracting officer will briefly discuss the causes and rationale for any ratings of "Fair" or below.

(r) Item 17, Contractor Comments: The contractor may provide any mitigating information. The comments will be limited to the Item 17 block.

(s) Item 18, Typed Name and Signature of Contractor Representative: Self-explanatory.

(t) Item 19, Typed Name and Signature of Contracting Officer: Self-explanatory.

(u) Item 20, Typed Name and Signature of Fee Determination Official or Project Manager: Self-explanatory.

PART 1853—FORMS

1853.204-70 [Amended]

3. In subpart 1853.2, section 1853.204-70, the section heading is revised and paragraph (o) is added to read as follows:

1853.204-70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1651, and 1612 and DD Form 1593).

* * * * *

(o) NASA Form 1651, Contractor Performance Summary. NASA Form 1651, prescribed at 1804.677, shall be used for reporting a summary of contractor performance.

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.303 [Amended]

4. Subpart 1870.3, Appendix I, to 1870.303 is amended as set forth below:

a. In chapter 3, section 301, paragraphs 1f. and 1g. are redesignated 1g. and 1h., respectively, and a new paragraph 1f. is added to read as follows:

* * * * *

301 Mission Suitability

1. Evaluation Subfactors

* * * * *

f. (1) Proposal risk will be carefully considered in evaluating proposals. The proposal risks to be assessed are those associated with cost, schedule, and performance or technical aspects of the program. These risks will be considered in the Mission Suitability subfactors and the Cost factor evaluation. Risks may be inherent in a program by virtue of the program objectives relative to the state of the art. Risks may occur as a result of a particular technical approach, manufacturing plan, the selection of certain materials, processes, equipment, etc., or as a result of the cost, schedule and economic impacts associated with these approaches. Risk may also occur from the impact that these will have on the offeror's ability to perform.

(2) As part of their proposal, offerors should be required to submit a risk analysis which identifies risk areas and the recommended approaches to minimize the impact of those risks on the overall success of the program.

(3) In evaluating risks, the evaluators must consider the offeror's assessment and make an independent judgment of the probability of success, the impact of failure, and the alternatives available to meet the requirements.

(4) Risk assessments shall be discussed in the SEB Report and be considered in determining the overall numerical and adjectival ratings and the strengths and weaknesses.

(5) It is the responsibility of the evaluation teams to inform the cost team of identified risk areas and the potential for cost impact.

* * * * *

b. In Chapter 3, section 303, paragraph 1. is revised to read as follows:

303 Relevant Experience and Past Performance

1. *Relevant Experience and Past Performance*

This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant procurement.

a. The performance risks which must be assessed are those associated with cost, schedule, and performance or technical aspects of the program. These risks are those which arise as a result of the offeror's past or current experience with similar types of efforts.

b. Data on the offeror's performance (including that of major subcontractors or teaming contractors) will be obtained from a variety of sources. Information on programs and contracts is available from the Contractor Performance Summary (CPS) report system from the center CPS focal point. (If the information received from the CPS focal point is more than six months old, it is recommended that follow-up with the contracting officer be initiated to ensure that significant changes have not occurred.) Information on programs and contracts outside the CPS system and information on contractors not within the CPS data base may be obtained from questionnaires or interviews, or other past performance assessment systems established by contracting activities outside the agency. Questionnaires or interviews should be tailored to focus on information that demonstrates performance related to each evaluation factor or subfactor.

c. Performance data collection is not limited solely to the proposing prime contractor division. Corporate-wide data should be reviewed to determine if any corporate-wide trends are relevant to the source selection. If other divisions, corporate management, critical subcontractors, or teaming contractors perform a critical element or significantly influence the proposed effort, their performance record should be evaluated and the risk relative to the appropriate evaluation factor or subfactor should be assessed. All performance risk assessments that include such diverse data must separately identify and document the data.

d. Each performance evaluation and risk assessment will consider the number and severity of problems, the effectiveness of corrective actions taken, and the overall work record. The assessment of performance

risk is not intended to be a simple arithmetic function of an offeror's performance on a list of contracts; but rather the information deemed most relevant and significant will receive the greatest consideration.

* * * * *

[FR Doc. 92-1874 Filed 1-27-92; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC-91-6]

RIN 2125-AC28

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its commercial motor vehicle marking requirements by making them applicable to every commercial motor vehicle subject to the Federal Motor Carrier Safety Regulations (FMCSRs). This action to include a broader range of vehicles will improve uniformity of identification of commercial motor vehicles operated on the nation's highways and aid enforcement officers in carrying out their duties.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Unique identification numbers provide a rapid and sure way to distinguish a particular motor carrier's vehicles. There are many companies with the same or similar name but which are located in different cities or states. As an example, there are twelve independent Arrow Trucking Companies, located in twelve different cities. Without the ability to quickly identify the city and State of domicile, the name of the motor carrier alone will be of little value to the average motorist.

A final rule published in the **Federal Register** on May 19, 1988 (53 FR 18042, Docket No. MC-114) (effective November 15, 1988), among other things amended part 390 of the FMCSRs by adding § 390.21, Marking of commercial motor vehicles. That rule generally required self-propelled motor vehicles operated by interstate private motor carriers of property and interstate motor carriers of migrant workers to be marked. The marking is to be located on both sides of the self-propelled vehicle and consists of the motor carrier's name or trade name, the city or community and State (name abbreviated) in which the carrier maintains its principal place of business or in which the vehicle is customarily based, and the motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT."

The ICC regulates the marking of commercial motor vehicles operated in interstate commerce by common and contract motor carriers of property or passengers. The ICC published a final rule, "Practice and Procedure: Miscellaneous Amendments; Revisions," including an amendment to § 49 CFR 1058, "Identification of Vehicles" in the **Federal Register** on March 27, 1990 (55 FR 11196). This rule extends the ICC's regulations to "govern all for-hire motor carriers except those providing (a) Joint, through, regular-route passenger service under continuing lease or interchange agreements, if the vehicle owner's name and "MC" number are displayed as prescribed at 49 CFR 1058.2, and if the carriers have filed with the Commission's appropriate Regional-Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers."

The ICC also discontinued a rulemaking in the **Federal Register** on July 11, 1990 (55 FR 28419), which would have eliminated the vehicle marking requirements of 49 CFR 1058 and adjusted the leasing regulations at 49 CFR 1057. The overwhelming majority of the comments received by the ICC indicated that the marking requirement is essential to public safety, because it allows immediate identification of vehicles in situations involving moving violations, stolen equipment, security, and unauthorized or uninsured operations.

The Authority Transferred in 1966

(Pub. L. 89-670, 80 Stat. 931, 940) to the Department of Transportation (codified at 49 U.S.C. 3104) had applied only to private motor carriers of property and motor carriers of migrant workers. Thus, four classes of for-hire motor carriers were not subject to the DOT's 1988 final rule. They included: (1) For-hire motor carriers transporting the U.S. mail in interstate commerce under contract to the United States Postal Service; (2) for-hire motor carriers of passengers transporting school children and/or school personnel in interstate commerce when such transportation is at the direction and/or under the control of a public school system and is not a "school bus operation" as defined in § 390.5; (3) for-hire motor carriers of property engaged in the emergency towing of disabled vehicles from the point of disablement to another location in interstate commerce; and (4) ICC "exempt" motor carriers (i.e., economically exempt, eg., agricultural commodity carriers). These carriers operate a significant number of commercial motor vehicles in interstate commerce.

The Motor Carrier Safety Act (MCSA) of 1984

(49 U.S.C. app. 2501-2520 (1988)) authorizes the FHWA to establish vehicle marking requirements for all commercial motor vehicles, as defined in the MCSA of 1984, if the FHWA determines that such a requirement will assist in ensuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated. The FHWA has determined that requiring all commercial motor vehicles operated in interstate commerce to meet a single identification standard would create a needed nationwide uniformity. Such action would assist Federal and State enforcement personnel in properly identifying motor carriers during roadside vehicle inspections and accident investigations, thus assuring the submission of accurate inspection and accident results and other data into the FHWA and State management information systems. In addition, the general public would be able to identify and report to the motor carrier or an enforcement agency any operations being conducted in an unsafe manner by the operator of a commercial motor vehicle.

Private motor carriers of passengers are not now subject to the FMCSRs. 49 CFR 390.3(f)(6). The preamble to the DOT's 1988 final rule stated that, "The FHWA recognizes that the Congress provided the Secretary (of Transportation) with the authority to regulate the safety of the private carriage of passengers. Since this segment of the motor carrier industry has never been subject to Federal safety regulations, however, it was decided that this issue should be addressed in a

separate rulemaking action." Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States is not subject to the FMCSRs, except for the accident reporting requirements of 49 CFR 394 when these entities are engaged in interstate charter transportation of passengers. 49 CFR 390.3(f)(2).

Discussion of Comments

A notice of proposed rulemaking (NPRM) was published on June 19, 1991 at 56 FR 28130. The NPRM proposed to require marking for all commercial motor vehicles subject to the FMCSRs but not previously embraced in 49 CFR 390.21. Ten comments to the docket were received. Four were from associations representing the motor freight, bus transportation, and towing industries, four were from individual freight and passenger carriers, and two were from State law enforcement agencies. All comments generally favored the proposed amendment. One commenter questioned the proposed requirement for location information, and a second expressed concern over the appropriate marking requirements for for-hire motor carriers operating under ICC authority.

Several commenters favored the proposal to permit for-hire motor carriers operating under ICC authority to meet the requirements by complying with the marking requirements set forth in 49 CFR part 1058. Other commenters noted that the increased uniformity would lead to improved accuracy of motor carrier identification and greater public safety and security.

One commenter requested guidance on the application of the marking requirement. A motor carrier industry association suggested that the FHWA and the Commercial Vehicle Safety Alliance work together to improve guidelines for enforcement officers to help them distinguish between interstate and intrastate motor carriers. The association also suggested that the FHWA prepare an alphabetical list by State of Office of Motor Carriers field offices where motor carriers may obtain a MCS–150 form to request a USDOT identification number. The FHWA is considering preparing informational materials to respond to these suggestions. A motor carrier of freight suggested stronger language on size and legibility of markings. These requirements have not been at issue, and were therefore not addressed in the NPRM.

A school transportation industry association and a bus industry association supported the proposed amendment to require for-hire school buses in interstate commerce to comply with marking requirements. However, the bus association did not agree with the requirement that the city or community and State be shown. The association stated that the location information could be misleading, as school buses are frequently moved within a State based on the need for vehicles at different company locations. Under § 390.3(f), "General Applicability," school bus operations as defined in § 390.5 are not subject to the FMCSRs, except for part 394. Both of these organizations also commented that the FMCSRs should apply to other classes of passenger carriers operating in interstate commerce, regardless of ownership, including private carriers of passengers, State and local government vehicles, and district- and State-owned school buses. These other passenger carriers are specifically exempted under § 390.3(f) as a result of notice and comment rulemaking published in the **Federal Register** on May 19, 1988 (53 FR 18042).

A private motor carrier of freight expressed concern that the proposed wording does not address the situation of a private interstate motor carrier that operates under ICC common and contract authority. The carrier suggested adding a specific statement that compliance with ICC marking requirements by carriers holding ICC operating authority constitutes compliance with FHWA requirements without regard to whether a specific movement is for-hire or private carriage.

The intent of this marking requirement is to provide unique identification for motor carriers. The type of carriage involved at any given time is immaterial if one of the two required markings is present. This regulation will permit a motor carrier operating under ICC authority to satisfy the FHWA's requirement for marking by continuing to display its ICC–MC identification number. Displaying either the ICC–MC number or the USDOT number, or both, will enable these motor carriers to comply with the regulation.

In view of the foregoing, the FHWA is amending its marking requirement regulation to encompass all commercial motor vehicles operated in interstate commerce. Those commercial motor vehicles operated by for-hire motor carriers under authority issued by the ICC would be allowed to meet the FHWA's rules by complying with the compatible marking requirements of the ICC.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action taken by the FHWA in this document will amend the commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. This rule requires motor carriers to mark commercial motor vehicles. The FHWA believes that the cost of this marking will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes

of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle marking, Motor vehicle safety.

Issued on: January 21, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 390, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Paragraph (a) of § 390.21 is revised to read as follows:

§ 390.21 Marking of commercial motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commerce Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 1058.

* * * * *

[FR Doc. 92-2049 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket Number 910919-1219]

Taking Marine Mammals Incidental to Commercial Fishing Operations; Corrections

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

ACTION: Correction to the interim final rule.

SUMMARY: This document contains corrections to the interim final regulations (Docket No. 910919-1219), which were published on Tuesday, October 8, 1991 (55 FR 50672). The regulations relate to the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Hollingshead, NMFS, at (301)-713-2055.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1991, NMFS published an interim final rule revising the March 30, 1990, yellowfin tuna importation regulations. These revisions addressed (1) how to calculate a mortality rate for the U.S. fleet when there is little or no fishing effort on a particular species group in a particular area; (2) a new schedule for requesting and receiving findings; and (3) a requirement for submission of a minimum of 12 months of observer data from a fishing season for reconsideration of a negative finding if a nation has been denied an affirmative finding due to an unacceptable species composition test.

Need for Correction

As published, the interim regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 8, 1991, of the interim regulations (Docket No. 910919-1219), which were the subject of FR Doc. 91-24076, is corrected as follows:

§ 216.24 [Corrected]

1. On page 50676, in the second column, in the second line of amendatory instruction number 3, "(e)(5)(viii)" is corrected to read "(e)(5)(xiii)".

2. On page 50676, in the third column, the paragraph designation "(viii)" is corrected to read "(xiii)".

* * * * *

Dated: January 22, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-1972 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 911176-1276]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards; dates of each fishing month.

SUMMARY: NMFS announces the dates of each fishing month during 1992 for calculating vessel bycatch rates of Pacific halibut and red king crab for purposes of the vessel incentive program. The intent of this action is to enhance prohibited species bycatch management and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), January 27, 1992 through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce Pacific halibut and red king crab bycatch rates in specified groundfish fisheries. Under the incentive program,

operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fishery, and the GOA "bottom rockfish" trawl fishery. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI flatfish fishery in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at §§ 672.26(b) and 675.26(b).

Regulations implementing the vessel incentive program require NMFS to publish a notice in the **Federal Register** announcing the dates of each fishing month (§§ 672.26(a)(2)(iii) and 675.26(a)(2)(iii)). The fishing month refers to a time period calculated on the basis of weekly reporting periods so that each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in the same calendar month.

In accordance with §§ 672.26(a)(2)(iii) and 675.26(a)(2)(iii), the following 1992 fishing months are specified as the periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1—January 1 through February 2;
Month 2—February 3 through March 1;
Month 3—March 2 through March 29;
Month 4—March 30 through May 3;
Month 5—May 4 through May 31;
Month 6—June 1 through June 28;
Month 7—June 29 through August 2;
Month 8—August 3 through August 30;
Month 9—August 31 through September 27;
Month 10—September 28 through November 1;
Month 11—November 2 through November 29; and
Month 12—November 30 through December 31.

Classification

This action is taken under 50 CFR parts 672.26 and 675.26.26 and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 22, 1992.

David S. Crestin,

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

[FR Doc. 92-1947 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

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

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-170]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add New Jersey to the list of States approved to receive mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because New Jersey has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action would relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: Consideration will be given to comments received on or before March 30, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-170. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, §§ 92.301(c)(2), 92.304(a)(4)(ii) and 92.304(a)(7)(ii), allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved States for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to States which have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. New Jersey has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations, which meet the requirements of § 92.304(a)(5) and § 92.304(a)(8) of the regulations, to control CEM. Therefore, we propose to add New Jersey to the list of States approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

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

We anticipate that fewer than 30 mares and stallions over 731 days old will be imported into the State of New Jersey annually from countries where CEM exists. Approximately 200 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in fiscal year 1991. During this same period, approximately 31,407 horses of all classes were imported into the United States.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d,

134f, and 135, 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. In § 92.304, paragraphs (a)(4)(ii) and (a)(7)(ii) would be amended by adding "The State of New Jersey" in alphabetical order.

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2013 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 91-123]

Veterinarians Accredited by the Mexican Government

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow veterinarians accredited by the Mexican government to perform official functions in connection with animals being exported from Mexico for importation into the United States. This action would ensure that an adequate number of qualified and competent individuals are available to perform functions required by the regulations governing the importation of animals into the United States.

DATES: Consideration will be given only to comments received on or before March 30, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-123. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8590.

SUPPLEMENTARY INFORMATION:

Background

APHIS regulates the importation of certain animals into the United States. The requirements for importation, found in 9 CFR part 92, provide that a "salaried veterinarian of the national government of the country of origin," or the equivalent, conduct specific tests or examinations of animals, and issue certificates for animals intended for export to the United States.

The Ministry of Agriculture for Mexico has recently developed a system for accrediting veterinarians who are not salaried employees of the national government of Mexico to perform official work in connection with the export of animals from Mexico. This work includes testing, examining, and certifying animals for export to the United States. Veterinarians employed by the United States Department of Agriculture, Animal and Plant Health Inspection (APHIS), have formally reviewed the Mexican procedures and requirements for accrediting veterinarians. APHIS officials believe, based on this review, that Mexican accredited veterinarians will be able to perform certain necessary services, currently performed by salaried veterinarians of the Mexican government, that are required by our regulations to prevent the introduction of communicable animal disease into the United States through the entry of animals.

We are therefore proposing to amend 9 CFR part 92 to allow veterinarians accredited by the Mexican government to perform official work in connection with the export of animals from Mexico to the United States. Specifically, we propose to allow veterinarians accredited by the Mexican government to issue animal health certificates required by the regulations for the importation of animals from Mexico into the United States. However, we also propose that each certificate issued by a veterinarian accredited by the Mexican government must also be endorsed by a full-time salaried veterinary officer of the national government of Mexico. Under this system the accredited veterinarian would make the necessary determinations about the animal's health and issue the certificate, and the Mexican government veterinarian would endorse it, indicating that the issuing veterinarian is properly accredited and that the certificate is properly completed.

Currently, each section of the regulations which requires certificates for animals imported from Mexico contains language like the following example: "All pet birds . . . shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the National Government of the country from which the birds are to be exported . . ." (9 CFR 92.104). We propose to change this language to read as follows, and to make changes of similar effect throughout the regulations: "All pet birds . . . shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the National Government of the country from which the birds are to be exported, or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so . . ."

The effect of these changes would be to allow animals to be imported from Mexico if they meet all other requirements of the regulations and are accompanied by a certificate issued by a veterinarian accredited by the national government of Mexico and endorsed by a full-time salaried veterinary officer of the national government of Mexico.

Related sections of the regulations contain language that requires, for example, that an imported animal must be accompanied by a certificate that "is either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin . . .". In these sections, we propose to change "signed by a veterinarian authorized by the National Veterinary Services" to read "signed by a veterinarian authorized or accredited by the National Veterinary Services" in order to make it clear that accredited veterinarians may sign these certificates.

We propose to make these changes in the following sections of Part 92: § § 92.101(c)(3)(i); 92.104(a); 92.205; 92.301(c)(2)(iv), (c)(2)(vi)(A)*(2)*, (c)(2)(vii)(B) and (C), and (c)(2)(xi)(C)*(4)*; 92.314; 92.326; 92.405(a) and (b)(i); 92.406(a) and (b); 92.427(b)(1), (b)(2)(i), (b)(2)(ii), (c)(1), (d)(1), and (e)(2); 92.428(a); 92.429, and 92.505(a).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for

consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would have no effect on the economy of the United States or on any entities in the United States. It would allow the Mexican national government to make use of the services of accredited veterinarians to perform certain duties currently performed by salaried veterinarians of the Mexican national government.

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. You should submit a duplicate copy of your comments to: 1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and 2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW, Washington, DC 20250.

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal disease, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Amended]

2. In § 92.101, paragraph (c)(3)(i), in the first sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately following the phrase "country of export".

§ 92.104 [Amended]

3. In § 92.104, paragraph (a), in the first sentence, the phrase "or accredited" would be added immediately following "issued by a veterinarian authorized".

§ 92.205 [Amended]

4. In § 92.205, in both the first and last sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

§ 92.301 [Amended]

5. In § 92.301, paragraph (c)(2)(iv) introductory text, the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

6. In § 92.301, paragraph (c)(2)(vi)(A)*(2)*, the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

7. In § 92.301, paragraphs (c)(2)(vii)(B) introductory text and (C), the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

8. In § 92.301, paragraph (c)(2)(xi)(C)*(4)* introductory text, the phrase the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

§ 92.314 [Amended]

9. In § 92.314, in the first sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

§ 92.326 [Amended]

10. In § 92.326, in the first sentence, the phrase ", or by a certificate issued by a veterinarian accredited by the Mexican Government and endorsed by a salaried veterinarian of the Mexican Government, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately following the phrase "Mexican Government".

§ 92.405 [Amended]

11. In § 92.405, paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

12. In § 92.405, paragraph (b)(i), the phrase "or accredited veterinarian" would be added immediately following "said salaried veterinary officer".

§ 92.406 [Amended]

13. In § 92.406, paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

14. In § 92.406, paragraph (b), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

§ 92.427 [Amended]

15. In § 92.427, paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a full-time salaried veterinary officer of the National Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

16. In § 92.427, in paragraph (c)(1), "has been tested with negative results by a salaried veterinarian of the National Government of Mexico" would be revised to read "has been tested with negative results either by a salaried veterinarian of the National Government of Mexico or by a veterinarian accredited by the National Government of Mexico,"; and "they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico" would be revised to read "they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so,".

17. In § 92.427, paragraphs (d)(1) introductory text and (e)(2), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.428 [Amended]

18. In § 92.428, in paragraph (a), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.429 [Amended]

19. In § 92.429, the phrase "certificate of a salaried veterinarian issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.505 [Amended]

20. In § 92.505, in paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2011 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-F

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

Regulatory Flexibility Act; Review of Existing Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of existing rules.

SUMMARY: In accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 610), the Commission is reviewing performance requirements in the Safety Standard for Walk-Behind Power Mowers. The purpose of this review is to determine if those requirements should be continued without change, amended, or revoked, consistent with the objectives for which they were issued, in order to minimize any economic impact which they may have on small entities, including small businesses.

DATES: Interested persons are invited to submit written comments on the rule on or before March 30, 1992.

ADDRESSES: Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and captioned "Regulatory Flexibility Act Review of Power Mower Standard."

FOR ADDITIONAL INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) became effective January 1, 1981, and requires Federal agencies to evaluate and taken into consideration the economic impact of their rules on "small entities," a term which includes small businesses

Additionally, section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small entities, including small businesses. Section 610 of the RFA also requires agencies to review periodically those rules issued after the effective date of the RFA. The purpose of the review required by section 610 of the RFA is to determine whether the rules under consideration should be continued in effect without change, amended, or revoked, consistent with the objectives of the agency, to minimize any economic impact which they have on small entities.

Section 610(c) of the RFA requires agencies to publish notice in the **Federal Register** of those rules to be reviewed under provisions of the RFA for economic impact on small businesses and other small entities within the next 12 months. Section 610(c) specifies that the notice shall include a brief description of those rules, the need for

those rules, and their legal basis, and shall invite public comment on the rules under review. The following information is provided in accordance with provisions of section 610(c) of the RFA.

Review of CPSA Rules

In 1986, the Commission completed the review required by section 610 of 17 rules issued under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small businesses. The Commission published a notice in the **Federal Register** of February 19, 1987 (52 FR 5079) to announce the completion of that review and the availability of a report on the review of CPSA rules for economic impact on small businesses.

The CPSA rules reviewed in 1986 included the Safety Standard for Walk-Behind Power Mowers (16 CFR part 1205). That rule was issued in 1979 to eliminate or reduce risks of amputations of toes and fingers, avulsions (the tearing of flesh or a part of the body), lacerations, contusions, and other serious injuries resulting from contact of the body with the moving blade of a power lawn mower. The standard contains labeling and performance requirements. The labeling requirements are applicable to both rotary and reel-type power mowers and became effective on December 31, 1979.

Performance Requirements of Mower Standard

As issued in 1979, the mower standard included performance requirements applicable to rotary power mowers. Provisions of the standard applicable to rotary mowers require the blade to be shielded to prevent accidental contact of the operator's foot with a moving blade. The standard also requires that rotary mowers must be equipped with a blade control system which requires continuous contact of the control by the operator for the blade to be driven and which causes the blade to come to a complete stop within 3.0 seconds after the operator releases the control. When the Commission issued the standard, it established December 31, 1981, as the effective date for the performance requirements for rotary power mowers. However, in the Commission's appropriations legislation for 1980 (Pub. L. 96-526), Congress delayed the effective date of the performance requirements of the standard until June 30, 1982.

The mower standard was the subject of seven petitions for judicial review which were consolidated and heard by the U.S. Court of Appeals for the Fifth Circuit. In *Southland Mower Co. et al.* v. *CPSC*, 619 F.2d 499 (1980), the court upheld the major provisions of the standard, but vacated one requirement for shielding of the discharge chute. All other blade-shielding requirements were upheld by the Court of Appeals. In the **Federal Register** of December 31, 1980 (45 FR 86416), the Commission amended the standard by revoking the requirement which was vacated by the *Southland Mower* decision. In accordance with provisions of the 1980 appropriations legislation, the Commission also established June 30, 1982, as the effective date for the performance requirements of the standard.

Amendment of Performance Requirements

As issued by the Commission in 1979, provisions of the standard applicable to the blade control system of a rotary power mower included a requirement that if the mower was equipped only with manual starting controls, the blade control system must stop the blade without stopping the engine. In the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 357, August 13, 1981), Congress directed the Commission to amend the mower standard to permit the blade control system of a power mower with only manual starting controls to stop the engine when it stops the movement of the blade if the engine starting controls are located within 24 inches of the top of the handle of the mower, or if the mower has a protective shield which extends 360 degrees around the mower housing. The Omnibus Budget Reconciliation Act also required the Commission to conduct a study of the effect of that amendment on consumers and to report the results of the study within two years after the effective date of the amendment.

In the **Federal Register** of November 5, 1981 (46 FR 54932), the Commission issued the amendment specified by the Omnibus Budget Reconciliation Act, to become effective on June 30, 1982, with the other performance requirements of the standard. The Commission conducted the study required by the Omnibus Budget Reconciliation Act and published a report dated June 30, 1984, entitled "The Effect on Consumers of the Amendments to the Safety Standard for Walk-Behind Power Lawn Mowers." The report discussed whether the amendment directed by the 1981 legislation might lead to an increased number of instances in which consumers defeat the blade-control system required by the standard. The report also discussed the economic effect on consumers of the amendment directed by the 1981 legislation. A copy of the report is available without charge from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

When the Commission reviewed rules issued under the Consumer Product Safety Act which were in existence on January 1, 1981, it reviewed only the labeling requirements of the Safety Standard for Walk-Behind Power Mowers, because those were the only provisions of the standard which were in effect on that date. In the report on the review of CPSA rules, the Commission stated that it would review the performance requirements of the mower standard at a later date, but before June 30, 1992.

Review of Performance Requirements

In accordance with provisions of section 610(c) of the RFA (5 U.S.C. 610(c)), the Commission hereby gives notice that during the next 12 months it will review the performance requirements of the Safety Standard for Walk-Behind Power Mowers codified at 16 CFR 1205.4 and 1205.5 and invites all interested persons to submit comments on those provisions of the standard by March 30, 1992.

Dated: January 22, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-2056 Filed 1-27-92; 8:45 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators and Commodity Trading Advisors for Offerings to Qualified Eligible Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing new Rule 4.7. Under this proposal, registered commodity pool operators ("CPOs") could, subject to certain conditions, claim relief from the specific disclosure, reporting and recordkeeping requirements of part 4 of the Commission's regulations,[1] for pools

[1] Commission rules referred to herein are found at 17 CFR ch. I (1991).

offered or sold to qualified eligible participants in a private offering which qualifies for exemption from the registration requirements of the Securities Act of 1933 ("Securities Act"), pursuant to section 4(2) of that Act. Rule 4.7 would exempt these CPOs, upon the filing of a notice of claim of exemption, from the specific disclosure requirements of Rule 4.21 (a) through (h) and would substitute abbreviated reporting and recordkeeping requirements for the requirements of Rules 4.22 and 4.23. The term "qualified eligible participant" ("QEP") would include registered futures commission merchants ("FCMs"), registered brokers and dealers, certain registered CPOs and commodity trading advisors ("CTAs") as well various other institutional and individual investors that meet the qualifications set forth in the rule.

In addition, CTAs who direct or guide the commodity interest accounts of clients that meet the requirements for QEPs set forth in Rule 4.7 and of commodity pools for which the CPO has obtained relief under the rule could claim exemption from the specific disclosure requirements of Rule 4.31 (a) through (g), and the recordkeeping requirements of Rule 4.32 with respect to such clients and commodity pools.

DATES: Comments on the proposed rule must be received on or before March 30, 1992.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or France M.T. Maca, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Exchange Act (the "Act") [2] was amended in 1974 to require the registration of CPOs and CTAs with the Commission.[3] Section 4m(1) of the Act, as amended, requires each person who comes within the definition of the term "commodity pool operator" in section 2(a)(1)(A) of the Act [4] to register with the Commission as a CPO or to satisfy the requirements for an exemption from such registration. In addition, each person who comes within the definition of "commodity trading advisor" in section 2(a)(1)(A) of the Act [5] is required to register as such with the Commission or to satisfy the requirements for an exemption from such registration.

On January 8, 1979, the Commission published part 4 of its regulations [6] relating to the operations and activities of CPOs and CTAs. The Commission stated that it was seeking "to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds." [7] Part 4 contains disclosure, reporting and recordkeeping requirements for CPOs (Rules 4.21, 4.22 and 4.23, respectively) and disclosure and recordkeeping requirements for CTAs (Rules 4.31 and 4.32, respectively). In addition, Rules 4.20 and 4.30 relate to the disposition of pool and customer funds by CPOs and CTAs, respectively.

The Disclosure Document for commodity pools [8] must contain business and disciplinary information with respect to the CPO, CTA and principals thereof, the pool's investment objectives and its past performance record, conflicts of interest with respect to the pool, a Risk Disclosure Statement and other prescribed information. CTAs are also required to deliver a Disclosure Document prior to or at the time of solicitation or entering into an agreement to direct or guide the commodity interest account of a prospective client.[9] In addition, CPOs are required to distribute to each participant periodic financial reports and a certified annual report,[10] and CPOs and CTAs are required to maintain and make available for inspection specified books and records.[11]

In implementing its statutory mandate to regulate the activities of CPOs and CTAs, the Commission has endeavored to construct a regulatory framework that avoids unnecessary burdens without reducing investor protection. Since the adoption of the Commission's original part 4 regulations, the Commission has refined that framework as appropriate to respond to changing market conditions and to simplify and streamline the regulatory structure without creating regulatory gaps. For example, Rules 4.5, 4.12(b) and 4.14(a)(8) provide exemptions from registration and/or other specified part 4 requirements based upon, among other things, the applicability of another federal regulatory framework to the CPO or CTA.[12]

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[2] 7 U.S.C. 2 (1988).

[3] Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, 88 Stat. 1389, 1397 (1974).

[4] Section 2(a)(1)(A) of the Act defines a "commodity pool operator" as:

Any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

Rule 4.13 provides an exemption from CPO registration for the operators of essentially family, club or small pools. See 44 FR 1918 at 1919 (Jan. 8, 1979).

[5] Section 2(a)(1)(A) of the Act defines a "commodity trading advisor" as:

Any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as a part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing.

[6] Rules 4.1-4.41.

[7] 44 FR 1918 at 1920 (January 8, 1979).

[8] Rule 4.21.

[9] Rule 4.31. The Disclosure Document for CTAs must contain, among other things, the name and business background of the CTA and of each principal thereof; a description of the trading program; and types of commodity interests the CTA intends to trade; the performance record of the CTA and its principals; a description of any conflict of interest regarding the trading program; disclosure with respect to material actions against the CTA, the FCM or their principals; and a Risk Disclosure Statement.

[10] Rule 4.22.

[11] Rules 4.23 and 4.32, respectively A CPO's records must include (1) internal trading and operational reports, general accounting and financial records with respect to the pool and the CPO's and its principals' own accounts; and (2) participant information, confirmations from carrying FCMs, sales literature and the signed statements of prospective participants acknowledging receipt of the pool Disclosure Document with respect to the pool (Rule 4.23). A CTA must maintain records similar to those required for a CPO with respect to its clients, its trading program and its own account (Rule 4.32).

[12] Rule 4.5, adopted in 1985, makes available an exclusion from the definition of the term "commodity pool operator" to certain persons, such as registered investment companies and federally-chartered banks, that are regulated under another regulatory framework and that meet specified operating criteria. Similarly, in 1987 the Commission adopted Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain investment advisers registered under the Investment Advisers Act of 1940. Rule 4.12(b), also adopted in 1987, provides an exemption pursuant to which certain registered CPOs of pools offered pursuant to the Securities Act, or an exemption therefrom, that meet certain operational criteria are relieved of many of the specific requirements otherwise applicable with respect to disclosure under Rule 4.21, to reporting under Rule 4.22 and to recordkeeping under Rule 4.23.

In addition, where appropriate, the Division of Trading and Markets has issued no-action letters to CPOs providing relief from part 4 requirements based upon, among other things, evidence of the financial sophistication and qualifications of pool participants, prior associations between the pool participants and the CPO, and the limited nature of the pool's contemplated use of futures and commodity options transactions.[13]

Part 4 of the Commission's regulations has not been extensively revised since the Commission's original CPO disclosure requirements were adopted in 1979. In the intervening years the number of registered CPOs has nearly doubled.[14] Assets held under management by CPOs have grown dramatically and the range of available futures and option contracts has increased substantially.[15] Many large money managers, in particular many managers for institutional investors, are now diversifying and hedging their portfolios by investing a portion of the assets under their management in the futures markets. As a result, the profile of commodity pool participants has evolved to include institutional participants and other highly capitalized and sophisticated participants.

In light of these developments, and consistent with the Commission's ongoing program for review of its rules and regulations, the Commission has undertaken a comprehensive review of the Part 5 regulations to ensure that the regulatory framework for CPOs and CTAs continues to provide adequate protection to pool participants and managed account customers without imposing unnecessary regulatory burdens upon CPO and CTA activities. The Commission's review is intended to identify areas in which the regulatory structure can be streamlined or simplified, while continuing to provide appropriate customer protection. This proposal constitutes the first phase of a broader review of part 4, which will also include consideration of the appropriateness of permitting the use of a two-part Disclosure Document.[16] In connection with this review, the Commission has solicited the views of representatives of the public and of the industry. On April 17, 1989, the Commission created the Regulatory Coordination Advisory Committee ("RCAC"), in accordance with the provisions of the Federal Advisory Committee Act.[17] The purpose of the RCAC is to advise the Commission concerning, among other things ways "to improve coordination among domestic * * * regulatory structures to enhance operational efficiency and capabilities of users" and to "enable the Commission to assess possible statutory, regulatory or policy alternatives and practical considerations in a rapidly growing and changing industry and global marketplace." [18] At its first meeting on September 26, 1990, the RCAC established a Working Group ("Working Group") to identify issues relating to CPOs and CTAs.

The Working Group suggested to the RCAC, among other things, that the Commission adopt an exemption from the registration, disclosure, recordkeeping and reporting requirements for CPOs with respect to commodity pools that only accept "accredited investors" meeting the standards set forth by the Securities and Exchange Commission ("SEC") in Regulation D [19] under the Securities Act. This suggestion was based upon the premise that accredited investors are "sophisticated investors" who are "capable of protecting their own financial interests and would benefit from reduction of the unnecessary costs currently associated with providing them with such investment opportunities." [20] The Working Group noted that neither the SEC nor most state Blue Sky law require any specific disclosure for Regulation D offerings that are made only to accredited investors and concluded that the reduction in regulatory offering costs that would result from such exemption would "provide accredited investors with an opportunity to invest in commodity pools more efficiently with less cost."

II. The Proposed Rule

Based upon its review of the part 4 regulations in light of more than a decade of experience in administering the existing framework, the evolution of commodity pools, the change in the pool participant profile during this period and the foregoing discussions with the RCAC and other interested parties, the Commission has determined to seek public comment on a revised regulatory framework that would be available to CPOs privately offering commodity pools solely to certain highly accredited investors and to CTAs providing commodity interest trading advice to such commodity pools and to highly accredited investors.

In particular, the Commission is seeking comment on proposed Rule 4.7. In proposing Rule 4.7, the Commission has the dual objective, consistent with its customer protection role, of: (1) Reducing unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the proposed rule, do not appear to need the full protections offered by the part 4 framework; and (2) coordinating its rules with those of the SEC applicable to private offerings exempt from registration pursuant to section 4(2) of the Securities Act so that most qualifying offerings may operate under

[13] *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 87-8 (1987-1990 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 23,973 (November 9, 1987); Division of Trading and Markets Interpretative Letter No. 84-2 (1982-1984 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 21,983 (January 17, 1984); and Division of Trading and Markets Interpretative Letter No. 85-6 (1984-1986 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 22,728 (February 8, 1985).

[14] In April 1979 there were 619 persons registered as CPOs. As of October 1, 1991 there were approximately 1,081.

[15] *Managed Accounts Reports* estimates public pool assets at $15 million in 1975, $250 million in 1980 and $435 million in 1983. Figures compiled by the National Futures Association indicate that the assets of commodity pools (both public and private) have more than doubled from the end of 1989 to the end of the first quarter of 1991, from $7.7 billion to $16.4 billion. Futures and commodity option contracts trading on exchanges numbered 90 in 1978 and 212 in 1990.

[16] Such a document would have two parts, a summary Disclosure Document, provided to all prospective pool participants, containing the information necessary for prospective participants to decide whether to participate in the pool; and a second part, which would be made available upon request, containing additional and more detailed information of interest to some investors. The Commission will address this issue in a separate release.

[17] 5 U.S.C. App. 2, section 1, *et seq.*, as amended (1988).

[18] See Charter of the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee. See also the notice of the establishment of the RCAC, 54 FR 15245 (April 17, 1989).

[19] 17 CFR 230.501-230.508 (1991). Regulation D was adopted in 1982 "to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors" (47 FR 11251 at 11252 (March 16, 1982)). On September 21, 1983, the North American Securities Administrators Association ("NASAA"), an association of securities commissioners from each of the states and jurisidictions of the United States and from several Canadian provinces, promulgated a model Uniform Limited Offering Exemption ("ULOE") intended to coordinate the regulation of limited and private offerings by the states with SEC Regulation D. Among other things, Regulation D provides a "safe harbor" exemption from the registration requirements of the Securities Act for certain private offerings sold primarily to accredited investors and to a specified number of non-accredited investors upon the filing of a notice.

Pursuant to CFTC Rule 13.2 a Chicago law firm, Vedder, Price, Kaufman & Kammholz also petitioned the Commission to establish such a rule in a Petition for Rulemaking dated December 18, 1990.

[20] See the Working Group "Issue Paper" presented at the November 28, 1990 meeting of the RCAC.

an exemption from otherwise applicable requirements of both the Commodity Exchange Act and the securities laws.[21] Establishment of a general exemption of this nature based upon the financial qualifications and investment sophistication of the offerees expands the reasoning of the case-by-case relief from CPO regulation previously extended to certain collective investment funds formed by persons with substantial prior associations with the funds' manager and evident financial sophistication by virtue of professional experience or financial resources.

In light of the differences between futures and securities investments and the Commission's historical approach to pool disclosure, the Commission is proposing to extend relief only to offerings made to persons who generally would qualify as accredited investors under SEC Regulation D and who also satisfy additional requirements relating to investment resources and expertise. The Commission believes that because of the unique characteristics of futures trading, participants in a commodity pool for which no specific disclosure is prescribed must demonstrate a higher level of qualification than do investors in a securities investment vehicle.

Proposed Rule 4.7 would provide a basis for exemption from the specific requirements of Rules 4.21, 4.22 and 4.23, the disclosure, reporting and recordkeeping requirements applicable to CPOs, for registered CPOs in connection with their operation of commodity pools offered and sold exclusively to qualified eligible participants in an offering which qualifies for exemption from registration under section 4(2) of the Securities Act ("qualified eligible pools"), subject to the terms and conditions stated in Rule 4.7. The exemption would include relief from all of the specific disclosure requirements of Rule 4.21. With respect to reporting and recordkeeping, the requirements would be streamlined.

Such CPOs would, however, remain subject to all other applicable requirements of the Act and the Commission's regulations thereunder. For example, they would remain subject to the anti-fraud provisions of sections 4b and 4*o* of the Act, 7 U.S.C. sections 6b and 6*o* (1988),[22] the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 [23] and 4.41,[24] respectively, the reporting requirements for traders set forth in parts 15, 18 and 19 of the Commission's regulations and other relevant regulations.[25] Moreover, any representations made in connection with the sale of participations in qualified eligible pools would be required to include any additional disclosures necessary to make such representations, in the context in which they are made, not misleading.

The Commission also believes that it is appropriate to provide relief from the specific disclosure and recordkeeping requirements of Rules 4.31 and 4.32 to the CTAs of clients who meet the QEP criteria ("qualified eligible clients") and of commodity pools whose CPOs have obtained the corresponding disclosure or recordkeeping relief under proposed Rule 4.7. The rationale for proposing relief for CTAs is analogous to that for proposing relief for CPOs, *i.e.*, that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require. Accordingly, as more fully discussed *infra*, the Commission has included such relief for CTAs in proposed Rule 4.7.

In connection with the proposed rule, the Commission is also considering giving relief to CPOs and CTAs who have claimed exemption from disclosure under proposed Rule 4.7 from disclosing in the Disclosure Document for other pools and clients their performance records with respect to qualified eligible pools and clients for which an exemption has been claimed. However, the performance of qualified eligible pools or clients could not be selectively disclosed. CPOs and CTAs who elected to disclose performance records with respect to pools or clients for which a 4.7 exemption is applicable would be required to do so as to all of their qualified eligible pools and clients, as prescribed by Rules 4.21 and 4.31, respectively, and to maintain the records necessary to substantiate their performance computations. CPOs and CTAs electing not to make such disclosures would be required to include a legend in the Disclosure Documents for other pools and clients indicating that they operate or have operated pools or advised clients with respect to which an exemption from disclosure had been claimed pursuant to Rule 4.7 and that this Disclosure Document does not include the performance record with respect to such pools or clients.[26] The Commission requests comment on whether this exemption from disclosing the performance of qualified eligible pools and clients is appropriate. The Commission also requests comment on all aspects of the proposed rule and in particular on the proposed QEP definition.

III. Section by Section Analysis

A. Definition of "Qualified Eligible Participant"

As noted above, the proposed exemption would apply only to offerings of pool participations to "qualified eligible participants," as that term would be defined in proposed Rule 4.7(a)(1). The Commission is proposing a definition of QEP that is designed generally to include persons who qualify as accredited investors under Regulation D and who meet certain additional qualifications as set forth in the proposed rule. The term "accredited investor," defined in Regulation D, includes individuals with specified income or net worth, corporations, partnerships and trusts that, among other things, have total assets in excess of $5,000,000, and certain institutional investors.

Using the "accredited investor" definition as a foundation, proposed Rule 4.7 defines categories of QEPs [27]

[21] Because many states have adopted a private offering exemption, the commission has no reason to believe that proposed Rule 4.7 would be inconsistent with the states' regulations governing such offerings.

[22] Generally, section 4b of the Act prohibits fraudulent transactions in connection with the sale of a commodity subject to the rules of a contract market or of a commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant or prospective pool participant or from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant. In addition, CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

[23] Pursuant to Rule 4.20, a CPO is required to "operate its pool as an entity cognizable as a legal entity separate from that of the pool operator" and is prohibited from commingling the property of a pool it operates with the property of any other person.

[24] Rule 4.41 prohibits the use of any deceptive or fraudulent advertising and prescribes a specific legend that must be prominently displayed in a Disclosure Document that includes simulated or hypothetical performance information.

[25] *E.g.*, Rules 33.9 and 33.10.

[26] Pursuant to Rule 4.21(a)(4) the operator of a pool that has traded commodity interests for twelve months or more preceding the date of the Disclosure Document is not required to provide the performance record of its other pools. Accordingly, the legend requirement would not apply to the Disclosure Document of such pools.

[27] These categories include (1) Investment professionals; (2) certain registered investment companies and business development companies, banks, savings and loans and other financial institutions, insurance companies, private business development companies, certain employee benefit plans, charitable organizations, corporations, business trusts, limited partnerships, pools, trusts, insurance company separate accounts, bank collective trusts and qualified natural persons; and (3) entities in which all beneficial owners are QEPs.

based upon objective indicia that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of their investments.[28] The Commission considered alternative financial qualifications, such as certain levels of net worth or total assets, but concluded that investment experience as evidenced by portfolio holdings is a better gauge of financial sophistication for a commodity pool participant. To come within the QEP definition, investment professionals and entities such as banks, savings and loan associations, other financial institutions and insurance companies may either purchase interests in the pool for their own accounts, *i.e.*, for accounts of which they are the sole beneficial owner, or as fiduciaries for the account of a QEP. All other QEPs proposed in paragraph 4.7(a)(2) would be required to be purchasing units for their own accounts.

The first class of QEPs would reach more categories of investment professionals than does Regulation D. It would include, in addition to registered broker-dealers which are accredited investors under Regulation D, certain Commission registrants listed in Rule 4.7(a)(1), specifically, registered FCMs and registered CPOs and CTAs meeting specified standards concerning assets under management, and the CPOs of the pools being offered. These investment professionals may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool. In addition, the Commission notes that registered FCMs and broker-dealers are subject to minimum financial requirements under the Commission's and SEC's respective rules.[29] The Commission has proposed that to constitute a QEP under proposed Rule 4.7, a registered CPO, unless it is the CPO of the pool being offered, must operate commodity pools which, in the aggregate, have total assets in excess of $10,000,000, and that a registered CTA must provide commodity interest trading advice to accounts that, in the aggregate, have total assets in excess of $10,000,000 actually deposited at FCM(s). As noted above, however, such CPOs and CTAs are QEPs only when acting for an account of which they are the sole beneficial owner or for the account of a QEP.

The second class of QEPs would consist of natural persons and entities, listed in proposed Rule 4.7(a)(2), who meet the financial requirements set forth therein. To promote the objective of harmonization of CFTC and SEC requirements, this class of QEPs also would include, among others, the categories of persons who are accredited investors under Regulation D, except as noted below. However, as discussed above, the proposed Rule 4.7 exemption would impose the added requirement that such accredited investors own and control at least $5,000,000 in securities (including pool participations) of issuers not affiliated with them or have deposited at least $1,000,000 initial margin and option premiums for commodity interest trading.[30] This requirement could be met with a portfolio containing a combination of securities and commodity interests provided that the sum of the amounts of securities held in and futures margin and option premiums deposited for a mixed portfolio, expressed as a percentage of the minimum amounts of securities required to be held and futures margin and option premiums required to be deposited by Rule 4.7, equals one hundred percent. For example, to be a QEP a person listed in Rule 4.7(a)(2) with a mixed portfolio who owned and invested $1,250,000 in securities—which is 25% of the required securities portfolio amount—would have to have deposited at least 75%—$750,000—of the futures margin and option premiums required to meet the total futures portfolio requirement. Of course, securities deposited as margin or option premium with a futures commission merchant for commodity interest trading and counted in the margin or option premium component of a mixed portfolio could not also be counted in the securities component of the portfolio. As an added protection, the Commission also proposes to establish the level of total assets required for corporations, trusts and other business enterprises at $10,000,000 rather than $5,000,000 as prescribed in Regulation D and to impose the same requirement on registered investment companies.

QEPs which meet the portfolio requirement may include certain entities that are not explicitly enumerated in Regulation D but are passive investment vehicles of the type Regulation D covers. For example, commodity pools, insurance company separate accounts, bank collective trusts as well as any governmental entities, whether domestic or foreign, or political subdivisions thereof, and multinational or supranational entities [31] and their instrumentalities, agencies or departments would qualify as QEPs if they had the prescribed financial resources and access to appropriate investment advice.

The participation of a pool, insurance company separate account or bank collective trust in a qualified eligible pool would be required to be directed by a QEP. In addition, unless all equity owners of such entities are QEPs, no more than ten percent of their assets could be used to purchase participations in a qualified eligible pool. This limitation is imposed because participants in these entities may not be QEPs and thus could not invest in a qualified eligible pool based on their own financial qualifications and investment sophistication.

Under Regulation D, corporations, business trusts, partnerships and trusts are not accredited investors if they were formed "for the specific purpose of acquiring the securities offered." The Commission would apply this limitation to those entities as well as to registered investment companies and business development companies to preclude unqualified participants from purchasing participations in a Rule 4.7 pool through a pooled investment vehicle.[32]

Business development companies ("BDCs") are accredited investors under Regulation D. It appears that BDCs are not prohibited from investing a small portion of their assets in commodity

[28] The SEC has used this "portfolio concept" to define "qualified institutional buyers" for the purposes of Rule 144A (17 CFR 230.144A (1991)) which provides a safe harbor exemption from the registration requirements of the Securities Act for resales of restricted securities to "qualified institutional buyers." The portfolio value required of a QEP under proposed Rule 4.7 is much lower than that required by the SEC for a qualified institutional buyer under Rule 144A because, among other things, the Rule 4.7 exemption is not an exemption from CPO or CTA registration.

[29] 17 CFR 1.17 (1991) and 17 CFR 240.15c3-1 (1991), respectively.

[30] Of course, this portfolio must be a *bona fide* portfolio of a size customary for the participant. A portfolio created specifically to obtain QEP status would not comply with the intent of proposed Rule 4.7.

[31] Multinational and supranational entities include the International Bank for Reconstruction and Development, the International Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank and other multinational lending institutions or regional development institutions in which the United States government is a shareholder or contributing member.

[32] These limitations would preclude unqualified investors from using QEPs to gain access to participations in a pool designed for QEPs by using a QEP as intermediary for purposes of investing in a pool or establishing a managed account.

pools.[33] Accordingly, the Commission has included qualified BDCs in the QEP definition. However, the Commission requests comment on whether such inclusion is appropriate.

Although small business investment companies ("SBICs") are accredited investors under Regulation D, the Commission has not proposed to include them as QEPs. SBICs operate under the Small Business Investment Act ("SBIA") [34] with the primary function "to provide a source of needed equity capital for small concerns." [35] Because providing equity capital for small concerns is required to be the primary function of SBICs, rather than their exclusive function, it would appear that SBICs may be permitted to place a portion of their assets in commodity pools for investment purposes. The Commission is requesting comment as to whether SBICs should be given QEP status to allow them to invest in qualified eligible pools to the extent they may lawfully do so under the SBIA.

Entities in which all of the equity owners are QEPs would also be QEPs and would not be subject to the portfolio requirement. These QEPs would constitute the third class of QEPs. Under Rule 4.7, a pool could qualify as a QEP in one of two ways: (1) Under proposed § 4.7(a)(3), if all participants in the pool were QEPs; and (2) under proposed § 4.7(a)(2)(xi) if the pool had total assets in excess of $10,000,000, was not formed for the specific purpose of participating in the qualified eligible pool offered and its participation in such qualified eligible pool was directed by a QEP. In the latter case, as noted above, unless all pool participants were QEPs, the pool could not invest more than ten percent of its assets in the qualified eligible pool.[36]

As stated above, the Commission definition of QEP is broader than the Regulation D definition of accredited investor because it includes certain Commission registrants and specified entities which are not accredited investors under Regulation D. Nonetheless, offerings including such registrants should not necessarily be disqualified from the Regulation D safe harbor. For example, a registered FCM would be a QEP under proposed Rule 4.7 and, if the FCM were a corporation or partnership not formed for the specific purpose of acquiring the securities offered, and had total assets in excess of $5,000,000, it would also qualify as an accredited investor under Regulation D.[37]

The Commission requests comment on the various aspects of the QEP definition. In particular, comment is requested on the adequacy of the proposed financial standards for natural persons and entities.

B. Relief for CPOs

1. Relief From Disclosure

Pursuant to proposed Rule 4.7(b)(1)(i), a registered CPO who offers or sells participations in a qualified eligible pool could claim relief from the specific disclosure requirements of Rule 4.21 with respect to that pool by filing a notice of claim for exemption containing specific representations. Registered CPOs operating qualified eligible pools and filing the requisite notice would be exempt from providing to prospective participants and filing with the Commission a Disclosure Document for the qualified eligible pool and, if an offering memorandum were distributed to prospective participants in the pool, such offering memorandum would not be required to contain the information specified in Rule 4.21.[38] However, any Disclosure Document or offering memorandum distributed to prospective participants in the pool would be required to include all information necessary to make such offering memorandum not misleading and to prominently display on its cover page the legend prescribed in § 4.7(b)(1)(i) notifying such investors that such offering memorandum was not filed with the Commission and that the Commission did not review or approve it. The exemption from Rule 4.21 provided by proposed Rule 4.7 would not relieve the CPO from the antifraud proscriptions of sections 4b and 4*o* of the Act.[39]

2. Relief From Reporting

Rule 4.22(a) requires a CPO to distribute to each participant in a pool that it operates monthly or quarterly financial statements containing the information specified in the rule.[40] Pursuant to proposed Rule 4.7(b)(1)(ii), a registered CPO who offers or sells participations in a qualified eligible pool could claim relief from the specific periodic reporting requirements of Rule 4.22(a). The CPO would be required, however, to distribute no less than quarterly to each participant in a pool for which Rule 4.7 periodic reporting relief has been claimed an abbreviated account statement, signed and affirmed as required by paragraph Rule 4.22(h). This abbreviated account statement would be required to indicate only the net asset value of the pool as of the end of the reporting period; the change in net asset value from the end of the last reporting period; and the net asset value per outstanding unit of participation in the pool as of the end of the reporting period. This simplified reporting requirement is similar to the reduced reporting requirement provided under Rule 4.12(b) for commodity pools principally engaged in securities transactions and satisfying the other requirements of that rule.[41]

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[33] BDCs are required to invest 70 percent of their assets, in the case of BDCs as defined in section 2(a)(48) of the Investment Company Act of 1940 ("ICA"), or 60 percent of their assets, in the case of BDCs as defined in section 202(a) of the Investment Advisers Act of 1940 ("IAA"), in securities of "eligible portfolio companies" and to give significant managerial assistance to such companies. Pursuant to section 2(a)(46)(A) of the ICA, an eligible portfolio company may neither be an investment company as defined in section 3 of the ICA nor a company which is excluded from the definition of investment company solely by section 3(c) of the ICA. Thus, thirty percent of the company's assets in the case of BDCs defined in section 2(a)(48) of the ICA and forty percent of the company's assets in the case of BDCs defined in section 202(a) of the IAA are not subject to specified use requirements.

[34] 15 U.S.C. 681 *et seq.* (1988).

[35] 15 U.S.C. 304(a) (1988).

[36] As part of its overall review of part 4 disclosure requirements, the Commission may provide additional relief with respect to pools investing in other pools.

[37] In addition, persons who would be QEPs under proposed Rule 4.7 but not accredited investors under Regulation D could be counted among the non-accredited investors allowed to participate in a Regulation D offering. In this case, however, while the CPO could claim relief from making the specific disclosures set forth in Rule 4.21, it would be required to make any disclosures specified in Regulation D to any qualified eligible participant which is not an accredited investor under Regulation D.

[38] See n. 8 *supra* and accompanying text.

[39] This provision would be consistent with the exemption from disclosure provided to certain offerings made pursuant to Regulation D as well as with the requirement for such offerings to comply with the antifraud, civil liability, and other provisions of the federal securities laws. See Rule 10b-5, 17 CFR 240.10b-5 (1991).

[40] The account statement must be distributed at least monthly in the case of pools with net assets of more than $500,000 at the beginning of the pool's fiscal year, otherwise at least quarterly (Rule 4.22(b)).

[41] The operating criteria of Rule 4.12(b) pools include that they generally and routinely engage in buying and selling securities and securities-derived instruments, that they commit no more than ten percent of their assets to establish commodity interest positions and that they trade such commodity interests in a manner solely incidental to their securities trading activities. See n. 12 *supra*. The premise of the Rule 4.12(b) exemption is that the extent and nature of the commodity interest trading of the pool warrants relief from the specific requirements of Rules 4.21 and 4.22 in reliance upon substituted compliance in the form of compliance with existing requirements of the securities laws. Rule 4.7 relief is available, however, without regard to the scope of the pool's futures-related activities and is instead premised upon the sophistication and financial resources of QEPs.

Rule 4.22(c) requires a CPO to distribute to each participant in a pool that it operates and to file with the Commission a certified Annual Report containing the information specified in the rule. Pursuant to proposed paragraph 4.7(b)(1)(iii), the CPO could also claim relief from the specific annual report requirements of paragraph 4.22(c) with respect to the qualified eligible pool. An abbreviated annual report would be required to be filed with the Commission and the National Futures Association within 90 calendar days after the end of the pool's fiscal year. Such annual report would be required to contain, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year, a Statement of Income (Loss) for that year and appropriate footnote disclosure and material information. The simplified reporting requirements are similar to those under Rule 4.12(b). While these statements would be required to be prepared according to generally accepted accounting principles, the Commission would not mandate certification of the annual report by an independent public accountant.[42] In addition, pursuant to proposed Rule 4.7(b)(iii)(E), if the CPO has claimed exemption from the reporting requirements of Rule 4.22(c) it must make a statement to that effect on the cover page of each annual report and, if the annual report is not certified by an independent public accountant, the CPO must also disclose that fact on the annual report's cover page.

3. Relief from Recordkeeping

Proposed Rule 4.7(b)(1)(iv) would make available relief from the specific recordkeeping requirements of Rule 4.23. Rule 4.23 requires a CPO to make and keep the books and records specified in the rule.[43] A CPO claiming relief under proposed Rule 4.7(b)(1)(iv) would be required to make and keep the account statements and annual reports referred to in proposed Rule 4.7(b)(1) (ii) and (iii) and all other books and records made in the normal course of business in connection with his operation of the pool and to make these books and records available to the Commission, the National Futures Association and the U.S. Department of Justice in accordance with Rule 1.31.[44] The proposed rule would provide essentially the same recordkeeping relief as is made available by Rule 4.13 to persons exempt from CPO registration because they operate a commodity pool that is essentially a club or family fund and receive no compensation for such activity [45] or because they operate specified small pools.[46] As the Commission noted in adopting Rule 4.13, the recordkeeping requirements contained therein are minimal recordkeeping requirements in that they essentially "only require the keeping of those books and records which are generated in the ordinary course of operating the pool." [47]

4. Notice of a Claim for Exemption

To claim the relief available under Rule 4.7, a CPO would be required to file a notice of claim for exemption. This notice requirement is patterned after the notice requirements of Rules 4.5 and 4.12(b). The notice would be required to contain, among other things, the names of the CPO claiming relief and of the pool(s) for which such relief was claimed.

The Commission has included a provision requiring CPOs claiming relief pursuant to Rule 4.7 to represent that neither the CPO nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) [48] of the Act.

In come cases, the Regulation D safe harbor is not available to issuers that are, or whose predecessors or affiliates are, subject to proceedings, convictions, orders or judgments described in Rule 230.252 (c), (d), (e) or (f) of the Securities Act regulations. In 1987, in response to a suggestion by representatives of the North American Securities Administrators Association, the SEC proposed an amendment to Regulation D that would expand the applicability of this disqualification.[49] The SEC determined not to adopt this amendment. However, most states apply disqualification provisions to private offerings.

The Commission believes that the proposed provision requiring CPOs seeking exemption pursuant to Rule 4.7 to represent that neither they nor their principals are subject to a statutory disqualification may permit the offer of these vehicles without implicating other regulators' requirements. The Commission invites comments on this provision.

Proposed paragraph 4.7(b)(2)(ix) would specify that the notice must be received by the Commission before the commodity pool first enters into any commodity interest transaction if relief from reporting or recordkeeping (pursuant to proposed Rules 4.7(b)(1) (ii) or (iii) or 4.7(b)(1)(iv)) were claimed or prior to any offer or sale of a participation in the pool if relief from disclosure were claimed (pursuant to proposed Rule 4.7(b)(1)(i)). Proposed Rule 4.7(b)(2)(ix) and (b)(2)(viii) would specify that a notice of exemption that does not include all required information will not be effective. As with Rules 4.5 and 4.12(b), proposed Rule 4.7(b)(2)(x) and (b)(3) respectively would make clear that relief claimed under Rule 4.7 would cease to be effective upon any change which would cause the CPO of the pool to be ineligible for relief and that any exemption claimed under Rule 4.7 will not affect the CPO's obligations to comply with all other applicable provisions of the Act and the Commission's regulations.

The notice of a claim for exemption required by proposed Rule 4.7 would be self-executing, *i.e.*, it would be effective upon receipt by the Commission, provided that it included all required information. However, if at the time of the Commission's receipt of the Notice, an enforcement proceeding brought by the Commission under the Act or the regulations thereunder were pending against the CPO, the exemption would not be effective until twenty-one calendar days after receipt of the notice and could be denied or made subject to such conditions as the Division of Trading and Markets may impose.

C. Relief for CTAs

Pursuant to proposed Rule 4.7(c) a commodity trading advisor could claim relief from the disclosure requirements

[42] Of course, if the annual report were certified by an independent public accountant, it would have to be certified in accordance with § 1.16.

[43] See n. 11 *supra* and accompanying text.

[44] Among other things, § 1.31 requires that books and records required by the Act and the Commission's regulations be kept for five years from the date of their making and be readily accessible during the first two years of the five-year period.

[45] In addition, such persons are precluded from conducting any advertising in connection with the pool.

[46] The total gross capital contributions received by such persons for participations in all the pools they operate may not, in the aggregate, exceed $200,000 and none of the pools operated may have more than 15 participants at any time.

[47] 46 FR 26004 at 26007–08 (May 8, 1981). Of course, a CPO would be required to maintain the reports required by Rule 4.22 (a) and (c) unless it had claimed exemption from reporting pursuant to Rule 4.7(b)(1) (ii) or (iii), respectively.

[48] Sections 8a(2) and 8a(3) of the Act authorize the Commission to, among other things, register conditionally or suspend or place restrictions upon the registration of persons subject to the statutory disqualifications listed in those sections. Persons subject to statutory disqualifications include, among other, persons who have had a prior registration suspended, revoked or refused, persons who are subject to an injunction from acting in or who have been convicted of a felony, involving, certain investment-related activities, and persons who have been found to have violated specified investment-related statutes and regulations.

[49] 52 FR 3015 (January 16, 1987).

of Rule 4.31 with respect to the commodity interest account of a client who met the requirements for QEP in Rule 4.7(a) or of a commodity pool for which relief from disclosure was effective under Rule 4.7(b)(1). Under this exemption, the CTA would not be required to file a Disclosure Document with the Commission and if the CTA distributed a promotional brochure to such client or commodity pool, such brochure would not be required to contain the information specified in Rule 4.31.[50] However, as with respect to CPOs claiming exemption under the proposed rule, any promotional brochure distributed to such client or commodity pool would be required to include all information necessary to make the statements made in such brochure not misleading. In addition, the CTA must prominently display on the cover page of any such promotional brochure the legend prescribed in the rule alerting such client or pool that the promotional brochure has not been filed with or reviewed or approved by the Commission. The CTA would remain subject to the antifraud provisions of sections 4b and 4*o* of the Act.[51]

The CTA could also claim relief from the specific recordkeeping requirements of Rule 4.32 [52] with respect to clients who met the QEP requirements and with respect to commodity pools for which recordkeeping relief was effective under Rule 4.7(b)(1)(iv). Such exempted CTA would be required to make and keep all books and records made in connection with his providing commodity interest trading advice to such clients and commodity pools and to make them available to the Commission, the National Futures Association and the U.S. Department of Justice in accordance with Rule 1.31.[53]

Under Rule 4.7 as proposed, a CTA could not claim relief from disclosure or recordkeeping with respect to a qualified eligible pool unless the CPO for such pool had claimed the corresponding relief from disclosure and recordkeeping. The Commission is seeking comment on whether relief from disclosure and recordkeeping should be available for CTAs of qualified eligible pools without regard to whether the CPO has claimed disclosure and recordkeeping relief with respect to such pools.

The CTA would also be required to file a notice of claim for relief and such notice would be subject to the same requirements as the notice for relief required to be filed by CPOs claiming relief under proposed Rule 4.7. However, in contrast to the filing requirement for CPOs claiming exemption, which requires a notice as to each qualifying pool, the CTA would be required only to file a single notice. This notice would state that the CTA anticipates providing commodity interest trading advice to qualified eligible clients and pools, which need not be specified in the notice, and represent that the CTA will comply with the requirements of Rule 4.7 as to such clients and pools.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Proposed Rule 4.7 would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[54] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[55] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[56]

The rule proposed herein would amend the Commission's rules currently applicable to CPOs and CTAs so as to reduce rather than increase those rule requirements. The exemptive relief provided under the proposed rules would be available to all CPOs and CTAs, regardless of size, with respect to qualified eligible participants and clients, and would reduce the disclosure, reporting and recordkeeping requirements applicable to the specified offerings. The Commission believes that the proposals, if adopted, would not have a significant economic impact on small entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605-(b)), the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered CPO or CTA who believes that this rule would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted this proposed/amended rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden House per Response: 29.10
Number of Respondents: 2,965
Frequency of Response: On Occasion

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours per Response: 1.00
Number of Respondents: 50.00
Frequency of Response: On Occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 4

Commodity pool operators, commodity trading advisors.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19, 7 USC 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23, the Commission hereby proposes to amend part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.7 is proposed to be added to read as follows:

[50] See n. 9 *supra* and accompanying text.
[51] See n. 22 *supra*.
[52] See n. 11 *supra*.
[53] See n. 44 *supra*.

[54] 47 FR 18618–18621 (April 30, 1982).
[55] 47 FR 18619–18620.
[56] 47 FR 18618, 18620 (April 30, 1982).

§ 4.7 Exemption from Rules 4.21, 4.22, 4.23, 4.31 and 4.32 with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors' clients that meet the requirements for qualified eligible participants.

(a) The term *qualified eligible participant* shall mean:

(1) Any person acting for its own account or for the account of a qualified eligible participant and who comes within any of the following categories, or who the commodity pool operator reasonably believes comes within any of the following categories, at the time of the sale to that person of a pool participation:

(i) Any futures commission merchant registered pursuant to section 4d of the Act;

(ii) Any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(iii) Any registered commodity pool operator who operates commodity pools which, in the aggregate, have total assets in excess of $10,000,000;

(iv) The commodity pool operator of the pool being offered or sold;

(v) any registered commodity trading advisor who provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $10,000,000 deposited at one or more futures commission merchants;

(2) Any person who, acting for its own account, in the aggregate, owns and controls at least $5,000,000 in securities (including pool participations) or issuers not affiliated with such participant or who has deposited at least $1,000,000 initial margin and option premiums with a futures commission merchant for commodity interest trading and who comes within any of the following categories, or who the commodity pool operator reasonably believes comes within any of the following categories, at the time of the sale to that person of a pool participation;

(i) Any investment company registered under the Investment Company Act of 1940 that has total assets in excess of $10,000,000 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of investing in the pool offered;

(ii) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iii) Any insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iv) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(v) Any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are qualified eligible participants;

(vi) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(vii) Any organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(viii) Any corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $10,000,000, and is not formed for the specific purpose of participating in the pool offered;

(ix) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(x) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(xi) Any pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $10,000,000, nor formed for the specific purpose of participating in the pool offered, and whose participation in the pool is directed by a QEP, *Provided*, that except where such pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(3) of this section, no more than 10 percent of the assets of such entity are used to purchase units in commodity pools for which a claim of exemption has been filed pursuant to this section;

(xii) Except as otherwise provided in paragraph (a)(2)(iv) of this section, if otherwise authorized by law to engage in such transactions, any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; and

(3) Any entity in which all of the equity owners are persons listed in paragraphs (a)(1) or (a)(2) of this section.

(b) Any person who is registered as a commodity pool operator under the Act, who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act will be exempt as provided in paragraph (b)(1) (i), (ii) or (iii) of this section for the offer and sale of participations in the pool, subject to the conditions specified therein, upon filing the notice required by paragraph (b)(2) of this section.

(1) A commodity pool operator that files a notice pursuant to this section may claim any or all of the following relief with respect to the commodity pool specified in such notice, hereafter referred to as "qualified eligible pool":

(i) *Disclosure.* Exemption from making the specific disclosures required by § 4.21 (a) through (h); *Provided*, That if an offering memorandum is distributed in connection with soliciting prospective participants in the qualified eligible pool, (A) such offering memorandum shall include any additional disclosures as may be necessary to make the information contained therein, in the context in which it is furnished, not misleading; and (B) the following statement must be prominently disclosed on the cover page: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION, THIS OFFERING MEMORANDUM IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR THIS OFFERING MEMORANDUM"; and *Provided further*, That the pool operator will not

be relieved from any obligation under the Act or the regulations thereunder.

(ii) *Periodic Reporting.* Exemption from the specific requirements of §§ 4.22(a) and 4.22(b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the qualified eligible pool as of the end of the reporting period.

(iii) *Annual Report.* (A) Exemption from the specific requirements of §§ 4.22 (c) and (d); *Provided,* That within 90 calendar days after the end of the qualified eligible pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements in the annual report specified by those sections, an annual report for the qualified eligible pool, signed and affirmed in a manner consistent with § 4.22(h) which contains, at a minimum:

(*1*) A Statement of Financial Condition as of the close of the qualified eligible pool's fiscal year (elected in a manner consistent with § 4.22(g));

(*2*) A Statement of Income (Loss) for that year; and

(*3*) Appropriate footnote disclosure and any other material information.

(B) Such annual report shall be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) Legend. (*1*) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(*2*) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report.

(iv) *Recordkeeping.* Exemption from the specific requirements of § 4.23; *Provided,* That the commodity pool operator shall maintain the reports referred to in paragraphs (b)(1)(ii) and (b)(1)(iii) of this § 4.7 and the books and records prepared in connection with his activities as the pool operator of the qualified eligible pool to which the exemption applies and shall make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) The notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association identification number of the person claiming the exemption;

(iii) Provide the name(s) of the qualified eligible pool(s) for which the request is being made;

(iv) Contain representations (A) that neither the commodity pool operator nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) of the Act, and (B) that the commodity pool operator will comply and the qualified eligible pool will be offered and operated in compliance with the requirements of §§ 4.7(b);

(v) Specify the relief claimed under this § 4.7;

(vi) State the closing date of the offering or that the offering will be continuous.

(vii) Be signed by the pool operator, as follows: If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer; and

(viii) Be filed in duplicate, with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(ix) The notice of a claim for exemption under paragraph (b)(2) of this section must be received by the Commission before (A) the date the qualified eligible pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under § 4.7(b)(1) (ii), (iii) and (iv); or (B) if relief is claimed pursuant to § 4.7(i), prior to any offer or sale of any participation in the qualified eligible pool. The notice will be effective upon its receipt by the Commission with respect to each qualified eligible pool for which it was made, *Provided,* That any notice which does not include any of the required information shall not be effective, and that if at the time of the Commission's receipt of such claim for exemption, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and such exemption may be denied by the Division of Trading and Markets ("Division") or made subject to such conditions as the Division may impose.

(x) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for such pool to be ineligible for the relief specified in § 4.7(b)(1) with respect to such pool. A notice advising the Commission of such change shall be filed promptly.

(3) Any exemption from the requirements of §§ 4.21, 4.22 or 4.23 made hereunder with respect to a commodity pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of this part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(c) Any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of clients that meet the requirements for qualified eligible participant set forth in § 4.7(a) ("qualified eligible clients") and of commodity pools for which relief was claimed and is effective under § 4.7(b)(1) as specified in § 4.7(c)(1) (i) or (ii) of this section upon filing the notice required by paragraph (c)(2) for this section with respect to such clients or commodity pools.

(1) A commodity trading advisor that files a notice pursuant to paragraph (c)(2) of this section may claim any or all of the following relief with respect to qualified eligible clients or pools:

(i) *Disclosure.* Exemption from the specific requirements of § 4.31 (a) through (g) with respect to the qualified eligible clients or qualified eligible pools for which relief from disclosure was claimed pursuant to § 4.7(b)(1)(i) and is effective; *Provided,* That if a promotional brochure is delivered to such qualified eligible clients or pools, (A) such promotional brochure shall include any additional disclosure as may be necessary to make the information contained therein, in the context in which it is furnished, not misleading; and (B) the following statement must be prominently displayed on the cover page: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION, THIS

PROMOTIONAL BROCHURE IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF A PROMOTIONAL BROCHURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS PROMOTIONAL BROCHURE"; and *Provided further*, That the commodity trading advisor will not be relieved from any obligation under the Act or the regulations thereunder.

(ii) *Recordkeeping*. Exemption from the specific requirements of § 4.32 with respect to qualified eligible clients or qualified eligible pools for which relief from recordkeeping was claimed pursuant to § 4.7(b)(1)(iv) and is effective; *Provided*, That the commodity trading advisor shall maintain the books and records prepared in connection with his activities as the commodity trading advisor of such qualified eligible clients or pools and shall make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice at its main business office in accordance with the provisions of § 1.31. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, upon the request of such representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

(2) The notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association identification number of the person claiming the exemption;

(iii) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and pools and that it will comply with the requirements of Rule 4.7 with respect to such clients and pools;

(iv) Contain representations (A) that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act, and (B) that the commodity trading advisor will comply with the requirements of §§ 4.7(c)(1);

(v) Specify the relief claimed under this § 4.7;

(vi) Be signed by a duly authorized representative; and

(vii) Be filed in duplicate, with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(viii) The notice of a claim for exemption under paragraph (c)(2) of this section must be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest accounts of qualified eligible clients or pools. The notice will be effective upon its receipt by the Commission, *Provided*, That any notice which does not include any of the required information shall not be effective, and that if at the time of the Commission's receipt of such claim for exemption, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and such exemption may be denied by the Division or made subject to such conditions as the Division may impose.

(ix) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief specified in § 4.7(c)(1). A notice advising the Commission of such change shall be filed promptly.

(3) Any exemption from the requirements of Rules 4.31 or 4.32 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of this part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible client or pool and with respect to any other client or pool to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

Issued in Washington, DC, on January 22, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-1911 Filed 1-27-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 363

RIN 1820-AA86

State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Extension of comment period.

SUMMARY: On November 13, 1991, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the State Supported Employment Services Program (56 FR 57778). The comment period for the NPRM ended on December 30, 1991. In response to requests from the public, the Secretary extends the comment period from December 30, 1991 to February 14, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: All comments concerning the proposed regulations should be addressed to Nell C. Carney, Commissioner, Rehabilitation Serviced Administration, 400 Maryland Avenue, SW. (Switzer Building, room 3225), Washington, DC 20202-2742.

FOR FURTHER INFORMATION CONTACT: Fred Isbister, Telephone (202) 732-1297.

Dated: January 22, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-1944 Filed 1-27-92; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-8, RM-7713]

Radio Broadcasting Services; Stock Island, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by S-3 Communications Corporation seeking the allotment of Channel 248A to Stock Island, Florida, as that community's first local FM service. Channel 248A can be allotted to Stock Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) west, in order to avoid a short-spacing to the vacant allotment for Channel 249A at Marathon, Florida. The coordinates for the proposal are North

Latitude 24–33–40 and West Longitude 81–46–18.

DATES: Comments must be filed on or before March 16, 1992, and reply comments on or before March 31, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Belisle, Leibowitz & Spencer AmeriFirst Building, suite 1450, One Southeast Third Avenue, Miami, Florida 33131 (Counsel for S–3 Communications Corporation).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 92–8, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 83

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–2064 Filed 1–27–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-7, RM-7879]

Radio Broadcasting Services; Scotland Neck and Pinetops, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WYAL Radio, Inc., seeking the substitution of Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, the reallotment of Channel 238C3 from Scotland Neck to Pinetops, North Carolina, as the community's first local aural transmission service, and the modification of Station WWRT(FM)'s construction permit to specify Pinetops as its community of license. Channel 238C3 can be allotted to Pinetops in compliance with the Commission's minimum distance separation requirements with a site restriction of 18 kilometers (11.1 miles) north to avoid short-spacings to Stations WRNS–FM, Channel 236C, Kinston, North Carolina, and Station WKML, Channel 239C, Lumberton, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 238C3 at Pinetops are North Latitude 35–55–54 and West Longitude 77–40–11. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 238C3 at Pinetops or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 16, 1992, and reply comments on or before March 31, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Daniel W. Clark, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–7, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–1922 Filed 1–27–92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

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.

ACTION

Drug Alliance; Availability of Funds

ACTION: Notice of availability of funds.

ACTION, the federal domestic volunteer agency, announces the availability of funds during fiscal year 1992 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, part C). These grants are to address the particular need for illicit drug use prevention programs that focus on at-risk youth from low-income communities.

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to confront the crisis of illegal drug use by youth by supporting innovative prevention programs that use volunteer resources at the local level to respond to this crisis. Volunteers of all ages and from every segment of the community can make vital contributions to illegal drug use prevention and education programs. Therefore, ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against illegal drugs.

The best strategy to combat illegal drug use by youth is to prevent it from starting. Effective prevention requires the involvement of every segment of the community in delivering and reinforcing clear and consistent "no use" messages. Because no single approach will work in every locale, ACTION has supported and promoted a wide range of models using volunteers of all ages to stop the use of illegal drugs by youth. The search continues for new approaches or models, as well as for strategies to adapt existing models to individual communities. There is continuing need for effective approaches that use volunteers to provide specific illicit drug use prevention information and refusal skills as well as to provide a wide range of positive activities for at-risk youth that can reinforce prevention efforts.

Local community and youth serving organizations are in a unique leadership position to provide meaningful structured volunteer programs which focus on preventing illegal drug use among youth. Such local organizations have demonstrated in the past that they are best able to address community problems such as illicit drug use among youth because they are closest to the problem and have the greatest stake in solving it. Also, they are most able to include both parents and youth in the planning and implementation of programs to combat illegal drug use—a strategy increasingly recognized as critical to the ultimate effectiveness of such community-based projects.

There is growing recognition of the importance of involving youth in illegal drug use prevention activities. In particular, youth volunteers have demonstrated that they are able to positively effect the lives and actions of at-risk youth. There is a critical need for communities to develop programs which will provide opportunities for drug-free youth to become leaders and role models to help counter peer pressure to use illegal drugs. As well as being of value to the community, youth volunteers themselves can receive a meaningful sense of involvement and accomplishment from providing service to others.

In addition, there is growing recognition of the importance of involving youth in illicit drug use prevention activities after school, on weekends and during the summer months when schools are not in session and school-related prevention information and support is unavailable. There is particular need for such illicit drug prevention programming in low-income neighborhoods. The needs in such communities that may be met through voluntary service are great, and the youth who live in these areas are generally considered at extremely high risk of becoming involved with illegal drugs. This announcement solicits innovative and creative proposals which respond to this need.

A. Eligible Strategy

Public and private non-profit agencies, including community-based organizations, which provide services to youth are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing project, (b) or developing a new project.

The proposed program must use non-stipended volunteers to provide illegal drug use prevention education and related activities for youth program participants. Such activity outside normal school hours, including after-school, weekends, and during the summer months, is encouraged. It must involve parents, make extensive use of non-stipended youth and/or adult volunteers in its operation, and target youth who reside in low-income communities, especially inner city neighborhoods, public housing developments, and rural areas. There should be special emphasis on the recruitment of volunteers who live in the community being served by the project.

The prevention education component must include information on the harmful consequences of illegal drug use as well as peer pressure resistance and refusal skills. The involvement of other drug prevention educational resources from the community is encouraged.

Additional positive activities to benefit or to involve youth which are designed to reinforce the prevention education process should be built into the program as well. Such activities may include (but are not limited to); mentoring, tutoring, community service, and other recreational/cultural/educational opportunities.

Finally, all proposals for $10,000 or more must include plans for detailed evaluation and documentation of "lessons learned" so as to measure the project's impact on the drug use problem in the community, to facilitate replication and adaptation of effective strategies in other communities, and to add to the body of knowledge about drug prevention.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies that provide services to youth will be eligible. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, community-based volunteer groups, religious organizations, local government agencies, service clubs, fraternities, sororities and youth-serving organizations.

Any applicant that does not adhere to a strict policy of the non-use of illegal drugs will not be eligible for consideration. Furthermore, an application will be deemed ineligible if it refers to philosophy, proposed activities, training or educational materials that advocate the tolerance of initial use or responsible use of any illegal drug, and/or the illegal use of any legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of Grant

The amount of a grant will not exceed $40,000 each. Grant funding will be provided on a one-time, non-renewable basis for a budget period not to exceed 12 months.

All grants awarded under this announcement require a 50% non-federal match for the project director's salary and fringe benefits. The project director must serve on at least a half-time basis. Additional non-federal match is strongly encouraged, and will be considered in decision-making process.

Applicants should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative detailing the source of the support and the formula used to compute these costs.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amount of funds available, or any part thereof.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as well as on conformance to the instructions included in the application.

1. Statement of need that includes both an analysis of the type and extent of the problem to be addressed by the project and an overview of the applicant's qualifications to meet that need.

2. Ability and plans to recruit, train, and retain non-stipended older youth or adult volunteers to assist youth in low-income communities.

3. Ability and plans for volunteers to provide appropriate illicit drug use prevention education (including information about harmful consequences to health from use and resistance training) for youth participants.

4. Ability and plans for volunteers to provide additional positive activities for youth participants (e.g., mentoring, tutoring, or recreational/cultural/educational opportunities.)

5. Plans to involve youth and parents in developing and/or implementing the program.

6. Plans to continue project activities beyond the end of the ACTION grant.

7. Thoroughness and feasibility of plans to work with other local agencies and organizations and existing illicit drug prevention coalitions to implement the program. At least three current letters from agencies or organizations which make a commitment to participate in the ACTION-funded project must be submitted.

8. Carefully formulated Work Plan which includes time-phased and quantifiable objectives, including objectives for continuation of the project, and the feasibility of proposed methods for meeting those objectives.

9. Potential for replication in other communities and plans to share project documentation or materials with other organizations.

10. Evidence of public and private sector support (financial and in-kind). Amount and type of non-federal support will be considered.

11. Detailed description of methods to be used in evaluating the impact of the program on the illegal drug abuse problem in the community. Failure to address this criteria will result in rejection of the application.

E. Applications Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants which meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Applicant's access to alternate resources; and

3. Allocation of Drug Alliance resources in relation to other ACTION funds.

Pursuant to Public Law 101-204, priority will be given to applicants that have not previously received Drug Alliance funds.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State office no later than 5 p.m. local standard time on Friday, March 27, 1992. Only those applications that are received at the appropriate ACTION State Office by 5 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form 424-PDD) with narrative budget justification, a narrative of project goals and objectives, a detailed Work Plan, (submitted on the form included in the application), and Assurances.

b. Signed and dated Certification Regarding Drug Free Workplace Requirements.

c. Signed and dated Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organizational chart of the applicant showing how the project is related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the above criteria and evidencing intent to cooperate with applicant in development and implementation of the ACTION funded project.

h. Statement that identifies previous ACTION funding (type, year, and amount) or a statement that applicant has not previously received funding from ACTION.

i. CPA certification of accounting capability.

j. Articles of Incorporation including the page that contains the State seal.

k. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items i, j and k above are not required for public agencies of state and local government.

Hearing-impaired individuals may contact ACTION's TDD number, (202) 606-5256. This announcement, application materials and guidance may be provided in alternative formats for the visually-impaired by calling (202) 606-4857.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is a list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Offices under their jurisdiction.

Region I

ACTION Regional Director, 10 Causeway Street, Room 473, Boston, MA 02222-1039, 617/565-7001

ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 223, Concord, NH 03301-3939, 603/225-1450

ACTION State Program Director, John O. Pastore Federal Bldg., Two Exchange Terr. Room 232, Providence, RI 02903-1758, 401/528-5424

ACTION State Program Director, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103-3510, 203/240-3237

ACTION State Program Director, U.S. Courthouse, 76 Pearl Street, Room 305, Portland, ME 04101-4188, 207-780-3414

ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222-1039, 617/565-7018

Region II

ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-3481

ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-4471

ACTION State Program Director, 44 South Clinton Avenue, Suite 702, Trenton, NJ 08609-1507, 609/989-2243

ACTION State Program Specialist, U.S. Courthouse & Federal Building, 445 Broadway, Room 103, Albany, NY 12207, 518/472-3664

ACTION State Program Director, U.S. Federal Building, 150 Carlos Chardon Avenue, Suite G49, Hato Rey, PR 00918-1737, 809/766-5314

Region III

ACTION State Program Director, 603 Morris Street, 2nd Floor, Charleston, WV 25301-1409, 304/347-5246

ACTION Regional Director, U.S. Customs House, 2nd & Chestnut Streets, Room 108, Philadelphia, PA 19106-2996, 215/597-9972

ACTION State Program Director, Federal Building, 600 Federal Place, Room 372-D, Louisville, KY 40202-2230, 502/582-6384

ACTION State Program Director, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814, 301/962-4443

ACTION State Program Director, Leveque Tower, 50 W. Broad Street, Room 304A, Columbus, OH 43215-3301, 614/469-7441

ACTION State Program Director, Gateway Building, 3535 Market Street, Room 2460, Philadelphia, PA 19104-2996, 215/596-4077

ACTION State Program Director, 400 North 8th Street, P.O. Box 10066, Room 1119, Richmond, VA 23240-1832, 804/771-2197

Region IV

ACTION Regional Director, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323-2301, 404/331-2860

ACTION State Program Director, 3165 McCrory Street, Suite 115, Orlando, FL 32803-3750, 407/648-6117

ACTION State Program Director, Federal Building/P.O. Century Station, 300 Fayetteville St. Mall, Room 131, Raleigh, NC 27601-1739, 919/856-4731

ACTION State Program Director, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 770, Birmingham, AL 35209-3120, 205/290-7186

ACTION State Program Director, 75 Piedmont Avenue, N.E., Suite 462, Atlanta, GA 30303-2587, 404/331-4646

ACTION State Program Director, Federal Building, 100 West Capitol Street, Room 1005-A, Jackson, MS 39269-1739, 601/905-5664

ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228-3889, 615/736-5561

ACTION State Program Director, Federal building, 1835 Assembly Street, Room 872, Columbia, SC 29201-2430, 803/765-5771

Region V

ACTION State Program Director, 431 South 7th Street, Room 2480, Minneapolis, MN 55415, 612/334-4083

ACTION Regional Director, 175 West Jackson Boulevard, Suite 1207, Chicago, IL 60604-2702 312/353-5107

ACTION State Program Director, 46 East Ohio Street, Room 457, Indianapolis, IN 46204-1922, 317/226-6724

ACTION State Program Director, 175 West Jackson Boulevard, Suite 1207, Chicago, IL 60604-2702, 312/353-3622

ACTION State Program Director, Federal Building, 210 Walnut Room 722, Des Moines, IA 50309-2195, 515/284-4816

ACTION State Program Director, Federal Building, 231 West Lafayette Boulevard Room 658, Detroit, MI 48226-2799, 313/226-7848

ACTION State Program Director, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202-4507, 414/291-1118

Region VI

ACTION Regional Director, 1100 Commerce, Room 6B11, Dallas, TX 75242-0696, 214/767-9494

ACTION State Program Director, 200 N.W. 5th, Suite 912, Oklahoma City, OK 73102-6093, 405/231-5201

ACTION State Program Director, 640 Main Street, Suite 102, Baton Rouge, LA 70801-1910, 504/389-0471

ACTION State Program Director, 611 East Sixth Street, Suite 404, Austin, TX 78701-3747, 512/482-5671

ACTION State Program Director, Federal Building, 700 West Capitol Street Room 2506, Little Rock, AR 72201-3291, 501/324-5234

ACTION State Program Director, Federal Building, 444 S.E. Quincy Room 248, Topeka, KS 66603-3501, 913/295-2540

ACTION State Program Director, Federal Office Building, 911 Walnut Room 1701, Kansas City, MO 64106-2009, 816/426-5256

ACTION State Program Director, First Interstate Plaza, 125 Lincoln Avenue Suite 214-B, Sante Fe, NM 87501-2026, 505/988-6577

Region VIII

ACTION State Program Director, Columbine Building, 1845 Sherman Street Room 301, Denver, CO 80203-1167, 303/866-1070

ACTION State Program Director, Federal Building, 2120 Capitol Avenue Suite 8009, Cheyenne, WY 82001-3649, 307/772-2385

ACTION State Program Director, Federal Office Bldg. Drawer 10051, 301 South Park Room 192, Helena, MT 59626-0101, 406/449-5404

ACTION State Program Director, Federal Building, 100 Centennial Mall North, Room 156, Lincoln, NE 68508-3896, 402/437-5493

ACTION State Program Director, Federal Building, 225 S. Pierre Street Suite 225, Pierre, SD 57501-2452, 605/224-5996

ACTION State Program Director, Frank E. Moss U.S. Courthouse, 350 South Main Street Room 484, Salt Lake City, UT 84101-2198, 801/524-5411

ACTION Regional Director, Executive Tower Building, 1405 Curtis Street Suite 2930, Denver, CO 80202-2349, 303/844-2671

Region IX

ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105-1914, 415/744-3046

ACTION State Program Office, 211 Main Street, Room 534, San Francisco, CA 94105-1914, 415/744-3015

ACTION State Program Director, Federal Building, 11000 Wilshire Boulevard Room 11221, Los Angeles, CA 90024-3671, 213/575-7421

ACTION State Program Director, Federal Building/P.O. Box 50024, 300 Ala Moana Boulevard Room 6326, Honolulu, HI 96850-0001, 808/541-2832

ACTION State Program Director, 522 North Central, Room 205-A, Rhoenix, AZ 85004-2190, 602/379-4825

ACTION State Program Director, 4600 Kietzke Lane, Suite E-141, Reno, NV 89502-5033, 702/784-5314

Region X

ACTION Regional Director, 915 Second Avenue, Jackson Federal Office Bldg. Suite 3190, Seattle, WA 98174-1103, 206/553-1558

ACTION State Program Director, 304 North 8th Street, Room 344, Boise, ID 83702-5835, 208/334-1707

ACTION State Program Director, Federal Building, 511 N.W. Broadway Room 647, Portland, OR 97209-3416, 503/326-2261

ACTION State Program Director, Jackson Federal Office Building, 915 Second Avenue Suite 3190, Seattle, WA 98174-1103, 206/553-4975

ACTION State Program Director/Alaska, 915 Second Avenue, Jackson Federal Office Bldg. Suite 3190, Seattle, WA 98174-1103, 206/553-1558

Signed at Washington, DC, this 22nd day of January 1992.

Jane A. Kenny,

Director.

[FR Doc. 92-2059 Filed 1-27-92; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF COMMERCE

Office of Administrative Law Judge

[Docket No. 251-008]

Peter E. Hess, Applicant; Order and Hearing Location

By agreement of the parties the informal hearing provided for in § 924.8(c) of the regulations (15 CFR 924.8(c)) relating to the denial of Applicant's request to conduct research related to the U.S.S. *MONITOR*, and within the Monitor National Marine Sanctuary, will be held in Hearing Room 2409 at 401 M Street, SW., Washington, DC at 9:30 a.m. on February 13, 1992.

Further, it is Ordered that not later than February 5, 1992, each of the parties shall file with this Tribunal and serve upon opposing counsel a memorandum setting forth their respective position and argument in this matter along with a list of witnesses and exhibits which are expected to be introduced at the hearing. Copies of such exhibits shall be provided and served on opposing counsel by February 5, 1992.

Dated: January 22, 1992.

William A. Ogden,

Administrative Judge.

[FR Doc. 92-1974 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-GB-M

Foreign-Trade Zones Board

[Docket 1-92]

Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Subzone Davisco International, Inc., Dairy Products Processing Plants, St. Peter/Nicollet, MN [1]

An applicaton has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of FTZ 119, requesting special-purpose subzone status for export activity at the intermediate dairy products manufacturing facilities of Davisco International, Inc. (Davisco), located in St. Peter and Nicollet, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 1992.

The proposed subzone would consist of three manufacturing/warehousing facilities: Site 1 (30,100 sq. ft.)—drying/blending facility located at 119 North Front Street in St. Peter, Minnesota; Site 2 (35,000 sq. ft.)—warehouse located at 1511 Gault Street, in St. Peter, approximately 65 miles southwest of Minneapolis-St. Paul; and, Site 3 (25,000 sq. ft.)—drying facility located 11 miles southwest of St. Peter at 734 Sixth Street in Nicollet, Minnesota.

The facilities are used to produce a variety of dairy products, but subzones status is being requested only for the production of intermediate dairy food products and by-products for export. The proposed activity involves the blending of foreign non-fat dry milk and casein with ingredients purchased domestically, such as milk minerals and proteins, lactose, sodium hydroxide, calcium hydroxide, and potassium hydroxide. The final products include: whey protein concentrate, delactosed whey, whey protein isolates, lactose, and various milk mineral by-products, which are sold to food product manufacturers. The application indicates that subzone status would help Davisco compete in its Asian markets.

Zone procedures would exempt the company from quota requirements and Customs duty payments on the foreign milk products used in the production for export. They would not be used in regard to the manufacture of products for the domestic market.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 25, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to 4-9-92).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 108 Federal Building, 110 S. Fourth Street, Minneapolis, MN 55401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 21, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-1982 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[1] This application is the first one filed under the FTZ Board's revised regulations (56 FR 50790-50808, 10-8-91), and all docket numbers that follow will involve applications similarly filed and processed.

International Trade Administration

[C-557-806; A-557-805]

Postponement of Preliminary Antidumping Duty Determination on Extruded Rubber Thread From Malaysia and Alignment of Final Countervailing Duty and Antidumping Duty Determinations of Extruded Rubber Thread from Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or 377-2239.

Postponement and Alignment

On January 10, 1992, North American Rubber Thread Co. Inc., petitioner in these investigations, requested that the Department postpone the preliminary determination in the antidumping duty investigation in accordance with 19 CFR 353.15(c). Accordingly, we are postponing the date of the preliminary determination until not later than February 14, 1992. Unless extended, the date of the final antidumping duty determination will be April 29, 1992.

On December 30, 1991, we published a preliminary affirmative countervailing duty determination pertaining to extruded rubber thread from Malaysia (56 FR 67276). The final countervailing duty determination in this case was originally due not later than February 26, 1992.

Also on December 30, 1991, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1671d(a)(1)), petitioner requested an extension of the due date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination with respect to the same produce and country. Accordingly, we are aligning the final determination in the countervailing duty investigation

with the final determination in the antidumping duty investigation of extruded rubber thread from Malaysia.

In accordance with section 705 of the Act and article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation of extruded rubber thread from Malaysia on April 28, 1992, which is 120 days from the date of publication of the preliminary determination in the countervailing duty investigation. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters on or after April 28, 1992. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to hold any entries suspended between December 30, 1991, and April 27, 1992, until the conclusion of this investigation.

Public Comment

Because no parties requested a public hearing within ten days of the publication of our preliminary countervailing duty determination pertaining to extruded rubber thread from Malaysia, we will not hold a public hearing on the countervailing duty investigation.

Interested parties may, however, submit ten copies of the business proprietary version and five copies of the public version of case briefs in the countervailing duty investigation to the Assistant Secretary for Import Administration by March 31, 1992. Ten copies of the business proprietary version, and five copies of the public version, of rebuttal briefs must be submitted to the Assistant Secretary by April 6, 1992. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement and alignment, in accordance with section 705(d) of the Act. Furthermore, this notice is published pursuant to sections 705(d) and 733(c)(2) of the Act.

Dated: January 21, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1980 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers two manufacturers/exporters of the subject merchandise to the United States during the period June 1, 1989 through May 31, 1990. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch, Cherie Rusnak or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 24916). Two respondents, Toyota Motor Corporation ("Toyota"), and Toyo Umpanki, Co., Ltd. ("TCM"), requested an administrative review. We initiated the review on July 26, 1990 (55 FR 30490) covering the period June 1, 1989 through May 31, 1990. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing or handling of articles. Less than complete forklift trucks are definded as imports which include a frame, by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized System (HTS) item numbers 8427.20.00-0, 8427.90.00-0. and 8431.20.00-0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers sales and entries by Toyota and TCM during the period June 1, 1989 through May 31, 1990

Such of Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift. Within these categories, we based our product comparisons on six primary characteristics, to which we assigned "points" indicating their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. Where there were no identical products sold in the home market, we selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, the Department determined that purchase price was the appropriate basis for the calculation of United States price based on the following reasons:

(1) The merchandise in question was shipped directly from the manufacturer

to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) This was a customary commercial channel for sales of this merchandise between the parties involved; and, (3) The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs these functions. Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price for each respondent is detailed below.

Toyota: We calculated purchase price and ESP based on the packed, c & f, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, import brokerage, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, and indirect selling expenses (which include inventory carrying costs, product liability insurance, advertising, and selling expenses), pursuant to section 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacturing prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. Also, in accordance with 772(d)(1)(C) of the Act, we added to the United States price the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. We computed the tax by multiplying the unit price, less discounts, foreign brokerage, foreign inland freight and insurance, ocean freight, marine insurance, import brokerage, U.S. inland freight and insurance, packing and value-added, by the tax rate. For purchase price sales, we multiplied the unit price, less foreing brokerage, foreign inland freight, ocean freight, marine insurance, and packing, by the tax rate.

In a supplemental questionnaire, dated May 23, 1991, Toyota was instructed to reallocate ocean freight on a shipment-by-shipment basis; allocate U.S. co-op advertising expenses on sale-by-sale basis by dealer; for value-added, delete any "offset" expense for income and profit from other business ventures and reallocate; and allocate a portion of the TAL indirect selling expenses incurred on behalf of the sales to the United States. Toyota did not comply. Therefore, we used best information available ("BIA"). For ocean freight and marine insurance, we used the expenses reported for one shipment to the East Coast as BIA for all sales, except for those sales that were shipped to the West Coast. For shipment to the West Coast we used Toyota's reported shipping expenses. For U.S. co-op and the TAL indirect selling expenses we used the amounts Toyota reported in the previous review. For the value-added, we used the highest reported amount for other U.S. expenses for each load capacity category.

Toyota calculated the credit expense on ESP transactions by offsetting the actual short-term rate of its related finance company with its intercorporate short-term rate. We disallowed the offset and recalculated Toyota's credit expense based on the short-term borrowing experience of its related finance company.

Toyota claimed a deduction from ESP for commissions paid to dealers for the sale of forklifts to end-users. Since these commissions are tantamount to post-sale rebates, we treated them as direct selling expenses.

TCM: We calculate purchase price and ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, containerization, import brokerage, U.S. Customs fees, U.S. freight to warehouse, commissions and trading company markups (which were treated as movement expenses), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, U.S. inland freight, U.S. inland insurance, and indirect selling expenses (which includes inventory carrying costs and indirect selling expenses incurred in Japan on the sales to the United States), pursuant to sections 772(e) (1) and (2) of the Act. Also, we added credit revenue to the United States price and, in accordance with section 772(d)(1)(C) of the Act, we added the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. For ESP sales, we computed the tax by multiplying the unite price, less foreign inland freight, foreign brokerage, packing, discounts, ocean freight and insurance, containeriziaton, U.S. duty, U.S. brokerage, and U.S. value-added, by the tax rate. For purchase price sales, we multiplied the unit price, less packing and discounts, by the tax rate.

Prior to the final results of review, TCM must recalculate ocean freight expense on the cubic size of the forklift truck and report the expense on a shipment-by-shipment basis.

For ESP transactions involving further manufacturing prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. We have recalculated the profit or loss attributable to value added after importation to include a proportional amount of the profit or loss associated with selling expenses attributable to forklift tucks.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value ("FMV") on the basis of home market sales and, where appropriate, constructed value. The calculation of FMV for each respondent is detailed below.

Toyota: We calculated FMV based on the c & f and f.o.b. prices to unrelated and related customers in the home market. The related sales were determined to be arms-length transactions. Where appropriate, we made deductions from the home market price for inland freight and for rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising. We had a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to ensure tax-neutrality.

For comparisons involving ESP transactions, we made deductions from the home market price, where appropriate, for credit expenses, warranties, and advertising. We made

an adjustment to FMV for indirect selling expenses (which includes various incentives and other selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect expense deduction on home market sales by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.56(b)(2). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

Petitioners alleged that Toyota sold forklift trucks in Japan at prices below the cost of producing the merchandise. In the calculation of cost of production ("COP"), the petitioners used Toyota's variable overhead, fixed factory overhead, and SG&A expenses. The Department conducted a separate cost test using the petitioners' cost data (accounting for 100 percent of sales) to determine if a cost investigation was warranted. Based on this comparison of COP to Toyota's home market prices, the Department determined that there were insufficient grounds to warrant a cost investigation.

TCM: The Department concluded that there were sufficient grounds to initiate a cost investigation for TCM. Therefore, for this review, we conducted the cost test for each load capacity category. We compared the home market prices, net of discounts and rebates, to the cost of production which included materials, fabrication costs, and general expenses. Where we found sufficient above-cost sales in the home market to form a basis for comparison, we calculated foreign market value based on delivered prices to unrelated and related customers (these sales were determined to be arms-length transactions) in the home market. We made deductions from the home market price, where appropriate, for inland freight and for rebates.

Although TCM reported its freight costs for sales to end users according to the actual freight costs per shipment, it used the ratio of the total freight expense on all dealer sales to total freight charged to all dealers to calculate inland freight for sales to dealers. Therefore, we recalculated inland freight for sales to dealers using the actual freight costs provided by TCM.

We made additional adjustments to the home market price, where appropriate, for commissions, discounts, net home market credit and warranties. For comparisons involving ESP transactions, we adjusted FMV for indirect selling expenses (which includes inventory carrying costs and other selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. The indirect selling expense deduction on home market sales was limited by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.56(b)(2). We added packing expenses incurred in Japan for U.S. sales to FMV.

We made a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to ensure tax-neutrality. We did not deduct the consumption taxes from home market prices because they were already deducted by TCM. We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

Where there were no, or insufficient, sales of such or similar merchandise in each of the load capacity categories at prices above the cost of production, we used constructed value as the basis for calculating FMV. Constructed value was based on the respondent's information. Since TCM's general expenses were not more than the statutory minimum of ten percent of the cost of materials and fabrication, we used the statutory minimum. Since TCM's reported home market profit was greater than the statutory minimum of eight percent of materials, fabrication, and general expenses, we used the actual profits.

Where constructed value was used in comparisons involving purchase price transactions, we adjusted for the differences in credit expenses, credit revenue, and warranty expenses. Where constructed value was used in comparisons involving ESP transactions, we deducted direct selling expenses and indirect selling expenses up to the amount of indirect selling expenses incurred on the U.S. sale.

For the preliminary results, we used the credit expenses and credit revenue TCM reported on installment sales. TCM claimed a deduction from home market price for commissions paid to other companies or individuals who play a role in the sale to end-users, under the following two situations: (1) Where TCM made a direct sale to an end-user in a dealer's territory; and, (2) where a dealer makes a sale in its own territory but another dealer has some relation to the customer. Since we determined that these commissions are post-sale rebates, we treated them as direct selling expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1989 through May 31, 1990:

Manufacturer	Margin (Percent)
Toyota Motor Corporation	3.92
Toyo Umpanki Co., Ltd.	9.21

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the certain internal-combustion industrial forklift trucks from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or prior reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the most recent review or, if

covered in this review or an earlier review, the rate from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be 9.21 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1977 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 23, 1991, the Department of Commerce published the preliminary results of its 1987-89 administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers four manufacturers/exporters of this merchandise to the United States during the period November 24, 1987 through May 31, 1989.

The Department gave interested parties the opportunity to comment on the preliminary results. Based on the analysis of the comments received, the Department adjusted the margins for some companies.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch, Stephen Jacques, Cherie Rusnak or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order (53 FR 20883) on certain internal-combustion, industrial forklift trucks from Japan in the **Federal Register** (56 FR 23675). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692,4070 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under the Harmonized Tariff System (HTS) item numbers 8427.20.00-0, 8427.90.00-0 and 8431.20.00-0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers sales and entries made by Toyota Motor Corporation (Toyota), Nissan Motor Company, Limited (Nissan), Toyo Umpanki Company, Limited (TCM), and Mitsubishi Heavy Industries, Limited (MHI) during the period November 24, 1987 through May 31, 1989.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Tariff Act, the Department established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift as imported. Within these categories, the product comparisons were based on six primary characteristics, to which points were assigned to indicate their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. The sum of these numbers, the "SSM Index Number", was used in the Model Match Test by linking U.S. sales to those home market sales with the same number, indicating an identical product was sold. Where there were no identical products sold in the home market, the Department selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

Data Changes Included in the Final Results of Review

In the preliminary results of review, the Department indicated that it would require very specific data change submissions from respondents to correct errors identified at verification and certain clerical errors contained in various data bases. On July 26, 1991, the Department sent its final requests for the corrected data and all relevant respondents submitted timely, corrected data.

In addition, the Department found that the imputed export consumption tax used in the preliminary analysis was incorrect where the basis of the tax was the transfer price or where the unit price included expenses which are not incurred on the forklift trucks sold in Japan. Therefore, for TCM's exporter's sales price (ESP) sales, the Department computed the tax for the final results of review by multiplying the unit price, less foreign inland freight, foreign brokerage, packing, discounts, ocean freight and insurance, containerization, U.S. duty, U.S. brokerage, and U.S. valued-added, by the tax rate. For purchase price sales, the unit price, less packing and discounts, was multiplied by the tax rate.

For Nissan, the consumption tax was computed by multiplying the unit price, less foreign brokerage and drayage, less ocean freight and insurance, U.S. Customs fees and port fees, U.S. inland freight, containerization, packing, and U.S. value-added, by the tax rate.

Toyota's consumption tax for ESP sales was computed by multiplying the unit price, less foreign inland freight, foreign brokerage, ocean freight and insurance, import brokerage, U.S. inland freight and insurance, and value-added, by the tax rate. For purchase price sales, the unit price, less discounts, foreign brokerage, foreign inland freight, and ocean freight and insurance, was multiplied by the tax rate.

Analysis of Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of the petitioners and two respondents, a

hearing was held on July 12, 1991. In response to a comment from petitioners indicating that they did not have sufficient time to thoroughly analyze the verification reports for Nissan and TCM, the Department allowed petitioners to submit a supplemental case brief limited to its analysis of the verification reports. Nissan and TCM had the opportunity to rebut the comments contained in the petitioners' supplemental case brief. Case and rebuttal briefs were received from petitioners, Toyota, Nissan, TCM, and MHI.

Interested Party Comments

Toyota

Comment 1: The petitioners contained that the Department's computer program failed to deduct U.S. value-added costs, indirect selling expenses, cash discounts, and credit expenses from ESP.

Toyota contends that petitioners are incorrect in stating that cash discounts should be deducted from U.S. price because the gross and unit prices on the ESP sales listing were reported net of cash discounts.

Department's Position: Due to programming errors, the Department inadvertently failed to deduct U.S. value-added costs, indirect selling expenses, and credit expenses from ESP. The Department has corrected these errors for the final results. In addition, the Department verified that Toyota's unit prices used in the calculation of U.S. price were net of cash discounts. Therefore, no further adjustment was necessary.

Comment 2: The petitioners contend that the Department should recalculate Toyota's U.S. value-added costs because Toyota understated the costs of materials installed by Toyota Industrial Equipment (TIE) and, as a result, understated its value-added labor costs, supervisory labor costs, and occupancy costs. Petitioners claim that the price of the materials purchased from Toyota Motor distributors, Inc. (TMD), a related supplier, was not the same as the price on arm's-length sales. Petitioners also claim that the related party transfer prices used by Toyota to calculate its reported value-added materials cost are significantly below the price charged by TMD on arm's-length sales to unrelated Toyota dealers. Therefore, the cost of materials that were obtained from a related supplier and installed in the United States should be based on the greater of the actual costs incurred to produce the materials or on the transfer price. At a minimum, the Department should increase the costs reported by Toyota.

Toyota argues that TIE is not in the business of further processing forklift trucks and that the practices that it characterizes as value-added are incidental to the sale of Toyota forklift trucks. Toyota further contends that all supervisory labor and occupancy costs are properly allocated to all products using the cost of sales because their primary function was to handle all industrial equipment. TIE paid the distributor price that was uniformly available to all three unrelated distributors during the period of review. Therefore, no adjustment to the material cost was warranted.

Department's Position: Petitioners' allegation is not supported by the Department's verification report. The verification report dated April 29, 1991, at page 10, stated that the Department looked at the material price list for dealers, and that TMD granted TIE a discount on the materials purchased from TMD. Since it is reasonable to expect that a distributor would not pay the same price as a dealer, the Department accepted TIE's reported material costs as reasonable. As a result, Toyota did not understate its value-added labor costs, supervisory labor costs, and occupancy costs.

Comment 3: The petitioners allege that the verification exhibits demonstrate that Toyota did not properly report its value-added labor costs because Toyota omitted from the value-added calculation benefits, taxes, and other payments paid with respect to its employees. Petitioners also contend that the actual hourly labor costs reported by Toyota, excluding the cost of fringe benefits, exceeds the total average hourly labor costs claimed by Toyota in its questionnaire response. As a result, the Department should reject Toyota's hourly cost data and use the best information available to calculate Toyota's average hourly labor costs. Additionally, petitioners urge the Department to recalculate Toyota's supervisory labor costs to include fringe benefits.

Toyota admits that these payments are not included in labor costs, but asserts that they are included in value-added overhead because the payments are not paid on behalf of the employees, but are incurred by Toyota like other overhead expenses. Toyota disagrees with petitioners' suggestion that Toyota's average hourly labor rate for the employees who worked in the processing centers was understated. Toyota claims that all of the points made with regard to its hourly employees also apply to its supervisory employees.

Department's Position: The Department agrees with Toyota. The Department verified Toyota's allocation of its value-added labor and supervisory labor costs and found that the allocation was reasonable because Toyota included fringe benefits in the value-added overhead (see Toyota Motor Sales (TMS) Cost of Production Verification Report, April 29, 1991, pg. 6).

Comment 4: Petitioners contend that by adding hours recorded for vacations, sick leave, personal business, absence without pay, and time off for bereavement, jury duty, and maternity leave to base hours, Toyota overstated total hours worked at the processing centers. Therefore, petitioners claim that Toyota reported a figure that represents hours paid rather than hours worked. Petitioners request that the Department reject Toyota's reported hourly labor cost and labor hour data, and use the best information available to calculate Toyota's value-added labor costs.

Toyota contends that the calculations in Toyota's Verification Exhibit 113 clearly show that Toyota added overtime hours to base hours and then subtracted hours for absences without pay to calculate the average rate for the hourly employees and supervisory labor in the processing centers. As a result, only hours worked were used in the calculation.

Department's Position: The Department verified in Exhibit 113 that the hours worked were in fact the hours paid. The overtime hours were added and all the absences were subtracted. Therefore, petitioners' assertion that Toyota did not properly report hourly labor cost and labor hours data is without merit.

Comment 5: Petitioners contend that the Department should reject Toyota's claimed occupancy costs because Toyota has two processing centers for value-added activities and Toyota has only allocated costs for the areas that are used to process forklift trucks. Toyota also claimed an allocation ratio for occupancy based on one of the facilities, but could not provide documentation to support the claim. Therefore, the Department should reallocate all occupancy expenses incurred by TIE at both processing centers for the products under review.

Department's Position: The Department identified at verification that Toyota incorrectly calculated occupancy costs. Toyota agreed and reallocated occupancy costs for the final results based on the proportion of space used for the value-added operations at both facilities. The Department used the

recalculated occupancy expense for the final results.

Comment 6: Petitioners contend that the comparison of total costs and sale-by-sale costs claimed by Toyota demonstrate that Toyota improperly allocated its supervisory labor and occupancy costs. Petitioners allege that these costs were understated because Toyota allocated supervisory labor and occupancy costs incurred in connection with the operation of the processing centers over the cost of all sales made during the period of review. Petitioners contend that value-added work should be allocated exclusively to those ESP sales that generated value-added processing costs.

Toyota contends that all practices characterized as value-added are incidental to the sale of forklift trucks. The processing centers process all industrial equipment, including covered and non-covered products. Therefore, all supervisory labor and occupancy costs are properly allocated to all products using cost of sales in the divisor because the processing center's primary function is to handle all industrial equipment.

Department's Position: The Department verified that Toyota's supervisory labor and occupancy cost allocations were reasonable. The Department verified that all practices characterized as value-added are related to the sale of covered and non-covered forklift trucks. Therefore, all value-added processing costs should be allocated across all sales, not just the covered sales that generated value-added costs (see TMS Cost of Production Verification Report, April 29, 1991, pgs. 5 & 6).

Comment 7: Petitioners contend that Toyota's U.S. value-added costs should include a portion of selling, general and administrative expenses (SG&A) incurred by TMS. Petitioners argue that the value-added costs are based solely on expenses recorded by TIE, not including any value-added expenses for TMS. Petitioners believe that the Department should add an amount for general and administrative expenses (G&A) of TMS to the value-added costs for sales by TIE.

Toyota states that the U.S. value-added costs include a portion of SG&A incurred by TMS. Toyota contends that an allocation for TMS' expenses is found in TIE's divisional financial statements. These expenses can be located in the TMC Verification Report ESP Sales, Exhibit 19.

Department's Position: The Department verified that the SG&A expenses incurred by TMS were included in the value-added costs (see TMS Cost of Production Verification Report, Exhibit 108, Income Statement).

Comment 8: Petitioners contend that servicing commissions should be included in U.S. value-added costs because the Department included rebates in the value-added costs and these commissions (like rebates) are reimbursements to the dealers from Toyota for servicing forklifts. Therefore, Toyota's servicing commission payments, along with a portion of profit and general and administrative (G&A) expenses associated with servicing commissions, should be included in Toyota's U.S. value-added costs.

Toyota claims that servicing commissions, unlike rebates, are not value-added costs. Toyota contends that this commission was paid to the dealer for vehicle preparation prior to customer delivery. These commissions also assure future dealer availability to provide after sale service to an end user. Toyota also contends that the commissions reported by Toyota on ESP sales should not be treated as rebates because they are paid to the dealer (not the end user) either for sales or servicing services connected with the sale of a forklift to a national account customer. Toyota argues that servicing commissions are reported only on sales to national account customers who purchase directly from TMS. These commissions are not paid to the buyer, the national account customer, so they cannot be considered rebates.

Department's Position: The Department agrees that servicing commissions should be included in U.S. value-added costs. Unlike Nissan's "service payment" (see Comment 46), the Department determined that Toyota incurs this expenses directly and did not separately charge the customer for these services. Therefore, the Department determined that Toyota's servicing "commissions" are payments to a third party, the dealer. As a result, these servicing commissions are considered a further cost of manufacturing because preparing, servicing, and delivering a forklift truck to the customer are all operations that add value to the forklift. Because these costs are incurred after a sale has been transacted by TMS, the Department included them in Toyota's U.S. value-added costs.

Comment 9: Petitioners claim that Toyota failed to report U.S. discounts granted under Toyota's introductory marketing campaign for at least nine sales during the period of review.

Toyota contends that the nine sales referred to by the petitioners were, in fact, made after the completion date of the campaign and, therefore, did not qualify for the introductory marketing campaign discount.

Department's Position: The Department verified the expenses associated with the Introductory Marketing Campaign and was satisfied that the discount was properly reported. The Department also verified that the nine sales in question were made after the completion date of the campaign and did not qualify for the introductory marketing campaign discount (see TMC Verification Report-ESP Sales dated April 29, 1991).

Comment 10: Petitioners claim that Toyota failed to report freight costs it incurred on sales to end users in the United States. Petitioners further contend that Toyota reimburses its dealers for costs incurred to ship forklifts to its national account customers and alleges that Toyota has included these shipping charges in its claimed servicing commissions. Petitioners contend that the Department should include amounts for these servicing commissions in Toyota's value-added costs or, at a minimum, the Department should classify the reimbursement of these delivery expenses as a U.S. movement charge.

Toyota contends that TMS sales prices are fob dealer's facility and that all delivery charges for the shipment of forklifts from Toyota's processing center to the unrelated dealers are paid for by the customer. Therefore, there should be no deduction for freight charges. Toyota also states that the dealer often prepares the vehicle for sales to Toyota's national account customer. The dealer is then reimbursed for these services by means of a servicing commission. Since these charges are paid for by the end user, these charges should not be included in value-added.

Department's Position: The Department verified that the TMS sales prices are fob dealer's facility. Therefore, no further deduction from U.S. price for this freight charge was warranted (see TMC Verification Report-ESP Sales, pg. 3). However, the Department included the servicing commission in the calculation of value-added (see Comment 8).

Comment 11: Petitioners claim that Toyota understated per unit costs for charges and expenses for its ESP sales because it used an inflated denominator to allocate total costs to individual sales. Toyota changed the number of sales at verification and, as a result, the per-unit U.S. charges and expenses on all ESP sales were understated. For the final, the Department should divide total costs reported by Toyota by the actual number of sales reported in its ESP sales

listing to calculate per-unit costs and expenses.

Toyota notes that the number of units reported in the verification exhibits is the number of trucks for which the relevant costs were incurred. Some of the sales reported in the ESP listing were sold during the period of review but were imported before the period of review and are not subject to this review.

Department's Position: The Department verified all sales quantities and values and found no discrepancies. Toyota's allocation of these expenses was reasonable, as shown in the TMC Verification Report-ESP Sales, April 29, 1991, Exhibit 19, Section B. This exhibit indicates that Toyota used the correct denominator in allocating selling and other expenses.

Comment 12: Petitioners argue that the Department should calculate Toyota's product liability expenses based on sales and expenses during the period of review on a per-unit basis. Petitioners contend that product liability costs should be treated the same as warranty costs and allocated across all forklift sales during the review period.

Toyota argues that product liability expenses are meant to cover any forklift currently in service so that this expense should be allocated over all forklifts in service as the Department has done. Therefore, no reallocation of the product liability expense is necessary.

Department's Position: The Department verified that the product liability expenses are reasonably allocated over all trucks currently in service by verifying all of Toyota's insurance documents for the period (see TAL Home Market Sales Verification Report, June 13, 1991, pg. 8).

Comment 13: Petitioners contend that Toyota has incurred direct advertising expenses on behalf of its U.S. sales of forklifts. Petitioners also contend that Toyota should not be allowed to claim the same types of advertisements as direct selling expenses in Japan and indirect selling expenses in the United States. Petitioners argue that all of Toyota's U.S. advertising costs are aimed at purchasers of forklifts and should be classified as direct selling expenses.

Toyota agrees with the petitioner that some of its U.S. advertising, mainly magazine advertising, are direct expenses.

Department's Position: The Department determined that only magazine advertisements are direct selling expenses. For the final result Toyota reclassified these expenses as direct selling expenses.

Comment 14: Petitioners claim that Toyota failed to report product demonstration expenses incurred in the United States in the calculation of direct advertising expenses.

Toyota argues that these U.S. demonstration expenses were incurred in demonstrating forklifts to Toyota's customers in the United States. Consequently, these U.S. demonstration expenses are properly categorized and allocated in the same manner as other indirect selling expenses.

Department's Position: The Department agrees that Toyota's U.S. demonstration expenses should be treated as direct selling expenses because they are directly related to sales of forklift trucks. However, the Department did not recalculate this expense for the final results because the recalculation would result in an insignificant adjustment (19 CFR 353.59(a)).

Comment 15: Petitioners argue that although TIE is basically a warehousing and processing operation, TMS incurs expenses to administer the operations of TIE and any other related subsidiary. Because Toyota omitted expenses incurred by TMS to run its TIE Division, its U.S. selling expenses are understated. Petitioners further contend that Toyota failed to include SG&A expenses incurred by TMS in Japan for U.S. sales in the reported U.S. indirect selling expenses.

Toyota asserts that TIE maintains all sales and marketing operations of industrial vehicles in the U.S., and it is not a warehousing and processing operation. Any administrative or general support provided by TMS has already been allocated to TIE in the divisional financial statements. Therefore, any TMS SG&A expenses incurred on U.S. sales are already included in the reported indirect selling expenses.

Department's Position: The Department verified Toyota's reported indirect selling expense incurred by TIE and determined that any TMS SG&A expenses incurred on U.S. sales are included in the reported indirect selling expenses (see TMC Verification Report-ESP sales, pg. 8).

Comment 16: Petitioners argue that the Department should include an allocated portion of TMC's selling and administrative costs in Toyota's U.S. indirect selling expenses.

Toyota notes that, in its November 20, 1989, questionnaire response, it had allocated a portion of TMC's SC&A expenses to U.S. indirect selling expenses.

Department's Position: The Department verified Toyota's reported U.S. indirect selling expenses. The Department was satisfied that the U.S. indirect selling expenses included a portion of TMC's indirect selling expenses (see TMC Verification Report-ESP Sales, Exhibit 19).

Comment 17: Petitioners contend that the Department inadvertently treated Toyota's home market technical services as a direct selling expense. The home market equivalent of the reported U.S. technical service expense should be treated as an indirect selling expense. Petitioners further contend that for purchase price comparisons, these expenses should not be deducted in calculating the net U.S. price because they are indirect expenses.

Toyota notes that the variable subtracted as a direct expense always contains a zero value, thus rendering petitioners' argument moot. Toyota further notes that in its November 20, 1989, response, it included an amount for home market technical services in its indirect selling expenses claim.

Department's Position: The Department agrees with Toyota. Moreover, at verification the Department determined that technical service expenses had been appropriately included in the reported home market indirect selling expenses. With respect to purchase price comparisons, the Department does not allow indirect selling expense adjustments to either the U.S. price or foreign market value. Therefore, no such adjustment was made in the purchase price comparison (see Toyota Automatic Loom Works' (TAL) Home Market Sales Verification Report, pg. 6).

Comment 18: Petitioners argue that the Department should reject Toyota's claim for home market direct advertising expenses because these direct advertising expenses were not documented. The Department should instead treat all home market advertising as an indirect expense because Toyota could not substantiate its claim that this expense was directly related to the sale of the subject merchandise. On purchase price sales, these indirect expenses should not be deducted from home market price.

Toyota contends that the Department verified home market advertising expenses and should continue to treat these advertising costs as direct selling expenses because they are directed towards Toyota's customers' customer.

Department's Position: At verification, the Department found that the claim for direct advertising costs was overstated. Moreover, the Department was unable to tie advertising expenses to particular advertisements of forklift trucks (see TAL Home Market Sales Verification

Report, pg. 19). Because Toyota could not substantiate that these expenses were directly related to the forklifts under review, the Department has included them in indirect selling expenses. No adjustment was made to purchase price sales for indirect selling expenses (see Comment 17).

Comment 19: Petitioners argue that the Department should recalculate Toyota's overstatement of its direct home market warranty expenses because Toyota included a portion of TAL's Quality Research Section expenses in the home market warranty.

Toyota claims that Toyota did not include the above referenced TAL costs as a part of the reported home market warranty expense. Toyota contends that no adjustment to the reported home market warranty expenses is appropriate because expenses should be considered a direct, not an indirect, expense.

Department's Petition: The Department agrees with petitioners and has reallocated Toyota's direct home market warranty and included the indirect warranty expenses in the indirect selling expenses. TAL's Home Market Sales Verification Report, page 7, shows that TAL overstated the warranty expense by the amount of the TAL costs.

Comment 20: Toyota claims that the short-term borrowing rate it used to calculate its credit expense is accurate. The Department determined that the short-term borrowing rate for use in Toyota's credit calculation should be the rate Toyota Motor Credit Corporation (TMCC) charged TIE to finance the sales. However, Toyota claims the Department erroneously converted the actual short-term borrowing rate to an intercorporate rate. Toyota's recalculation of its credit expense will correct the Department's conversion for purposes of the final results.

Petitioners agree with the Department's determination and suggest that Toyota recalculate its U.S. credit expense based on the interest rate that TMCC charged to TIE.

Department's Position: The Department used the TIE short-term borrowing rate to calculate the credit expense because this rate reflects the actual borrowing experience of TMCC, Toyota's related finance company (see TMC Verification Report-ESP Sales). Toyota did not use this rate in the recalculation of its credit expense as requested by the Department in the preliminary results published on May 23, 1991 (56 FR 23675). Therefore, the Department recalculated the credit expense on ESP transactions to reflect the rate charged to TIE. Toyota also used its incorrect short-term borrowing rate in the calculation of inventory carrying expense. As a result, the Department recalculated inventory carrying cost to reflect the same TIE short-term borrowing rate as was used in the credit expense calculation.

Comment 21: Toyota contends that if the Department classifies Rebate #2 as value-added, no additional amounts should be allocated to value-added G&A and profit. Toyota claims that it neither incurs G&A nor makes a profit when it pays the dealer to perform value-added work. Toyota argues that a further allocation of profit and G&A is double-counting (Toyota's Case Brief, June 24, 1991, Page 3).

Petitioners argue that Toyota incurred G&A costs on sales that included value-added work performed by the dealer. Toyota must negotiate the terms and conditions of the value-added work and payment with the dealer, and order or pay for options that the dealer is to install on the forklift. Toyota must also coordinate with the dealer to ensure that the proper equipment is installed, the forklift is delivered to the customer, and the records of these activities are maintained. Thus, both Toyota and the dealer incur G&A costs and expect to make a profit on the sale of the forklift.

Department's Position: The Department agrees with Toyota to the extent that general and administrative expenses and profit are not incurred by Toyota on the value-added work performed by the dealer because the Department did not use the dealer's price to the end user as U.S. price. These rebates are part of the value-added calculation because the rebates are for modifications conducted after the sale of the forklift.

Comment 22: Toyota argues that the Department improperly reallocated warranty expenses over all units sold. Warranty expenses, like indirect selling expenses, should be allocated on a sales value basis per model as is the Department's usual practice. Toyota contests the Department's reallocation of warranty and Operating Restraint System (ORS) expenses over the quantity of units sold. Toyota requests that the Department use the expenses as reported for the final results.

Department's Position: The Department disagrees. Toyota's allocation of the warranty and ORS expenses on a sales value basis per model is inappropriate because Toyota did not accrue these expenses by model. Therefore, the Department determined that it was more appropriate to allocate the total expense across all sales of the subject forklift trucks. This is the same methodology Toyota used in allocating U.S. brokerage and handling expenses.

Comment 23: Toyota argues that it did not use the incorrect amount in its calculation of U.S. brokerage and handling and U.S. inland freight and that the Department verified these amounts. Therefore, the Department's changes made for the preliminary analysis were inappropriate.

Department's Position: The Department agrees with Toyota that the total expenses as reported in Verification Exhibit 19, pages F1 and F2, for U.S. brokerage and handling is correct and was verified. However, Toyota did not use these totals in its calculation of brokerage and freight (see TMC Verification Report-ESP Sales, Pre-Selected Sales, observation (1565). The Department used the total brokerage and handling expenses reported in Exhibit 19, pages F1 and F2, in the recalculation. The Department inadvertently used the wrong total for the inland freight expense, which resulted in an understatement, and has corrected this error using the total from Exhibit 19 for the final results.

Comment 24: The Department requested that Toyota calculate and report ocean freight on a shipment-by-shipment basis based on weight rather than cubic volume. Toyota argues that calculating separate east coast and west coast ocean freight rates based on cubic volume, rather than weight on a month-by-month basis, is the most appropriate way to calculate ocean freight costs. Toyota argues that this method will remove any distortion caused by the difference between the east coast and the west coast rates and will result in an allocation based on cubic size, which is the basis on which these charges are incurred.

Petitioners agree that Toyota should calculate ocean freight shipment-by-shipment based on weight. The per-unit costs incurred by Toyota will vary from shipment-to-shipment depending on the total quantity of each shipment, the international carrier used, the composition of the shipment (*e.g.*, forklift parts vs. complete forklifts), and the time the forklifts were shipped. Shipments that consist only of forklifts may generate per-unit costs that differ from shipments that consist of forklifts and forklift parts. Similarly, international carriers often impose bunker or fuel surcharges, destination and delivery fees, and other changes that may vary from shipment to shipment.

Department's Position: The Department agrees with petitioners that the per-unit costs, based on weight,

incurred by Toyota will vary from shipment-to-shipment. However, the Department disagrees with petitioners that Toyota included ocean freight expenses for folklift parts in its allocation. The Department verified that the reported expenses only included forklift trucks. The Department disagrees with Toyota that a monthly average is the most accurate allocation of ocean freight. The Department generally requires such expenses to be reported on a shipment-by-shipment basis and the Department found at verification that Toyota has the ability to report actual ocean freight expenses by shipment and by customer (see TMC Verification Report-ESP Sales, Pre-Selected Sales, observation 1565). Therefore, the Department recalculated ocean freight expenses for the East Coast based on information received at verification. We used Toyota's monthly averages for the shipments to the West Coast.

Comment 25: Toyota argues that co-op advertising should be allocated over all sales and not on a dealer-specific basis. The program is aimed at generating sales of all forklift trucks, regardless of the dealer. Because these advertisements are directed at the dealer's customer, the most appropriate method to calculate these co-op expenses is over all sales.

Petitioners argue that Toyota should allocate its co-op advertising expenses on a dealer-by-dealer basis because co-op advertising expenses are jointly paid by Toyota and the dealer to stimulate sales in the dealer's area.

Department's Position: The Department has determined that co-op advertising should be allocated by dealer because Toyota records the expense by dealer and because these expenses vary from dealer to dealer. Therefore, allocating the expense across all sales is not appropriate. Only certain dealers are involved in the co-op advertising program and the expenses should, therefore, be allocated to those dealers' sales. The Department asked Toyota in its May 23, 1991, letter requesting changes for the final, to allocate co-op advertising expenses on a dealer-by-dealer basis and Toyota complied with the Department's request. The Department used Toyota's revised data for the final results.

Comment 26: At verification, Toyota agreed to reallocate a portion of TAL's indirect selling expenses incurred on U.S. sales. Although Toyota did not originally report some of TAL's expenses, Toyota argues that TAL's sales expenses should also be allocated over all sales.

Department's Position: Toyota reallocated TAL's indirect selling expenses over all sales. For the final results, the Department did not request Toyota to reallocate a portion of TAL's indirect selling expenses related to home market sales. Therefore, the Department did not include these home market indirect selling expenses incurred by TAL.

Comment 27: Toyota contends that the Department has double counted certain value-added items in the ESP margin calculation.

Department's Position: The Department agrees and has made the corrections for the final results.

Comment 28: Toyota contends that the TMS offset expense should be included in the U.S. indirect selling expenses because it is directly related to the sale of new forklifts. The "offset" expense is a TIE "other (income) expense" which is mostly profit or loss generated from the sale of lease trucks.

Petitioners contend that the Department correctly instructed Toyota to eliminate any offset expenses to the U.S. indirect selling expenses that may be generated by income from other business ventures (non-operating expenses). Since this item is generated by sales of used forklifts, which are not subject to this review, the item is unrelated to the covered sales.

Department's Position: The Department concluded that the items included in this "offset" are unrelated to the sale of new forklifts covered by the review. For the final results, the Department directed Toyota to eliminate this "offset" to indirect selling expenses and Toyota complied.

Comment 29: Toyota argues that for purchase price sales, U.S. warranty expenses should be either subtracted from the U.S. price or added to the foreign market value, but not both. Toyota also argues that only one differences-in-merchandise (DIFMER) adjustment should be made to foreign market value (FMV). Toyota contends that the Department has applied two differences-in-merchandise values to the foreign unit price in dollars.

Department's Position: The Department agrees and has made the corrections for the final results.

Nissan

Comment 30: Petitioners contend that the Department failed to include two data sets of ESP sales in calculating the dumping margins. These sales include those ESP sales that entered the U.S. during, but were sold prior to, the period of review and those sales made from imported frames that were further manufactured by Barrett, a U.S. subsidiary of Nissan. Petitioners state that the Department has previously indicated the date of entry is the determining factor in deciding whether the transaction is to be included in the review.

Nissan argues that petitioners' comment is untimely. Nissan contends that petitioners should have included their comment in the case brief and that the inclusion of this comment violates the Department's instructions that petitioners limit their comments in the Supplemental Case Brief to issues raised in the verification reports and exhibits. In addition, Nissan states that the Department has the discretion to calculate dumping margins for the frames imported by Barrett. Finally, Nissan claims that the Department did not use, for the preliminary results, the most recent ESP data set that Nissan had submitted. Nissan requests that the Department use the ESP data set from April 1991 in its final determination.

Department's Position. The Department has included in the analysis the most recent ESP data set containing sales entered during, but sold prior to, the period of review. The Department has applied the dumping margin found on completed forklifts to the imported frames that entered the United States during the period because to do otherwise would require inordinately complicated calculations and the frames represent a small percent of the completed value of the truck. Also, the Department granted petitioners additional time to analyze the verification reports and exhibits. Petitioners' comment was formulated during this additional time and was based on the new information. Therefore, their comment was timely.

Comment 31: Nissan contends that the Department erred in adding U.S. containerization charges to FMV; in not adding the consumption tax to U.S. price where U.S. price is compared to constructed value; in not including seventeen home market sales in the calculation of FMV because the rebate data was missing; in not including the dealers free credit period in the calculation of home market credit and incorrectly calculating the number of days credit was extended to certain home market customers; in weight-averaging Nissan's cost of production and constructed value data; in not adjusting Nissan's FMVs for the difference in merchandise adjustment; in incorrectly calculating the direct cost of manufacture of trucks exported to the United States; and, in using the wrong home market data set.

Department's Position: The Department has made all the corrections to the computer programs for the final results with the exception of the consumption tax. The Department does not add the consumption tax to U.S. price where U.S. price is compared to constructed value (see 19 CFR 353.50).

Comment 32: Nissan claims that the Department should add Nissan Industrial Equipment Company's (NIEC) preparation charge to the U.S. price. Nissan stated that the preparation charge is an additional amount charged to the dealer when NIEC performs certain activities to prepare the truck for delivery.

Petitioners contend that in the original questionnaire response, Nissan's description of these charges was inadequate and that Nissan has not provided sufficient documentation which supports their claim that the preparation charge was added to the final U.S. selling price. In addition, the Department should not allow Nissan to claim a sale specific adjustment when Nissan's value-added costs were not reported on a sale-by-sale basis.

Department's Position: The Department agrees with petitioners. Nissan states in its case brief that the preparation fee involves "operations to prepare the truck for delivery." This fee is in addition to the invoiced amount of the forklift. The Department was not provided specific documentation concerning the services rendered or invoices directly related to the work performed. Therefore, the Department did not include this proposed change in the U.S. price calculation.

Comment 33: Nissan claims that the Department should use the short-term interest rates for the calculation of home market credit expense contained in its submission January 11, 1991. Nissan states that the Department verified these rates. Nissan noted that the latest revised computer tape includes the verified short-term interest rate.

Department's Position: The Department agrees with Nissan and used the rates from Nissan's January 1991 submission for the final results.

Comment 34: Nissan contends that the Department improperly converted Nissan's negative warranty expense into a positive amount. According to Nissan, the warranty expense amounts incurred for U.S. warranty expenses are negative because the warranty amounts are net of the reimbursement Nissan receives from its parts suppliers. Nissan argues that either the negative amount of warranty expenses should be subtracted from U.S. price or the converted positive amount should be added to U.S. price because the amount of the reimbursement does not exceed the amount of warranty expenses incurred by NIEC.

Petitioners argue that Nissan failed to specify whether the parts suppliers that reimbursed Nissan were related. Petitioners state that since Nissan had previously admitted it was related to some of its parts suppliers, the reimbursement is therefore merely an intercompany transfer of funds.

Department's Position: The Department agrees with petitioners. The claimed negative warranty expenses will be not be turned into positive values, but merely disallowed for the final results. The Department views the parts reimbursement for warranty expenses between Nissan, NIEC and Nissan's parts supplier as an intercompany transfer of funds.

Comment 35: Nissan contends that the Department improperly denied an adjustment for a certain home market rebate. Nissan noted that the Department did not make an adjustment for the rebate because it "included sales outside the review period." Although Nissan admits that one component of this rebate was based on data outside the review period, Nissan contends that it would be incorrect to totally deny an adjustment for this rebate. Nissan claims the purpose of the rebate was to stimulate sales of forklift trucks in the home market and, therefore, the Department should treat this rebate as either a direct or indirect selling expense (see Nissan's Case Brief, June 24, 1991, pg. 10).

Petitioners argue that because the rebate included sales outside the review period, the claimed adjustment should be rejected. Petitioners claim that the fact that the rebate was paid during the period of review is immaterial.

Department's Position: The Department verified the rebate and determined that it was directly related to the sales of forklift trucks. Therefore, the Department treated the rebate as a direct selling expense for the final results.

Comment 36: Nissan contends that the Department should treat the fifteen sales excluded from the preliminary results in a manner consistent with their payment histories. Nissan claims that these fifteen trucks have unusuable profit and U.S. price data because NIEC had not received payment for these trucks at the time the sales data was submitted to the Department. Nissan reports that NIEC subsequently received payments for four of the fifteen trucks and requests that the Department use the actual payment dates for the four trucks.

Nissan claims that NIEC has not yet received payment for the remaining eleven trucks. Nissan argues that the cost of these trucks is already accounted for as part of the company's bad debt expense, which is a part of U.S. indirect selling expense. Nissan contends that if the Department uses these sales, the Department should use the average credit expense for the other U.S. sales and calculate profit for the eleven sales based on an average of the credit expenses.

Because Nissan sold and shipped the eleven forklift trucks, petitioners argue that the Department should treat these trucks as U.S. sales and that the bad debt received by Nissan from the dealer should be allocated over the eleven sales. They claim the allocated amount should serve as the U.S. price for each of the forklifts. Petitioners alternatively propose that the Department treat the bad debt expense as a direct, rather than indirect, selling expense.

Department's Position: The Department will use the payment dates supplied by Nissan for four sales since NIEC subsequently received payment for these trucks. For the remaining eleven sales, the Department disagrees with Nissan's contention that, since final payment was not received, these entries should not be considered sales. The eleven trucks were covered merchandise under the antidumping duty order and were sold and shipped in the normal course of trade during the period of review. The Department will, therefore, include these forklift trucks as sales in the final results. Because the eleven sales are a *de minimis* percentage of Nissan's ESP sales and therefore the use of these sales would result in an insignificant adjustment to FMV, the Department will use the average credit expense of NIEC's other U.S. sales and base profit on these average credit amounts (see 19 CFR 353.59).

Comment 37: Petitioners contend that Nissan's cost of production data is unreliable because Nissan based the data on transfer prices rather than actual costs. Petitioners also contend Nissan did not supply the actual costs of production for parts purchased from related suppliers. Petitioners recommend conducting a cost verification of Nissan or use of the best information available which is the rate from the original investigation for the cost data.

Nissan contends that it would be almost impossible to use the actual cost of production for parts supplied by Nissan's related suppliers for each individual forklift truck because it does not have a bill of materials for each forklift truck and constructing one would be a time consuming task.

Furthermore, Nissan provided data showing that the standard costs used in the cost of production are above the related suppliers' cost of production. Nissan claims that its data uses averages and demonstrates that Nissan's related supplier transfer prices are in the aggregate higher than the unrelated suppliers' cost of production. Nissan therefore contends that the related suppliers' transfer prices reflect fair market value and are appropriately used to calculate Nissan's cost of production.

Department's Position: Because this is the first administrative review of this case, the Department was not required to conduct verification. The Department did, however, verify Nissan's home market sales, U.S. sales, and U.S. cost data. As a result of the verifications of this data, which included a cost verification of NIEC, the Department concluded that Nissan's responses were sound and reliable. The Department, therefore, has accepted Nissan's cost of production data.

Comment 38: Petitioners claim that the Department should conduct a cost test because Nissan changed its data, thus altering the results of the home market cost test. Petitioners point out differences between a cost test performed by Nissan in September 1990 and the cost test in the preliminary results. Petitioners claim that these differences warrant a cost verification of Nissan.

Nissan contends that the reason for the discrepancy is that the Department made a clerical error in the computer program and incorrectly weight-averaged Nissan's cost data on the basis of the truck serial number. Nissan claims that if the clerical error is corrected, the Department's results should be close to the cost test performed by Nissan in September 1990.

Department's Position: The Department agrees with Nissan that differences in the cost tests were largely due to a clerical error. The Department incorrectly weight averaged the cost of production data by the truck's serial number. The clerical error has been corrected for the final results (see Comment 31).

Comment 39: Petitioners contend that Nissan failed to include the cost of obsolete inventory in its reported costs. Petitioners argue that the parts inventory which was written off or disposed of at less than fair value during the period should be included as part of Nissan's material costs. Petitioners argue that the Department should increase Nissan's reported costs by the amount of "other" expenses in Nissan's income statements. Petitioners urge that the "other" expenses be calculated as a percentage of the cost of sales for each fiscal period and that the Department increase Nissan's reported production costs by that percentage for the relevant period.

Nissan states that the "Miscellaneous Losses" account of Nissan's Murayama factory income statements include losses on inventory write-offs at the factory. Nissan notes that the Murayama factory is the only facility that produces forklifts and therefore includes all losses on inventory write-offs incurred by Nissan. Nissan also contends that the "Miscellaneous Losses" account includes inventory write-offs of automobiles produced at the plant. Nissan, therefore, claims that the losses for inventory write-offs overstate, not understate, the losses incurred by Nissan.

Department's Position: The Department agrees with Nissan because Nissan's calculation for writing-off obsolete inventory was reasonable. Nissan obtained this data from the internal profit and loss statement of the Murayama factory. Therefore, the Department used the reported figures for inventory write-offs for the final results.

Comment 40: Petitioners contend that the Department should recalculate Nissan's research and development costs. Petitioners argue that Nissan's methodology is not in accordance with Generally Accepted Accounting Principles (GAAP) because Nissan did not expense Research and Development costs when incurred. Petitioners urge the Department to use best information available for research and development.

Nissan argues that its actual research and development costs were expensed as they were incurred in accordance with GAAP and the Department's practice.

Department's Position: The Department determined that Nissan properly accounted for research and development costs and that these costs are allocated in accordance with GAAP. Consistent with GAAP, Nissan expenses its actual research and development costs as they are incurred. The Department used Nissan's reported figures for these costs.

Comment 41: Petitioners contend that three of Nissan's home market rebates are neither directly nor indirectly related to the sales of forklift trucks but rather that these rebates promote the sale of spare parts for or services on forklifts and are not related to forklift sales. Petitioners ask that the Department not deduct these expenses from the home market price as direct or indirect selling expenses (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 10).

Nissan argues that these rebates are related to Nissan's sales efforts. Nissan contends that the ability of Nissan's dealers to service forklifts is of vital importance to product sales and is an important part of Nissan's sales strategy. Therefore, Nissan contends that these rebates are properly considered selling expenses (see Nissan's Case Brief, July 9, 1991, pg. 33).

Department's Position: The Department agrees with Nissan that these rebates are related to the forklift sales. The treatment of these rebates as indirect selling expenses will remain unchanged for the final results.

Comment 42: Petitioners contend that a certain home market rebate should be treated as a G&A expense rather than a selling expense because it is not related to the sale of forklift trucks (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 11).

Nissan contends that this rebate is directly related to the sales function of the dealers and should be treated as a selling expense (see Nissan's case brief, July 7, 1991, pg. 34).

Department's Position: The Department agrees with Nissan that this rebate is an indirect selling expense because it is related to the selling functions of the dealer, and not directly related to the sale of the forklift trucks. Therefore, the Department included this rebate as part of Nissan's home market indirect selling expenses.

Comment 43: Petitioners contend that the Department should reject or recalculate one of Nissan's home market rebates because Nissan incorrectly reported the amount for this rebate (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 11).

Nissan argues that it used the same methodology for this rebate as did the Department in its original investigation (see Nissan's Case Brief, July 7, 1991, pg. 35).

Department's Position: The Department agrees with Nissan. The Department verified this rebate and determined that the rebate was properly calculated and directly related to the sales of forklift trucks.

Comment 44: Petitioners assert that the Department should reject Nissan's claim for incidental expenses. Petitioners contend that these expenses are not related to the sales of forklift trucks but instead are servicing expenses. Petitioners also claim that Nissan failed to claim or to demonstrate that these expenses were incurred for the particular sales under review.

Nissan asserts that these incidental expenses are incurred for minor modifications performed by the dealer to meet the customer's specifications and are therefore directly related to the sale of the forklift. Nissan claims that the incidental charges were claimed only on the trucks to which the expense directly relates and that the verification exhibits tie the expenses to individual trucks.

Department's Position: The Department agrees with Nissan. The incidental expenses were verified and tied directly to individual trucks by the vehicles's model and serial number. The Department found that the incidental expenses are incurred when the forklift is modified to the customers' specifications and, therefore, are related to the sales of new forklifts. The full amount of the adjustment was allowed for the final results.

Comment 45: Petitioners contend that Nissan should recalculate its home market and U.S. inventory carrying costs on a sale-by-sale basis. Petitioners assert that Nissan's response indicates that inventory carrying periods may vary substantially from model to model and from sale to sale.

Department's Position: After the publication of the preliminary results, the Department requested that Nissan provide the inventory carrying costs on a sale-by-sale basis for all U.S. sales and for those home market sales used as foreign market value. Nissan complied with this request and the Department used the data.

Comment 46: Petitioners argue that Nissan's service payment represents a transfer of value-added activities from Nissan to its U.S. forklift dealers. Therefore, the Department should include these payments in Nissan's U.S. value-added. Petitioners also ask that the Department allocate the service payments portion of SG&A to U.S. value-added.

Nissan claims that its U.S. subsidiary charges a "ship-in" fee to certain customers for modifications performed on the truck. Nissan then reimburses that same amount to its dealers as a "service payment" for that work. Therefore, Nissan claims that the service payment is a direct pass-through from the customer to the dealer. Nissan contends that if the service payment is added, then the ship-in fee should also be deducted from U.S. value-added. Because the net effect on value-added would be zero, Nissan asks the that Department not add the service payment to value-added.

Department's Position: The Department agrees with Nissan. The payment is a pass-through from customer to dealer and thus there is no net transfer from Nissan to its U.S. forklift dealers. Allocating SG&A expenses to value-added would be inappropriate because the Department did not adjust value-added for this service payment.

Comment 47: Petitioners contend that Nissan based its materials cost used for further processing in the United States on transfer prices between Nissan and its U.S. subsidiaries. Petitioners state that Nissan's costs for these materials are not arm's length costs because these costs are based on transfer prices from related suppliers. Petitioners ask the Department to verify the cost of value-added materials obtained from Nissan's related suppliers.

Nissan contends that it has already established that its transfer prices were on average higher than the related suppliers' cost of production for those models and this data is reliable.

Department's Position: As stated in the Department's response to Comment 37, the results of the Department's other verifications of Nissan's data indicate that the data contained in Nissan's responses is generally reliable. Therefore, the Department determines that Nissan's data is valid.

Comment 48: Petitioners comment that Nissan's U.S. shop costs do not include warehousing and inventory storage expenses because these expenses are included in indirect selling expenses. They argue that Nissan's method of accounting is inappropriate because it increases indirect selling expenses and understates the calculation of profit for value-added in the United States. Petitioners urge the Department to move Nissan's value-added warehousing and inventory expenses from indirect selling expenses to Nissan's shop costs.

Nissan claims that it is inappropriate to include warehousing and inventory storage costs in NIEC's shop costs because forklift inventory costs are, for the most part, not related to further processing. The inventory costs are therefore incurred while NIEC holds the truck for sale. Consequently, Nissan contends that the warehousing and inventory storage expenses are indirect selling expenses.

Department's Position: The Department agrees with Nissan. NIEC's shop costs and accounting methods were examined by the Department during the U.S. sales cost verification. The Department verified their cost data and methodology and found that Nissan's treatment of NIEC's warehousing and inventory storage costs was appropriate.

Comment 49: Petitioners contend that Nissan failed to report all of its U.S. value-added costs associated with NIEC's facilities in Buena Park, Ca., Schaumberg, Ill., and Mansfield, Mass. Petitioners claim that Nissan may have incurred processing costs, rent and operating costs at its other facilities. Petitioners ask that the Department reallocate total shop costs as stated in petitioners case brief as the best information available for the allocation of total shop costs (see Petitioners' Supplement Case Brief, July 9, 1991, pg. 15).

Nissan argues that it has accurately reported the expenses in the manner the expenses were incurred. Nissan states that the Buena Park expenses are included in NIEC's shop costs. Nissan contends that its Mansfield facility is operated on a contract basis and that it is impossible to segregate the small amount of work done on further processing of forklifts. Nissan had included in Mansfield expenses as part of indirect selling expenses. Nissan asserts that the Schaumberg facility is a corporate office and that its expenses are included in NEIC's common expenses, including an appropriate percentage allocated to NIEC's shop costs.

Department's Position: The Department agrees with Nissan. NIEC's expenses and accounting methods were examined by the Department during the U.S. value-added verification. Their cost data and methodology were verified and the Department found that the costs for the Buena Park facility were included in NIEC's indirect selling expenses. The costs for the Mansfield facility were included in NIEC's shop costs. NIEC's corporate offices expenses were included in NIEC's common expenses. The Department found that Nissan's treatment of NIEC's expenses related to its other facilities was reasonable.

Comment 50: Petitioners argue that Nissan's value-added calculation methodology is improper because Nissan should have provided costs for each type of value-added activity and actual value-added cost for each sale. Petitioners ask that Nissan's total shop costs be reallocated only to sales that required value-added work in the U.S. as best information available.

Nissan contends that NIEC does not maintain accounting records that would permit accurate reports of value-added costs on a sale-by-sale basis. Nissan states that the direct labor and factory overhead are not accounted for on the basis of individual trucks or operations. Nissan explains that it reported total shop costs and that the only appropriate basis on which to allocate the shop

costs is over all the trucks on which the shop performed work.

Department's Position: The Department agrees with Nissan. NIEC's shop costs and value-added data were verified and the Department determined that NIEC's allocation of shop costs over trucks on which the shop perfomred work was reasonable (see NIEC Verification Report of U.S. Further Manufacturing Costs, pg. 4).

Comment 51: Petitioners contend that Nissan improperly allocated its total value-added shop costs because Nissan failed to properly report its U.S. value-added costs. Nissan did not include the parts storage costs and shop costs of the Memphis facility. Petitioners urge the Department to use best information available to calculate Nissan's actual value-added costs.

Nissan states that its reporting method of value-added costs is appropriate and properly allocated all expenses to shop costs. Nissan argues that its mentodology provides the most reasonable measure of value-added costs.

Department's Position: The Department agrees with Nissan. Nissan's value-added and total shop costs and accounting methodology were examined during the U.S. sales cost verification. In addition, the Department determined that NIEC properly accounted for parts storage expenses in its indirect selling expenses because NIEC is a sales and distribution organization, its classification of overhead expenses as an operating expense was reasonable. The Department found that Nissan's allocation of value-added expenses was resonable.

Comment 52: Petitioners contend that Nissan improperly allocated NIEC's common costs to forklifts because NIEC did not allocate these costs on a cost of sales basis.

Nissan states that NIEC's allocation ratio of common expenses is in the normal course of business and is consistent with the Department's methodology for selling expense allocations.

Department's Position: The Department verified NIEC's allocation ratio for common expenses and determined that it was reasonable. Therefore, the Department used NIEC's reported expenses for the final results (see NIEC Verification Report, pg. 6).

Comment 53: Petitioners contend that Nissan failed to explain certain negative labor and overhead expenses. Petitioners point out that NIEC has negative expenses for shop supplies and "Get Ready" expenses for individual months. Petitioners argue that it is not possible to have these negative expenses and they request that the Department add these expenses to NIEC's shop costs.

Nissan contends that each of the negative amounts cited by petitioners reflect a proper credit to shop expenses. Nissan states that the negative amount for shop supplies is a credit for miscellaneous parts returned to inventory. Likewise, the credit to the "Get Ready" account reflects a reimbursement for training expenses.

Department's Position: The Department agrees with Nissan. The Department verified a negative amount selected at random from Nissan's response and found it was reasonable. Therefore, Nissan's data from the response was used for the final results (see NIEC Verification Report, pg. 3).

Comment 54: Petitioners contend that Nissan has apparently included movement charges and value-added cost in its claimed indirect selling expenses. Petitioners believe that costs in two accounts refer to the sale and distribution of forklifts. Petitioners state that two of the costs should not be in indirect selling expenses but instead placed in movement charges. Petitioners also comment that the amount of a third account concerned with depreciation expense was incorrectly included in indirect selling expenses. Petitioners urge that this expense be included in Nissan's value-added costs (see Petitioners' Supplemental Case brief, appendix B, July 2, 1991, pg. 22).

Nissan states that the accounts in question refer to NIEC's Sales and Import/Distribution departments, not to the sale and distribution of the forklifts themselves. Nissan comments that the two accounts mentioned by petitioners are for postage and overnight courier services incurred by various departments. Nissan contends that these services are not related to the shipment of forklifts and are therefore not moving charges. Nissan also disagrees with petitioner about the third account concerning depreciation expenses. Nissan contends that it has excluded the depreciation expenses on NIEC's shop equipment from the indirect selling expenses. Nissan states that the depreciation expenses included in indirect selling expenses are for depreciation of office equipment and company automobiles used by salesmen (see Nissan's Case Brief, July 9, 1991, pg. 66).

Department's Position: The Department agrees with Nissan. The Department verified NIEC's indirect selling expenses at the U.S. verification. Specifically, the Department verified that the accounts were correctly included in indirect selling expenses.

Comment 55: Petitioners argue that the Department must reschedule the cost of production data verifications for Nissan and TCM. Petitioners note that due to the outbreak of war in the Middle East, the Department implemented travel restrictions for all employees and postponed the Nissan and TCM cost of production verifications. Petitioners state that nothing has changed in the context of this review that has altered the need to verify this information.

Further, petitioners argue that verification is needed because of the complexity of the case and because the plethora of forklift truck models creates a great likelihood of significant errors in the cost calculations. Verification is a "reasonable measure" that will significantly assist petitioners' meaningful participation in this review. Petitioners note that without cost verifications, there will be no cost verification reports or exhibits, review of which is an important check on the accuracy of respondent's information.

Petitioners further argue that a Nissan cost verification is necessary because Nissan's October 22, 1990, questionnaire response was deficient in at least two respects. This response indicated that Nissan's cost of materials is based on transfer prices between Nissan and its related suppliers and that Nissan failed to provide a complete, accurate, and timely response to the Secretary's request.

With respect to TCM, petitioners argue that verification of TCM's cost data is necessary because this data was not verified in the underlying investigation and has never been verified in an administrative review. Petitioners state that the Department should use best information otherwise available (BIA) because TCM's cost data is full of errors, omissions, and discrepancies. Petitioners suggest that if the Department chooses to conduct a cost verification or does not use BIA, it should correct the various deficiencies in the data. Petitioners conclude that failure to conduct cost verifications is an arbitrary and capricious use of the Department's power.

Department's Position: With respect to administrative reviews, the Department is required to verify information under section 776(b)(3) of the Act if the Secretary concludes that good cause for verification exists, or if a timely request for verification is received from an interested party, and the Department has not conducted a verification during either of the two immediately preceding administrative

reviews. The instant administrative review is the first review of the antidumping order in this case. Thus, verification was not required under section 776(b)(3) of the Act. The Department did conduct extensive verification of Nissan's home market sales, U.S. sales, and the value-added cost data from Nissan's related facilities in the United States. TCM's home market sales, U.S. sales and U.S. costs, including value-added cost data from TCM's related facilities in the United States, were verified. The Department determined that TCM's data reporting methodology was sound and reliable. The Department had scheduled cost of production verifications for Nissan and TCM, but was forced to reevaluate the utility of these verifications after hostilities in the Persian Gulf curtailed the Department's verification activities. Given that these verifications were not required, and in light of the successful verification of all other aspects of Nissan's and TCM's sales, the Department concluded that the cost information submitted by Nissan and TCM was satisfactory. See 19 U.S.C. 1677e(b).

TCM

Comment 56: TCM notes that, in certain further manufacturing situations, its operations conducted in the United States have reduced the value of particular forklift trucks as sold from the value of the trucks as imported. For example, TCM's response indicates that it may satisfy a particular customer by removing an unwanted feature, such as an overlarge mast, from an otherwise acceptable forklift truck, resulting in a "negative cost-increase."

TCM objects to the Department's allocation of loss to further manufacturing operations in the United States. According to TCM, the Department's preliminary results computer program multiplied all of TCM's negative profits for U.S. value-added by negative one to convert them into positive amounts. The result, in TCM's view, is a failure to allocate loss to U.S. value-added, while overstating profit.

Department's Position: The Department agrees with TCM that in cases where operations conducted in the United States have reduced the value of particular forklift trucks as sold from the value of the trucks as imported, a negative value-added adjustment is justified. Therefore, the Department corrected this error for the final results. The Department also agrees with TCM that losses were improperly accounted for by multiplying the losses by negative one. Following the methodology upheld by the Court of International Trade (CIT) in *The Timken Co.* v. *United States,* Slip Op. 90–117 (Nov. 2, 1990), the Department proportionally allocated losses, as well as profits, to value-added for the final results.

Comment 57: Petitioners claim that the Department mistakenly failed to include TCM's SG&A component in the U.S. value-added calculation. Petitioners also contend that the Department should use BIA in allocating SG&A attributable to certain TCM value-added sales because those sales feature negative SG&A expenses. Petitioners note that regardless of the possibility of a component "swap-down" (where an option is replaced with a less expensive one) resulting in a negative material cost, it is impossible to have negative SG&A because, among other things, orders have to be processed, instructions must be issued, and inventory records must be adjusted.

TCM notes it reported U.S. value-added SG&A expenses consistently across all appropriate ESP sales according to the same apportionment formula. TCM argues that the Department must apply a consistent allocation formula, regardless of "swap-downs" or "swap-ups," rather than the results-oriented approach favored by petitioners. In addition, TCM notes that its apportionment method does not reduce or increase the total amount of SG&A reported by TCM on a transaction, rather this method simply classifies part of SG&A as value-added. TCM further contends that in a swap-down situation, more SG&A would have been incurred on the truck as imported had it been sold without further assembly; a negative SG&A component of value-added is the technical means of reaching the value of the forklift truck as imported. Therefore, the apportionment of negative SG&A to U.S. value-added results not only in a decrease in U.S. value-added and an equal and offsetting increase in the various components of SG&A reported separately, but also allows the Department to arrive at the value of the forklift truck as imported.

Department's Position: The Department agrees with petitioners in that SG&A expenses, like labor, are either positive or are nonexistent; negative SG&A cannot exist. TCM is incorrect in its assertion that allocation of a negative amount of SG&A results in the value of the forklift truck as imported. As SG&A allocable to the forklift truck occurs after importation and in connection with value-added activities, an "as imported" value is achieved by subtracting SG&A from, not adding it to, the total value-added. Therefore, in instances where SG&A was reported as a negative by TCM, the Department used the absolute value of the expense to properly account for value-added SG&A expenses.

Comment 58: Petitioners argue that the Department should include TCM's product line research and development costs in the cost of manufacture rather than in G&A expenses, as TCM reported.

Department's Position: The Department agrees with petitioners and has included research and development costs in the cost of manufacture calculation.

Comment 59: TCM objects to the Department's inclusion of trucks in the preliminary results that were allegedly liquidated by the U.S. Customs Service and to the application of best information available to determine the U.S. price for those trucks. TCM contends that this action is contrary to the Department's prior pronouncements in this review, where the scope of the antidumping duty order for forklift trucks from Japan is defined as "all unliquidated entries," and is also contrary to Department precedent in Portable Electric Typewriters from Japan (PETs), 56 FR 14072, 14073 (April 5, 1991), in which the Department stated "it is our standard practice not to review liquidated entries."

Department's Position: The Department disagrees with TCM. TCM's citation to PETs from Japan is inapposite. In that case, the Department declined to incorporate the liquidated sales of automatic/calculating PETs because these entries were not within the scope of the antidumping duty order for the period under review. Thus, the Department concluded that it need not include the liquidated entries merely to calculate future deposit rates.

In this review, TCM declined to provide the Department with sufficient information on the liquidated sales. The Department determined that any weighted-average margin based solely on unliquidated sales may be unrepresentative of TCM's pricing practices during the period of review (see Color Picture Tubes from Japan, 55 FR 37915, 37918 (September 14, 1990)). Consequently, these sales have been included in the calculation of the weighted-average margin even though the entries of these forklifts may have already been liquidated. Because TCM declined to report information for these sales, we used best information available, in accordance with section 776(c) of the Act. As best information available, the Department used the rate applied to TCM in the less-than-fair-

value investigation to value the unreported liquidated sales.

Comment 60: TCM notes that the Department incorrectly subtracted U.S. packing from both purchase price and ESP sales that were matched to constructed value (CV), despite having correctly added U.S. packing to CV.

Department's Position: The Department agrees with TCM and has corrected this error for the final results.

Comment 61: TCM notes that the Department subtracted home market inland freight from home market net price, which was subsequently compared to the home market cost of production. However, TCM further notes that the home market inland freight expense was already included in the cost of production as part of the direct selling expense component of SG&A. TCM submits that the Department should not deduct inland freight from the home market price before comparing it to COP, which is inclusive of inland freight.

Department's Position: The Department agrees with TCM and has corrected this error for the final results.

Comment 62: Petitioners argue that TCM, for the first time in its case brief, claims that credit income associated with some of its reported U.S. transactions resulted from leasing arrangements. Petitioners contend that these transactions are leases, not sales, and should therefore be excluded from consideration in the final results. In support of this contention, petitioners note that several verification documents specifically refer to a sample transaction as a rental arrangement; that 19 U.S.C. 1677a stipulates that dumping calculations consider sales and not leases; and that the Department's questionnaire requests information only on sales.

TCM contends, however, that these transactions were installment sales in which dealers entered into a leasing arrangement with CIM or TAM for repayment of the sales price with interest over an extended period. In support of its contention, TCM noted that for Nissan's credit revenue in the antidumping investigation of forklift trucks, the Department "consider[ed] the interest revenue to be an increase in price agreed to by the customer at the time of sale." Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12,552, 12,571 (April 15, 1988).

Department's Position: Petitioners are incorrect when they state that TCM,'s case brief is the first time they claim that credit income associated with certain U.S. transactions resulted from leasing arrangements. Because the Department refered to installment sales in the credit expense portion of the TAM verification report, the issue was, in fact, raised prior to TCM's rebuttal brief.

Secondly, the Department verified that these transactions were in fact installment sales rather than leasing arrangements and they were included for the final results of review.

Comment 63: Petitioners assert that TCM has not provided enough information on TCM's U.S. transactions allegedly resulting from leasing arrangements, and that as BIA, the Department should disregard TCM's credit income reported for all lease transactions. Finally, petitioners contend that if the Department decides to include TCM's reported credit income, it should reduce the interest payments to their present value.

TCM notes that the Department's purchase price margin calculation adds both U.S. credit expense and U.S. credit income to FMV as circumstance of sale adjustments. TCM explains, however, that its credit income results from leasing arrangements with forklift truck dealers in the United States, and therefore the U.S. credit income should be added to U.S. price.

In support of its contention, TCM cites the less than fair value investigation, in which the Department considered Nissan's credit revenue "to be an increase in price agreed to by the customer at the time of sale." Certain Internal-Combustion Forklift Trucks from Japan, 53 FR 12552, 12571 (April 15, 1988). TCM also cites Gray Portland Cement and Clinker from Japan, 56 FR 12164, 12165 (March 22, 1991) in which the Department treated after-sale revenue as credit revenue and added it to U.S. price for purchase price transactions.

Department's Position.: The credit income submitted by TCM for all leasing arrangements with the U.S. dealers was used as reported. Also, rather than the offset, the addition of the credit expense and credit income to FMV in the Department's purchase price margin calculation was the result of a computer programming error. Therefore, the Department added credit income to U.S. price for the final results of review. Further, because the Department did not reduce projected credit expense for installment sales to their present value, the Department did not reduce credit income to its present value for the final results.

Comment 64: TCM contends that the Department should treat the related trading company markup as an indirect selling expense, not a commission, because such payments are an intracompany transfer of funds. In support of its claim, TCM cites Gray Portland Cement and Clinker from Japan, 56 FR 12156 (March 22, 1991), Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990), and Color Picture Tubes from Japan, 55 FR 37923 (September 14, 1990), in which the Department did not deduct related party commissions from U.S. price, because they were considered intracorporate transfers. Thus, TCM concludes that the Department's standard practice is to disregard payments between related parties, and should do so in this case as well.

Petitioners contend that the trading company fees are movement expenses and should therefore be deducted from the U.S. price. Petitioners note that the Department, in its C. Itoh Industrial Machinery Inc. (CIM) verification report listed the C. Itoh Japan markups at issue among the seven movement charges incurred by TCM. Petitioners further note that TAM incurs these expenses as well. Petitioners contend that the Department's treatment of the markups in the preliminary results should have recognized that the trading houses perform services in connection with the importation processes (e.g., documentation processing) which petitioners state are clearly movement charges.

Finally, petitioners note that in the underlying less than fair value investigation, fees paid to a trading company for services relating to the movement of the subject merchandise were treated as movement charges. Petitioners claim that because the trading companies do not function as an independent selling arm of TCM, and are not paid for finding new customers, the fees do not qualify as commissions because there is no selling function involved in the service provided by the trading companies. Therefore, the fees cannot be treated as indirect selling expenses. Petitioners speculate that, if anything, the amounts reported by TCM for this expense understate the actual expense incurred for document preparation, scheduling, etc., because there is some relationship between the trading companies, TAM and CIM.

Department's Position: The Department agrees with petitioners and has reconsidered the treatment of these expenses. Although the trading companies are directly related to CIM and TAM, and therefore indirectly related to TCM (within the meaning of section 771(13)(D) of the Act), the services they perform, and thus the fees they exact, are directly connected with the movement of forklift trucks from Japan to the United States. TCM has

misunderstood the Department's statement in Color Picture Tubes from Japan. The Department disallowed a markup in that case because it was "an intra-corporate transfer of funds and not an actual expense." (55 FR 37923). (See also Gray Portland Cement and Clinker from Japan, 56 FR 12156, 12167–68, and Gray Portland Cement and Clinker from Mexico, 55 FR 29244, 29251.) In this case, the trading company markups represent actual expenses relating to the movement of forklifts which would be incurred as an expense regardless of relationship of the party performing the service to TCM, TAM, or CIM. Furthermore, these expenses were verified by the Department. Therefore, to ensure an "apples-to-apples" comparison, the Department has deducted the trading company markups directly from U.S. price.

Comment 65: Petitioners contend that the Department should use best information available to rectify certain errors in TCM's exporter's sale price and purchase price data bases. Petitioners note errors for the following expenses: Fees paid to trading companies, U.S. brokerage and handling, containerization costs, ocean freight, marine insurance, U.S. duty, U.S. freight to warehouse, credit and warranty expenses.

TCM asserts that petitioners' contentions represent rebuttals to TCM's submission of factual information and as such should be disallowed under § 353.31(a)(2) of the Department's regulations which indicates that such allegations may be submitted "at any time prior to * * * 10 days after the date such factual information is served on the interested party." TCM then notes it submitted the information in dispute 18 and 15 months ago. TCM states that, since this is the first time the petitioners have made these factual allegations and as they affect only a few trucks, the Department should reject them as untimely and *de minimis*.

Department's Position: The Department agrees with TCM. The allegations were untimely submitted and have not been considered in these final results.

Comment 66: Petitioners claim that the value-added sales information provided by TCM should be rejected. Petitioners contend that the Department selected five value-added sales for examination during verification and that TCM was unable to support the costs reported in its response on four of the five sales. Petitioners conclude that under even the most lax verification standards, an eighty percent failure rate for the sample sales reviewed does not warrant reliance on the remainder of TCM's reported value-added data. In addition, petitioners claim TCM understated its value-added labor and overhead costs in its sales listing, that TCM failed to substantiate its value-added labor hours, that TCM improperly claimed value-added truck preparation services as indirect selling expenses, that TCM reported conflicting labor times for its value-added jobs, that TCM apparently understated the labor hours required to swap masts, and that TCM understated its hourly labor and overhead rates.

Department's Position: The Department verified the value-added information provided by TCM according to standard procedures, including examination of relevant accounting records and original source documents of TCM, CIM, and TAM. Petitioners exaggerate the extent of the errors discovered at verification. With the exception of minor clerical and methodological errors, which the Department required TCM to correct in its post-preliminary results submission of information, the Department found the value-added information submitted by TCM reliable, with no further discrepancies.

Comment 67: Petitioners note that at the TAM verification, the Department observed that some forklift trucks were stolen from inventory. Petitioners claim that since the verification report did not indicate whether TCM was fully reimbursed for the loss by TCM's insurance company, the losses from these thefts should be treated as direct selling expenses on the sales covered by the review.

Department's Position: As stated in the verification report, the Department reviewed the insurance claim concerning these forklift trucks. The fact that the insurance company had not reimbursed TCM during the period of review is not dispositive that reimbursement will not occur. In addition, the Department has no evidence on the record that the insurance company has rejected the claim or that TCM will not be reimbursed in part or in full. Therefore, it would be inappropriate to treat the expenses associated with the stolen trucks as direct selling expenses. Moreover, the Department does not consider stolen merchandise to be sales in the ordinary course of trade as defined in section 771(15) of the Tariff Act and, accordingly, have excluded the stolen forklift trucks from further consideration for the final results.

Mitsubishi

Comment 68: MHI contends that its home market sales to related MHI dealers are at prices reflective of arm's-length transactions and that it has provided both qualitative and quantitative analysis to support this claim. Concerning the qualitative analysis, MHI alleges that it has previously demonstrated that the prices, rebates, credit terms and discounts offered by MHI to Mitsubishi Motors Corporation (MMC) dealers and related MHI dealers are "essentially the same." MHI notes that the only significant difference in treatment between MHI and MMC dealers during the period of review was that MHI dealers received "special rebates." MHI contends that these special rebates are granted by MHI on a case-by-case basis based on a review of MHI by each MHI dealer's sales results and financial condition.

MHI states that it provided the Department with quantitative analysis showing that the average net prices charged to MHI dealers and MMC dealers were similar. MHI argues that since it has provided convincing evidence that sales to both related and unrelated dealers in the home market are arm's-length transactions, the Department can use either sales to unrelated dealers of all dealer sales (i.e., sales to both MMC and MHI dealers). Finally, MHI alleges that complete and accurate data on sales and costs of forklift trucks sold by MHI dealers to unrelated end users is not available to MHI because this information is kept by MHI dealers, who do not keep complete records on forklift sales.

Petitioners point out that MHI conceded in its initial questionnaire response that MHI's sales to MHI dealers are not arm's-length. Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19090 (May 3, 1989), petitioners state that MHI clearly had the burden of showing that prices charged in the home market to related and unrelated parties are comparable. Petitioners argue that MHI failed to show that sales to MHI dealers were at arm's-length.

Department's Position: The Department made the decision in March 1990 that sales by MHI to related MHI dealers were not made at arm's-length. The Department's determination was based on the information on the record at that time, which was MHI's response dated November 20, 1989. In this submission MHI stated:

> There are two types of dealers in Japan: MHI dealers and MMC dealers. All dealers receive the same gross prices, but the dealer agreements differ in that MHI dealers have an article in their agreements concerning counseling by MHI on their operations. Also,

the net prices differ by dealer type because MHI dealers receive special discounts and rebates and special terms of payment.

MHI further argued in its questionnaire response that: "For purposes of this review, we submit that the Department should only consider sales to MMC dealers because all MMC dealers are treated equally and are treated differently than MHI dealers."

Because of the information contained in MHI's questionnaire response concerning the difference in treatment between MHI dealers and MMC dealers, the Department determined that the sales to MHI dealers were not arm's-length. In the supplemental questionnaire dated March 20, 1990, the Department requested MHI dealer sales to end users, which represent 75 percent of the home market. MHI did not provide any new data or compelling reasons that warranted reconsideration of the arm's-length decision. However, over the course of the review, MHI reversed its position regarding the MHI dealer sales without providing sufficient data to warrant reconsideration by the Department.

MHI's claims that it had previously demonstrated that the payment terms offered to MMC and MHI dealers were essentially identical. This directly conflicts with MHI's November 20, 1989, response. In this response, MHI stated that the payment terms were different. MHI dealers paid on the installment basis at a low rate. The MMC dealers, except for one related MMC dealer, paid in full within a short period of time after receipt of the invoice. Also, the interest free period for MHI dealer sales is longer than for MMC dealers. This is clear evidence that MHI dealers received more favorable payment terms.

The Department was unable to duplicate MHI's calculated "net prices" in MHI's July 12, 1990, submission using the explanation provided. According to this submission, the net prices were compared after making adjustments for (1) differences in merchandise (using variable costs) to compute the sales prices of a standard struck; and (2) for differences in circumstances of sale (i.e., credit, warranty and advertising). MHI's explanation of net prices in its brief is, however, different than that offered in the July 12, 1990, submission. MHI's brief states that the prices were adjusted for "MHI's level of trade claim." This is an inappropriate adjustment because the sales to dealers in Japan are at the same level of trade. MHI's quantitative analysis is inconclusive and without merit. Where the respondent cannot show that sales to related parties were at arm's-length, and the sales made through the related party are a significant percentage of all sales in the home market, the Department calculates foreign market value based on the sale price to the first unrelated party (see Roller Chain, Other than Bicycle, from Japan, 55 FR 42608 (October 22, 1990). Thus, because MHI did not provide the Department with data on MHI dealer sales to end users (accounting for 75% of the home market) or with new information showing that these sales were in fact made at arm's-length, the Department was forced to use the best information available.

The Department also disagrees that MHI had no information on sales by MHI dealers to end users. Based on MHI's initial response, the Department concluded that many MHI dealer sales are shipped direct to the end user by MHI. In the original response, MHI stated that "in many cases the dealer has MHI arrange delivery." Therefore, MHI should have data concerning these direct shipments. Furthermore, because of MHI's rebate and discount programs, the Department found that MHI directs the sales of certain forklift trucks to specific customers. In these instances, MHI would know which forklift truck was sold to the end user. Subsequently, the Department has found that few changes are made by the related dealers and, as MHI stated, approximately 20 out of the thousands of forklift trucks sold had a specification change made by the related dealer.

The Department also found evidence that MHI had knowledge of the options work performed by the MHI dealers. Based on the documents, obtained from three MHI dealers and reviewed at verification, the Department found that MHI had specific knowledge of the work performed by the dealers. During the course of the Department's visit, each dealer stated that purchase orders were completed and copies were forwarded to MHI. The purchase order indicates the work to be performed by MHI and the work to be performed by the dealer (see MHI Verification Report dated February 1, 1991). In addition, the Department obtained evidence at verification that the dealer cannot perform specification changes to the forklift truck without prior approval from MHI. The dealers explained that the work performed by them is generally minor, Some examples given were: The assembly or attachment of roofs, LPG tanks, drum clamps, roll clamps, push and pull devices, bars, rear view mirrors; electric welding; and the painting of customer names. The Department found that the dealers maintained profit and loss or cost data for each forklift truck sold. Therefore, the type of sales or cost data needed by the Department should have been available.

Throughout this review, MHI has tried to limit the Department's access to data and to dictate what the Department should use as foreign market value. MHI stated that it would provide end-user sales data for those sales that did not match MMC sales, but no end-user sales data was provided. By letters dated April 30, 1990, May 8, 1990, July 16, 1990, and September 27, 1990, and at numerous meetings, the Department informed MHI that all MHI dealer sales to end users must be provided. Additionally, the Department had every reason to believe that MHI could and would provide this sales data. MHI had asked for and had been granted extensions in order to obtain the end-user sales data. Because of MHI's failure to provide this repeatedly requested information, the Department was forced to rely on the best information available, in accordance with 19 U.S.C. section 1677e(c).

Comment 69: MHI argues that even assuming, *arguendo,* that MHI's sales to MHI dealers were not arm's-length transactions, the Department should not use best information available. MHI further argues that the use of best information available would only be necessary if the Department decides that the special rebates provided to MMC dealers are proper circumstance of sale deductions to prices and not intercompany transfers or equity infusions for which no adjustment to price is proper.

Petitioners argue that MHI has never established that its sales to related MHI dealers are comparable to its sales to unrelated MMC dealers and that MHI dealer sales to end users.

Department's Position: MHI has neither demonstrated that its sales to related MHI dealers are at arm's-length nor provided complete data on MHI dealer sales to end users, both of which were repeatedly requested by the Department. As a result, the Department could not properly conduct the cost test and thus had to rely on the best information available.

Comment 70: MHI asserts that the Department should calculate foreign market value (FMV) using sales to MMC dealers because MMC dealer sales exceed five percent of sales on a such or similar category basis to third countries. Regardless of what type of viability test the Department chooses to apply, MHI sales to MMC dealers represent a significant above-cost pool of home market sales upon which to base FMV should the Department decide that sales

to MHI dealers were not arm's-length. Therefore, there is no reason for the Department to look further than sales by MHI to MMC dealers to calculate FMV.

Department's Position: MHI is confusing the home market viability test with the below cost of production test. The viability test is not at issue. The issue is whether the Department had sufficient information on the record to determine whether MHI had sufficient sales in the home market at or above its cost of production. The Department determined that MHI failed to provide the cost of production for the forklift trucks sold by the MHI dealer to the end user and MHI did not provide the prices to the end user. Therefore, the Department was unable to perform the cost test.

Comment 71: MHI argues that the Department will not use sales by MHI to MHI dealers in the calculation of foreign market value because related party sales could result in artificially low antidumping margins. Therefore, the Department should either use the related party sales or disregard them and use the remaining sales. In particular, the Department should not use the MHI dealer sales to end-users because these sales are at a different level of trade than the sales to the United States.

Department's Position: Section 353.45 of the Department's regulations is very clear concerning use of sales to related parties. The fact that these sales to MHI dealers are at a different level of trade than the sales to the United States and that the use of these home market sales would result in artificially low dumping margins is irrelevant. Since MHI's sales to the related MHI dealers did not satisfy the requirements of § 353.45, the Department requested MHI dealer sales to end users.

Comment 72: MHI argues that the Department's statutory interpretation of the related party regulation is improper and creates an unreasonable administrative burden on the Department and respondents. MHI further argues that when the Department found sufficient sales to calculate foreign market value at the level of trade nearest to U.S. sales, it should use those sales. Finally, MHI claims that the Department should not go to a more distant level of trade to enlarge the pool of home market sales unless this is absolutely necessary.

Department's Position: The Department determined that MHI did not demonstrate that the prices to the MHI dealers were comparable to the prices at which MHI sold such or similar merchandise to the unrelated dealers. Therefore, in accordance with § 353.45, the Department properly determined that foreign market value should be based on the sales of the related party. However, as stated previously, the Department has been unable to conduct a cost test on all home market sales because MHI neither provided the cost data nor the sales data for the sales to the end users. Since the end-user sales constituted 75 percent of the total home market sales, the Department was unable to determine if there were sufficient sales at or above the cost of production which could be used in the calculation of foreign market value (refer to Comment 76). MHI's assertion that the Department found sufficient sales to calculate foreign market value is incorrect.

Comment 73: MHI asserts that even assuming, *arguendo*, that the Department could consider sales by MHI dealers equal with sales to MMC dealers, this action results in no better matches. MHI has calculated the weighted-average total points for model matches using sales by MHI to both MMC and MHI dealers (or by MHI dealers) and compared this number to the weighted average points for model matches to total sales by MHI to MMC dealers only. The results showed that MHI and MMC dealers' sales were within the same point range and that there was not a significant difference between them. In addition, the majority of the matched sales occurred within the same month as the U.S. sale whether sales to both MMC and MHI dealers or sales to MMC dealers alone were used.

Department's Position: Because MHI conducted its own tests and only provided the Department with the results, the Department had no information on the record concerning the actual MHI program used to perform the price comparisons. The Department was unable to duplicate this test and could not evaluate the merits of MHI's claim (see Such or Similar Comparisons).

Comment 74: MHI argues that sales by MHI dealers do not survive the model match test and do not provide the most similar matches. In its August 16, 1990 submission, MHI presented the model matching characteristics (created to compare such or similar merchandise) it was able to obtain on sales by MHI dealers to end users. MHI showed that these sales would not match any U.S. sales and thus failed the model match test.

Department's Position: MHI's argument contradicts its previous arguments. In the August submission, MHI argued that there is not a significant difference between the forklift trucks sold to MHI and MMC dealers. Now, MHI argues that these same trucks would not match to any U.S. sale. This is highly improbable. As MHI stated at the hearing, the only difference in the model matching characteristics that can change between the MHI sale to the MHI dealer and the dealer's sale to the end user is the mast. MHI also stated at the hearing that MHI found less than 20 trucks where the MHI dealer switched the mast. This represents less than 0.5 percent of the total sales to end users. These few sales should not have eliminated all the sales to end users as potential model matches for the U.S. sales.

Comment 75: MHI argues that if the Department must conduct a below cost test on a pool of sales consisting of MHI sales to MMC dealers and MHI dealer sales to end users, it should do this by making the adverse assumption that the sales by MHI dealers are below cost. While this is an adverse assumption under U.S. antidumping law, it is also a reasonable assumption given that, even after receipt of special rebates, these dealers were not profitable. By making this assumption, the Department is left with sales to MMC dealers in the home market which, even after application of the cost test, are sufficient in quantity to form a viable home market for calculation of foreign market value.

Department's Position: MHI has conducted an improper cost test because MHI only tested the MMC dealer sales. These sales represent approximately 25 percent of MHI's total home market sales. To perform the cost test properly, the Department needs the cost of the forklift truck the MHI dealer sold to the end user. This cost data was never provided and MHI did not use it in its cost test. Therefore, MHI's cost test is inconclusive. Moreover, MHI has never demonstrated that this cost data could not be provided (see Comment 72).

Section 773(b) of the Act clearly states that the Department shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. Therefore, MHI's suggestion that the Department assume that all MHI dealer sales to end users are below cost is not allowable under the law.

Comment 76: MHI argues that the Department is not authorized to collect data on MHI dealer sales because the Department is only allowed to obtain data to calculate foreign market value on sales "through" related parties rather than sales "to" related parties. Because MHI does not sell through dealers, it does not have records on these sales. Furthermore, the data on MHI sales to MHI dealers simply does not exist. MHI found that MHI dealers did not keep

complete, accurate and detailed records of the actual specifications or prices of each forklift truck sold. Further, while MHI dealers modified the trucks they purchased from MHI in almost every case before sale, the dealers kept their actual modification costs on a total monthly basis only, rather than on a per truck basis. The information required to respond to the Department antidumping questionnaire is not kept by MHI dealers in the ordinary course of their business; they only kept the records required for Japanese tax purposes and these are too general to be useful.

Petitioners state that the meaning of the Department's regulations concerning related party sales is clear and that MHI "tortures" the intent of 19 CFR 353.45(b) by assuming the word "through" triggers the same test that the Department applies when determining whether a U.S. sale should be examined on an exporter's sale price basis or a purchase price basis. Petitioners point out in the underlying investigation of forklift trucks the Department required both Komatsu and Sumitomo to report Japanese related dealer sales of forklift trucks to unrelated purchasers in lieu of sales not made at arm's-length to the related dealers.

Department's Position: The Department disagrees with MHI. Based on the verification of three of the six MHI dealers (see MHI Verification Report, March 25, 1991), the Department determined that these dealers (one large dealer and two smaller dealers) maintained sufficient records to report the pricing and difference in merchandise data necessary for the calculation of foreign market value and for performing the cost of production test. Specifically, the Department found: (a) One dealer had prepared "a sales report to president" (Exhibit 156) which contains "type of forklift truck, specific cost breakdown for the standard truck and the options, and the calculation for the profit realized on the sale of this truck;" (b) another dealer stated that salesmen are required to complete an "APPLICATION FOR APPROVAL FOR SALE" form or sales report form which contains complete cost or price breakdown for the sales manager including the profit or loss realized on the sale; and (c) the third dealer stated that salesmen maintain notebooks which provide the cost breakdown for the standard truck and the options. The third dealer also claimed that it was rare that a price change occurred after the purchase order had been forwarded to MHI.

In conformity with 19 CFR 353.45(b), it is the normal practice of the Department to disregard related party sales. Generally, the Department requires that respondents report the first sale to an unrelated party, unless the respondent makes arguments and provides sufficient information to enable us to analyze the comparability of related and unrelated sales. The burden of proof is on the respondent to show that the prices are comparable since it is the party making the claim.

To perform an analysis of the comparability of related and unrelated sales, the Department generally requires that a respondent provide sales-specific or customer-specific payment terms for credit expenses, as well as information on commission, rebate and discounts. MHI has failed to provide sales-specific information on discounts and rebates. In addition, MHI has provided contradictory information on "special rebates," first arguing that the rebates were granted on an equal basis to all MHI dealers and later arguing that they were granted to "varying degrees." In fact, MHI's case brief states: "Only if special rebates result in price adjustments could net prices to MHI dealers differ significantly from net prices to MMC dealers." The lack of reliable information on the special rebates has prevented any meaningful analysis of the sales to MHI dealers.

In situations where the transactions between related parties were not at arm's-length and a substantial percentage of home market sales were made through a related party, the Department may rely on the sales to the first unrelated purchasers in calculating foreign market value (see *Roller Chain from Japan*, 55 FR 42602 (October 22, 1990)).

Comment 77: MHI argues that it reported all sales to the United States subject to assessment of antidumping duties during the period. MHI contends that only unliquidated sales are subject to review under section 751 of the Act and, since liquidated entries are outside the scope of the order, they cannot be subject to review. MHI states that the Department's past practice has been to not review liquidated entries, citing Large Power Transformers from France, 46 FR 36889 (September 20, 1984).

MHI also cites Color Picture Tubes from Japan, 55 FR 37915 (September 14, 1990) and asserts that the Department ignores liquidated entries when the volume and type of sales of unliquidated entries is sufficient to be representative of the respondent's pricing practices during the review period. MHI notes that it had nine sales contracts during the review period and that the liquidations were random, including both early as well as late contracts and parts of others.

Petitioners argue that since the volume of these unreported sales is large in relation to the total volume of sales, the reported sales are not representative of MHI's pricing practices. Petitioners further argue that U.S. sales are used to assess antidumping duties on unliquidated entries and to calculate the cash deposit rate for future entries and therefore the respondent must produce the required information.

Department's Position: There is no evidence on the record which supports MHI's contention that these entries were liquidated. When asked for proof of liquidation, MHI merely stated that the Department could inquire with the Customs Service about the liquidated entries. However, the Customs Service cannot readily furnish this type of information to the Department. It was therefore, reasonable for the Department to require that MHI provide information on the allegedly liquidated sales. In an antidumping review, the burden of proof of any statement lies clearly with the party making that statement. Further, the Department clearly informed MHI that it was to report *all* of its U.S. sales that fell within the scope of the review during the period of investigation. The Department was unable to determine whether MHI's unliquidated entries were representative of MHI's pricing practices for the period under review due to MHI's failure to provide the requested information.

Comment 78: MHI argues that if the Department were to use best information available (BIA), it should use BIA only for foreign market value and in this case BIA would be sales to MMC dealers or constructed value. Furthermore, use of BIA is inappropriate in this case because MHI has made good faith efforts to respond to the Department's requests.

Department's Position: Throughout this review, MHI has tried to limit the Department's access to data and to dictate what the Department should use as foreign market value. Also, the Department can not rely on MHI's submissions in deciding issues because the submissions are inconsistent and incomplete or MHI failed to submit the required data. Therefore, the Department determined to use BIA, which was MHI's rate from the original investigation.

Furthermore, the use of constructed value as FMV would also be inappropriate. Section 773(A)(1) of the Act establishes a clear hierarchy for the calculation of FMV. The Act dictates

that foreign market value be based on home market sales unless there were no home market sales or the quantity of home market sales is so small as to form an inadequate basis for comparison. MHI's sales of forklift trucks in Japan were significant enough to form an adequate basis for comparison. Where the home market is the appropriate basis for foreign market value and where a respondent is unable or unwilling to report those sales, the Department must determine what is the best information available to value these sales.

General Issues

Comment 79: Petitioners assert that the Department's sales below cost methodology is flawed and produces understated margins of dumping. Petitioners contend that internal combustion forklift trucks are not a fungible product and are more like "job order" products such as mechanical transfer presses, offshore oil platforms, and large power transformers. Because forklifts are "job order" products, petitioners conclude that FMV often consists of just one home market sale compared to one U.S. sale. If the single home market sale is sold below cost, there likely will be no dumping margin. Petitioners suggest that the Department conduct its cost test on the model match concordance tape, not on the home market sales tape to correct this error.

Department's Position: The sales below cost of production test was conducted according to the Department's standard procedures. Despite petitioners' claim that forklifts are "job order" products, the information presented during the course of this review has revealed that forklifts are mass-produced. While the specifications and capabilities of the products petitioners cited are generally determined in advance of production, the record indicates that large numbers of various forklift models are mass-produced. Any customizing or "job order" activity occurs well after production and often well after importation into the United States (at Toyota's, Nissan's, or TCM's U.S. value-added facilities). The forklift trucks under review are clearly unlike the products mentioned by petitioners and are amenable to the Department's standard cost test procedures.

Finally, the Department notes that the only example petitioners cited regarding the alleged deleterious effects of the Department's cost test methodology was the direct result of a clerical error and has already been addressed (see Comment 31).

Comment 80: Petitioners state that the Department should revise its model match methodology because it gives insufficient weight to tire type and, therefore, results in more matches of merchandise, but not in matches that are the most similar. Petitioners aver that tire type is a crucial attribute of a forklift truck because the tire type determines the construction of the frame of the truck. As stated in the original less than fair value investigation, tire type "is the identifying feature and principle component of the product, and is solely dedicated for the manufacture of a complete internal-combustion forklift truck" (53 FR 12552). Petitioners argue that the Department's matching methodology does not require sufficient similarity between U.S. and home market sales because the Department considers forklifts with a point range of 7–9 on a 21-point scale similar (see Such or Similar Comparisons section for a listing of model match characteristics and their relative weight in "points").

Petitioners suggest three alternative methods for the such or similar comparisons and tire type matching. First, petitioners recommend that the Department return to the original less than fair value matching methodology. Second, petitioners propose increasing the weight for tire type from six to ten points. Finally, petitioners state that matches with less than fifteen points do not constitute similar merchandise because the predominant features of the home market comparator would be substantially different from the U.S. truck; therefore, the Department should omit all home market sales with less than fifteen points.

Department's Position: The Department clarified and refined the model match methodology used in the original less than fair value investigation by, among other improvements, devising a point-weighting scheme which simplified reporting requirements while according the greatest weight to tire type. Petitioners failed to provide any specific examples regarding widespread, or even episodic, matches of dissimilar merchandise. Without such evidentiary support for their position, the Department can neither evaluate petitioners' claim nor reasonably alter its existing matching procedure.

Comment 81: Petitioners claim that the Department improperly accounted for the consumption tax forgiven upon exportation of forklift trucks to the United States. Petitioners contend that each of the three steps the Department used in its treatment of the Japanese consumption tax was unjustified under the law. In support of their contention, petitioners cite *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (CIT 1990) (*Zenith I*), *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989) (*Daewoo*), and *Zenith Electronics Corp.* v. *United States, 633 F. Supp. 1382 (CIT 1988) (Zenith II*).

Petitioners note that Toyota, Nissan, and TCM neither claimed nor proved an entitlement to any adjustment to U.S. price resulting from treatment of the Japanese consumption tax, and that the Department's adjustment, which was based on an unproven assumption of one hundred percent "pass through," was therefore unlawful. Petitioners suggest that the Department not adjust U.S. price upward for any taxes. Similarly, petitioners claim that Congress did not legislate tax neutrality in the antidumping statute, and that the Department's regulations do not include rebate or forgiveness of foreign market tax upon exportation as a circumstance of sale triggering an adjustment. Petitioners conclude that the Department should eliminate this adjustment from U.S. price for Toyota, Nissan, and TCM because the adjustment has no basis in law and improperly reduces *ad valorem* dumping margins with respect to these producers.

Department's Position: The Department does not agree with the CIT in *Zenith I, Zenith II*, or *Daewoo* that the statute requires a measurement of home market tax incidence or precludes a circumstance of sale adjustment, but has not had the opportunity to appeal these issues. Because the Department believes that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, the Department does not agree with the CIT's decision on adjustments for differences in commodity taxes. After calculating the amount of commodity tax not collected on the export sales and adding it to U.S. price, the Department made a circumstance of sale adjustment to foreign market value for the difference in taxes in each market (Television Receivers, Monochrome and Color, from Japan, 56 FR 38417, 38418, Comment 2 (August 13, 1991)).

Final Results of Review

As a result of the comparison of United States price to foreign market value, the Department determined that the following margins exist for the period November 24, 1987 through May 31, 1989:

Manufacturer/exporter	Margin percent
Toyota Motor Corporation	12.22
Nissan Motor Co., Ltd	7.36
Toyo Umpanki Co., Ltd	7.71
Mitsubishi Heavy Industries, Ltd	39.15

The Department of Commerce shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain internal-combustion, industrial forklift trucks from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the review companies will be as outlined above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this or prior reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or of the most recent review, or if not covered in this review or an earlier review, the rate from the less-than-fair-value-investigation; and (4) the cash deposit for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be 12.22 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1978 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-817, A-475-804, A-412-808]

Initiation of Antidumping Duty Investigations: Potassium Hydroxide, Liquid and Dry, From Canada, Italy, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1174.

Initiation of Investigations

The Petition

On January 2, 1992, we received a petition filed in proper form by LinChem, Inc. (Petitioner), a producer of potassium hydroxide, liquid and dry, (KOH) in the United States. Petitioner submitted supplementary information on January 10, January 13, January 16, and January 22, 1992. In accordance with 19 CFR 353.12, the petitioner alleges that KOH from Canada, Italy, and the United Kingdom is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has standing to file the petition because it is an interested party, as defined under section 771(9)(D) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on F.O.B. port of entry price quotations obtained from certain U.S. distributors and end-users of KOH produced in Canada, Italy, and the United Kingdom. Petitioner adjusted the USP quotations for movement expenses incurred for transportation from plant to port of entry. We recalculated the movement expenses for imports of the subject merchandise from Italy.

Petitioner based foreign market value (FMV) for Canada on F.O.B. delivery point price quotations from producers of KOH. Petitioner based FMV for the United Kingdom on delivered price quotations and for Italy on both F.O.B. plant and delivered price quotations. Petitioner adjusted the FMV price quotations for movement expenses to arrive at a F.O.B. plant price for Canada and the United Kingdom. Petitioner adjusted the liquid KOH price quotations to a KOH price quotation on a dry basis. We adjusted the FMV price quotation for Italy to account for the value-added tax incurred in Italy. We deducted inland freight in Italy to obtain an F.O.B. plant price.

Based on the supplements to the petition, the dumping margin for subject imports from Canada is 66.01 percent, and the dumping margins for subject imports from the United Kingdom range from 138.98 percent to 163.91 percent. Based on the supplements to the petition, the dumping margins calculated by the Department for subject merchandise from Italy range from 60.16 percent to 190.88 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of KOH from Canada, Italy, and the United Kingdom. Petitioner alleges that producers of KOH in Canada, Italy, and the United Kingdom and their importers should have known that they were selling KOH into the United States at less than fair value, and that a massive increase in imports has occurred over a short period of time.

Initiation of Investigations

We have examined the petition on KOH from Canada, Italy and the United Kingdom and have found that the petition meets the requirements of section 732(b) of the Act. Therefore we are initiating antidumping duty investigations to determine whether imports of KOH from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigations

The merchandise subject to these investigations is all grades of KOH, liquid and dry. Imports of this product are currently classifiable under the

Harmonized Tariff Schedule (HTS) subheading 2815.20.0000. The HTS subheading is provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

Preliminary Determinations by the International Trade Commission

The International Trade Commission (ITC) will determine by February 18, 1992, whether there is a reasonable indication that imports of KOH, liquid and dry, from Canada, Italy, and the United Kingdom are materially injuring, or threaten material injury to, a U.S. industry. If the ITC's determinations are negative, the investigations will be terminated. Otherwise, if the investigations proceed normally, the Department will make its preliminary determinations on or before June 10, 1992.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2052 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on pig iron from Brazil. We preliminarily determine the net subsidy to be 0.06 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 14927) of the countervailing duty order on pig iron from Brazil (45 FR 23045; April 4, 1980). We received requests for review from Associated Metals and Minerals Corporation, Sumitomo Corporation of America, Considar, U.S.A., Inc., and SINDIFER, interested parties within the meaning of 355.2(i). We initiated the review covering the period January 1, 1990 through December 31, 1990, on May 21, 1991 (56 FR 23271). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published on May 30, 1991 (56 FR 24174).

Scope of Review

Imports covered by this review are shipments of pig iron of basic, malleable, and low phosphorous grades, from Brazil. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.30.00, and 7206.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, nineteen companies, and seven programs.

Hyperinflationary Economics

According to statistics published by the Brazilian government the annual inflation rate in Brazil during the review period was 1,285 percent. Under such circumstances, the clustering of nominal countervailable benefits either at the beginning or at the end of the review period would tend to distort the real value of the benefit bestowed on the firm. In this review, benefits from the Income Tax Reduction for Export Earnings program were received at the beginning of the review period. Therefore, we have made a downward adjustment to the nominal values of annual exports used as the denominator in the calculation of the benefit from this program. This adjustment is based on the price deflator index used by the Brazilian government during the period of review, the Bonus do Tesouro Nacional (BTN). For further explanation of this methodology see Final Negative Countervailing Duty Determination: Silicon Metal From Brazil (56 FR 26988; June 12, 1991).

Analysis of Programs

(1) Income Tax Reduction for Export Earnings

This program was previously named Income Tax Exemption for Export Earnings. Under this program, exporters of pig iron are eligible for a reduction in income tax on the portion of their profits attributable to exports. The exporter calculates the tax-reduction portion of profit based on the ratio of export revenue to total revenue. Because this program provides tax reductions that are limited to exporters, we preliminarily determine that it is countervailable.

The nominal corporate tax rate in Brazil in 1990 was 30 percent, while under this program profits from export sales were taxed at a rate of eighteen percent, pursuant to Decree-Law 7988 of December 28, 1989. Furthermore, Brazilian tax law permits all companies to reduce their income taxes by investing up to 24 percent of their tax liability in specified companies and funds. Eight pig iron exporters claimed this income tax reduction for export earnings on their tax returns filed in 1990 and invested in the specified companies and funds. Their effective tax rates were thus lowered below the nominal 30 percent rate during the period of review.

We calculated the effective tax rate for the firm by dividing the net tax liability by net taxable income. In order to adjust for hyperinflation, the reported figures were converted into BTN using the same BTN rate used in the tax returns. We determined the export profit by multiplying the exports to sales ratio by adjusted operating profits. We then determined the tax reduction by multiplying the export profit (converted into BTN) by the difference between the effective tax rate and the preferential tax rate of eighteen percent. We divided the tax benefit by the firm's total exports for 1990, which were deflated using the average BTN rate for 1990. We then weight-averaged each firm's benefit by its share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent for all firms for the period January 1, 1990 through December 31, 1990.

Decree Law 8034 of April 12, 1990 eliminated this tax reduction and established a prevailing tax rate of 30 percent for domestic and export earnings for tax year 1990 (the 1990 tax returns are filed in 1991). See, *e.g.*, Final Negative Countervailing Duty Determination: Silicon Metal From

Brazil (56 FR 26988; June 12, 1991). We consider this elimination to be a program-wide change. Because it occurred prior to the issuance of these preliminary results and there are no residual benefits to the producers/exporters of pig iron, we have taken this program-wide change into account in setting our cash deposit rate. Therefore, for purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment (54 FR 23366; May 31, 1989) § 355.50(a) (1) and (2) at page 23385.

(2) Programs Not Used and Eliminated

We also examined the following programs and preliminarily determine that the respondents did not use them during review period and that they were terminated by the Government of Brazil:

A. CACEX Preferential Working Capital Financing for Exports. This program was terminated effective August 30, 1990, by Central Bank Resolution 1744.

B. FINEX preferential financing under Resolutions 68 and 509. This program was terminated on October 5, 1990 by constitutional provision.

C. Preferential financing from the Banco do Brasil under the EST and EGF. The EST financing was eliminated; EGF financing is not available to pig iron producers.

See, *e.g.*, Final Negative Countervailing Duty Determination: Silicon Metal From Brazil (56 FR 26988; June 12, 1991) and Final Affirmative Countervailing Duty Determination: Steel Wheels from Brazil (54 FR 15523; April 18, 1989).

(3) Other Programs

We also examined the BEFIEX Reduction of Taxes and Import Duties program, the Accelerated Depreciation on Brazilian-made Capital Equipment program, and the FINEP preferential financing program, and preliminarily determine that exporters of pig iron did not apply for or receive benefits under these programs during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.06 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less then 0.50 percent *ad valorem* is *de minimis*.

Upon completion of this review, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of pig iron from Brazil exported on or after January 1, 1990 and on or before December 31, 1980.

The Department will also instruct the customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Act, on all shipments of pig iron from Brazil entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1979 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Equinomics, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84-00013.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Equinomics, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is revoking the certificate. This notice summarizes the notification letter sent to Equinomics, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290, 15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR 325 (1986). Pursuant to this authority, a certificate of review was issued on June 25, 1984 to Equinomics, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (section 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c).

On June 17, 1991, the Department of Commerce sent to Equinomics, Inc. a letter containing annual report questions with a reminder that its annual report was due on August 9, 1991. Additional reminders were sent on August 22, 1991 and on October 10, 1991. The Department has received no written response from Equinomics, Inc. to any of these letters.

On November 19, 1991, and in accordance with § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Equinomics, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Equinomics, Inc. thirty days to respond was published in the **Federal Register** on November 27, 1991

at 56 FR 60095. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Equinomics, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Equinomics, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 21, 1992, to notify Equinomics, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: January 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-2053 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Determination: Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain aluminum-killed cold-rolled steel sheet.

SHORT-SUPPLY REVIEW NUMBER: 63.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply request for 350 metric tons of certain aluminum-killed ("AK") cold-rolled steel sheet for the first quarter of 1992 under the U.S.-EC Steel Arrangement.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1386 or (202) 377-1390.

SUPPLEMENTARY INFORMATION: On January 8, 1992, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting short supply of 350 metric tons of certain AK cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-EC Steel Arrangement"). BMC requests the following quantities of four different sizes of AK cold-rolled steel sheet: 45 metric tons that are 18.62 inches in width and 0.0060 inch in thickness, 70 metric tons that are 19 inches in width and 0.0068 inch in thickness, 190 metric tons that are 24 inches in width and 0.0068 in thickness, and 45 mertric tons that are 27 inches in width and 0.0060 inch in thickness. BMC claimed that the requested product, used to manufacture aperture masks for color television picture and data display tubes, is not produced domestically and that its potential European supplier does not have sufficient regular export licenses available. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested product meets the following specifications:

Chemistry (in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulphur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); and Iron (remainder); the total of these elements excluding iron not to exceed one percent;

Width Tolerance: +/−0.04 in.;

Thickness Tolerance: +0.00028 in., −0.00020 in.;

Coil Weight: 1.5 to 3.0 metric tons, with a maximum of 20 percent in 0.5 to 1.5 metric ton weights per single shipment.

Action

On January 8, 1992, the Secretary established an official record of this short-supply request (Case Number 63) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary authorized the importation of additional quantities of the requested product in 1990 and 1991. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary applied a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than January 23, 1992.

On January 14, 1992, the Secretary published a notice in the **Federal Register** (57 FR 1455) announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were to be submitted no later than January 21, 1992. No comments were received.

Conclusion

Because the Secretary received no comments to the **Federal Register** notice from potential domestic suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 350 metric tons of the requested steel sheet for the first quarter of 1992 under article 8 of the U.S.-EC Steel Arrangement.

Dated: January 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2054 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Standard Length Premium Curve Rails

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: Certain standard length premium curve rails.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 13,000 net tons of certain standard length premium curve rails for the first quarter of 1992

under paragraph 8 of the Arrangement Between the Government Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT SUPPLY REVIEW NUMBER: 64.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain standard length premium curve rails used on railroad curves of over two degrees and in special uses such as switches. On January 15, 1992, the Secretary received an adequate petition from Union Pacific Railroad ("UP") requesting a short-supply allowance for 13,000 net tons of certain standard length premium curve rails for the first quarter of 1992 under paragraph 8 of the U.S.-Japan Arrangement. UP requests the following quantities of three different sizes of premium rail: 500 net tons of 39 feet long-115 lbs./yard, 500 net tons of 39 feet long-136 lbs/yard, and 12,000 net tons of 80 feet long-133 lbs./yard. UP states that the requested product is not produced domestically and that its potential Japanese suppliers do not have sufficient export licenses available during this period.

The requested product meets the following specifications:

Chemistry:
- Carbon: 0.72–0.82 percent,
- Manganese; 0.80–1.20 percent,
- Phosphorus: 0.030 percent maximum,
- Sulphur: 0.025 percent maximum,
- Silicon: 0.59 percent maximum,
- Chromium: 0.25 percent maximum,
- Molybdenum: 0.025 percent maximum.

Minimum Tensile Strength: 171,000 psi.
Minimum Yield Strength: 114,000 psi.
Minimum Elongation: 10 percent.
Minimum Brinell Hardness of the head must be 322 at 0.4 inches from the surface. Average surface hardness must be a minimum of 380.
The rails must be free of shatter crackers through at least one of the following processes: Controlled cooling of rails or blooms; vacuum treatment; or other such process.
The rails must be ultrasonically tested for internal imperfections to detect a minimum of 3/32 inch diameter defect anywhere in the sound path of the head, a minimum of 1/16 inch diameter defect in the web and longitudinal imperfections exceeding 1/2 inch length and greater than 1 1/8 inch depth occurring in the base.
The rails must meet a figure of .001721 inch of gage face wear per million gross tons on the high rail, and a figure of .000296 inch of head height loss on the low rail, as measured by the American Association of Railroads.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 14, 1992.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than February 4, 1992, to the Secretary of Commerce, attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after February 4, 1992. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: James Rice or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-2667 or (202) 377-1390.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1981 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Nationwide

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate the American Indian Business Consultant (AIBC) for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $210,000 in Federal funds. The period of performance will be from May 1, 1992 to April 30, 1993. The AIBC will operate nationwide. The award number for this AIBC will be 98-10-92016-01.

The funding instrument for the AIBC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The American Indian Program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a

conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by MBDA staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

The AIBC performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. The AIBC with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall the AIBC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the AIBC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with *OMB Circular A-129, "Managing Federal Credit Programs,"* applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the AIBC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of AIBC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with *section 319 of Public Law 101-121,* which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is February 28, 1992. Applications must be postmarked on or before February 28, 1992.

ADDRESS: MBDA, American Indian Program, Office of Operations, Business Development Division, 14th & Constitution Avenue, NW., room 5099C, Washington, DC 20230, (202) 377-2366.

FOR FURTHER INFORMATION CONTACT: Luis G. Encinias, Chief, Business Development Division, MBDA American Indian Program Monitoring Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (Catalog of Federal Domestic Assistance)

Dated: January 22, 1992.

Luis G. Encinias,

Chief, Business Development Division.

[FR Doc. 92-1976 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (G.M.T.), will hold a public meeting beginning at 1 p.m. on February 11, 1992, and ending at 4 p.m., on February 13, 1992. The meeting will be held in the Oregon Department of Fish and Wildlife Building, 2501 SW. First Avenue, suite 200, Portland, OR.

The GMT will review two industry reports on sablefish allocation and discuss the concept of individual fisherman's quotas for groundfish species. Other topics will include preliminary stock assessment guidelines, catch monitoring and allocation of Pacific whiting among U.S. fishermen. The GMT will also prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

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: January 22, 1992.

David S. Crestin,

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

[FR Doc. 92-2022 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License; Tissue Engineering, Inc.

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of

an exclusive license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Application Serial Number 7-487,894, "Human Olfactory Neuron Cultures," and its continuation-in-part, Serial Number 7-605,788, having the same title, to Tissue Engineering, Inc., having a place of business in Boston, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The inventions relate to a culture of human olfactory neurons. The neurons may display a normal neuronal pathology or a pathology characteristic of a generalized central nervous system disease. The cultured neurons can be used for neurotoxicity tests, screening for therapeutic drugs and anti-viral agents, and diagnosing Alzheimer's disease.

The availability of SN 7-487,894 for licensing was published in the **Federal Register** vol. 56, no. 22, p. 4049 (February 1, 1991). The availability of SN 7-605,788 was published in the **Federal Register**, vol. 56, no. 99, p. 23553 (May 22, 1991). A copy of the above-identified patent applications may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark (telephone 703/487-4738), Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92-1991 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh, agreement was reached to establish limits for Categories 363 and 634 for the period beginning June 1, 1991 and extending through January 31, 1992, and for Category 237 for the period beginning October 1, 1991 and extending through January 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 30, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the periods beginning on June 1, 1991 for Categories 363 and 634, and October 1, 1991 for Category 237, and extending through January 31, 1992, in excess of the following levels of restraint:

Category	Restraint Limit
237	85,595 dozen.
363	10,404,110 numbers.
634	184,589 dozen.

You are directed to charge to the above levels of restraint the following amounts for goods imported during the periods June 1, 1991 through October 31, 1991 for Categories 363 and 634, and October 1, 1991 through October 31, 1991 for Category 237. Additional charges will be supplied as they become available.

Category	Amount to be Charged
237	0 dozen.
363	1,241,484 numbers.
634	53,910 dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-2051 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Clearance No. 9000-0014]

OMB Clearance Request for Statement and Acknowledgement, SF 1413

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension to an existing OMB clearance (9000-0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Statement and Acknowledgement, SF 1413.

DATES: Comments may be submitted on or before March 30, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgement, will be used by all Executive Agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgement of the inclusion of those clauses in the subcontract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,000; responses per respondent, 1.5; total annual responses, 3,000; preparation hours per response, .15; and total response burden hours, 450.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Clearance Request for Statement and Acknowledgement, SF 1413, OMB Control No. 9000-0014, in all correspondence.

Dated: January 21, 1992.

Laurie Frazier,

FAR Secretariat.

[FR Doc. 92-1992 Filed 1-27-92; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, February 4, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 10:30 a.m. The purpose of this meeting is to permit representatives of U.S. company members of the IAB to participate in a meeting of the Working Group on Emergency Data Systems of the IEA's Standing Group on Emergency Questions (SEQ), scheduled to be held at the OECD on that date. This Working Group is considering the scope of the data requirements relating to the IEA's Emergency Sharing System, the benefits and burdens of the current data requirements and possible reforms to these data requirements. The agenda for the meeting, which is under the control of the IEA Secretariat, is as follows:

1. Approval of record of fourth meeting.
2. Results of surveys of the reporting burden imposed by Questionnaires A, B, and C.
3. Enhancement of role of Questionnaire C.
4. Working Group progress report to the SEQ.
5. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB and their counsel, representatives of the Department of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 8, 1992.

John J. Easton, Jr.,

General Counsel.

[FR Doc. 92-2043 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Transmittal of Mined Geologic Disposal System (MGDS) Annotated Outline Planning Package for Preparation of a License Application and Monitored Retrievable Storage (MRS) Annotated Outline Planning Package for Preparation of a License Application to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the MGDS Annotated Outline Planning Package for Preparation of a License Application and the MRS Annotated Outline Planning Package for Preparation of a License Application to the NRC for comment and guidance on December 19, 1991, and December 20, 1991, respectively. The annotated outline process will be the basis for developing license applications, if any, for the MRS and MGDS programs. The annotated outline process will be iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the annotated outlines, contact Priscilla Bunton, RW-311, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, (202) 586-8365.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 92-2042 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-556-000, et al.]

Sunnyside Cogeneration Associates, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Sunnyside Cogeneration Associates

[Docket No. QF86-556-003]

January 13, 1992.

On January 8, 1992, Sunnyside Cogeneration Associates tendered for filing an amendment to its filing in this

docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Comment date: January 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana Michigan Power Co.

[Docket No. ER92-216-000]

January 14, 1992.

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M) on January 9, 1992, tendered for filing additional data requested by the staff of the Commission in support of the loss percentage contained in Modification No. 1 dated November 10, 1991 to the Settlement Agreement dated August 31, 1988 (1988 Agreement) between I&M and Wabash Valley Power Association, Inc. (Wabash Valley), I&M's Rate Schedule FERC No. 76.

Modification No. 1 decreases the cost to Wabast Valley for Dump Energy, gives Wabash Valley additional flexibility in scheduling transmission service, and adjusts the loss percentage as provided for in the 1988 Agreement.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and Wabash Valley.

Comment date: January 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER92-264-000]

January 15, 1992.

Take notice that on January 7, 1992, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on November 14, 1991, by the respective parties:

Economy Energy Sale Agreement Between The Metropolitan Water District of Southern California (District) and Southern California Edison Company

The Agreement provides for the sale of economy energy from District to Edison and from Edison to District under one of the two rates agreed upon by the parties prior to delivery: (1) a ceiling rate based on incremental production costs (designated as the "Incremental Energy Rate"); or (2) a Share-the-Savings Rate.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER92-263-000]

January 15, 1992.

Take notice that on January 7, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on November 7, 1991, by the respective parties:

Amendment No. 1 (Amendment) To The Firm Transmission Service and Emergency Service Agreement Between Southern California Edison Company and San Diego Gas & Electric Company

The Agreement extends the term of service to December 31, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER92-259-000]

January 15, 1992.

Take notice that Central Vermont Public Service Corporation ("Central Vermont") on January 3, 1992 tendered for filing an amendment reducing the amount of power to be sold to Enosburg Falls pursuant to an October 31, 1991 letter agreement for the sale of Central Vermont system incremental power and energy to the municipal utilities of Orleans, Enosburg Falls and Barton. The October 31, 1991 agreement was filed with the Commission in Docket No. ER92-145-000.

Central Vermont requests that the Commission waive its notice requirement in order to allow the amendment to become effective on December 1, 1991.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER92-266-000]

January 15, 1992.

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Chicopee Municipal Lighting Plant ("CMLP"). The rate schedule corresponds to a letter agreement, dated December 24, 1991, between UI and CMLP. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to CMLP.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power Inc.

[Docket No. ER89-670-000]

January 15, 1992.

Take notice that on January 8, 1992, Iowa Power Inc. (Iowa Power) tendered for filing the first amendment to the original filing for this docket dated September 22, 1989, in connection with the Electric Interchange Agreement with the City of Ames.

Iowa Power states that the first amendment to the Interchange Agreement filing provides a revised service schedule for Service Schedule H—Scheduled Outage and Energy. The amended filing also includes requested cost support for Service Schedule G—Equalization Power and Energy.

Iowa Power requests an effective date of February 14, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER92-262-000]

January 15, 1992

Take notice that on January 6, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment sent by Niagara Mohawk to Consolidated Edison Company of New York, Inc. ("Con Ed") dated November 27, 1991, providing for certain transmission services to Con Ed. This amendment is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This amendment is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission

in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1991.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER92-270-000]

January 15, 1992

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M), by letter dated January 9, 1992, tendered for filing as an initial Rate Schedule an Interconnection Agreement, dated December 30, 1991, between I&M and Louisville Gas & Electric Company (LG&E).

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Kentucky Public Service Commission, and LG&E.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The United Illuminating Co.

[Docket No. ER92-267-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Bangor Hydro-Electric Company ("BHE"). The rate schedule corresponds to a letter agreement, dated December 18, 1991, between UI and BHE. The commencement date for service under the agreement is February 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to BHE.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The United Illuminating Co.

[Docket No. ER92-268-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Central Vermont Public Service Corporation ("CVPS"). The rate schedule corresponds to a letter agreement, dated December 30, 1991, between UI and CVPS. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station and a portion of UI's entitlement in Mystic Unit #7.

Copies of the filing were mailed to CVPS.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp Electric Operations

[Docket No. ER92-265-000]

January 15, 1992

Take notice that PacifiCorp Electric Operations (PacifiCorp), on January 8, 1992, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a compliance filing under this Docket.

This compliance filing is pursuant to the Commission's condition stipulated in the acceptance for filing of the Agreement for Mitigation of Major Loop Flow (Agreement) among PacifiCorp, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) under this Docket to file the derivation of the annual capital carrying charge to PG&E and SCE pursuant to Section 2.9 of the Agreement.

Copies of this compliance filing were supplied to PG&E, SCE, the Public Utilities Commission of the State of California.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. The United Illuminating Co.

[Docket No. ER92-269-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to UNITIL Power Corporation ("UPC"). The rate schedule corresponds to a letter agreement, dated December 24, 1991, between UI and UPC. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy UI's Bridgeport Harbor Station Unit #3.

Copies of the filing were mailed to UPC.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Co.

[Docket No. ER92-202-000]

January 15, 1992

Take notice that on January 9, 1992, Montaup Electric Company ("Montaup"), at the request of Staff, filed and amendment to its original filing. The amendment contains the fuel forecasts used to support the negotiated energy charge of $20/MWh. Montaup continues to request that the agreement be allowed to become effective as of November 1, 1991.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp Electric Operations

[Docket No. ER92-110-000]

January 17, 1992

Take notice that PacifiCorp Electric Operations on January 13, 1992, tendered for filing an amendment to its October 8, 1991 filing of the Draft Lost Creek Transmission Service Agreement as previously amended on November 18, 1991 under this Docket.

The amended filing requests a waiver of the sixty (60) day filing period established pursuant to the Commission's Order under Central Maine Power Company Docket No. ER91-457-000 and forwards an additional filing fee both as directed by the Commission's staff.

Copies of this amended filing were supplied to Bonneville Power Administration and the Public Utility Commission of Oregon.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Co.

[Docket No. ER92-96-000]

January 17, 1992

Take notice that on January 13, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment 3 to its FERC Electric Tariff Volume No. 4. WWP states that the purpose of the Amendment is to make changes requested by Commission staff. WWP also renewed its request for a waiver of the sixty (60) day filing requirement in order for the Tariff to have an effective date of November 1, 1991.

A copy of the filing was mailed to Portland General Electric.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Co.

[Docket No. ER91-620-000]

January 17, 1992

Take notice that on January 13, 1992, Central Maine Power Company (CMP) tendered for filing its amended FERC Electric Tariff, 12th Revised Volume No. 1, Wholesale Electric Rates for Other Utilities. This filing is made in response to the Commission's Deficiency Letter dated October 29, 1991. Under the proposed tariff, CMP's wholesale rates will increase by $352,546.01 for Period I.

The proposed tariff will affect CMP's wholesale customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Island Electric Cooperative, Inc. Copies of the filing have been served on the representative of CMP's above-named wholesale customers, and on the Maine Public Utilities Commission and the Public Advocate.

The filing also requests renewal of the previously-granted waiver of Section 35.14, to allow the Company to recover, through the fuel clause, the total cost of power from qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978 (PURPA).

CMP states that the filing also includes a Request for Reconsideration of the Staff's refusal to accept the Company's attrition allowance as approved by the Maine Public Utilities Commission.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. St. Joseph Light & Power Co.

[Docket No. ER92-18-000]

January 17, 1992

Take notice that on January 13, 1992, St. Joseph Light & Power Company (SJLP), on January 13, 1992, tendered for filing an amendment to filing of SJLP-Iowa Power Interchange Agreement Amendment. In this amendment to filing, SJLP has provided a revised Service Schedule F, Term Energy.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Power Co.

[Docket No. ER92-274-000]

January 17, 1992

Take notice that on January 13, 1992, Consumers Power Company tendered for filing Supplement No. 2 to the Transmission Service Agreement dated December 18, 1986 (Rate Schedule No. 61) between Consumers Power Company and the Southeastern Michigan Rural Electric Cooperative, Inc. The filed Supplement provides for the extension of the transmission agreement through December 31, 1999 and limits unilateral filing for rate changes over that period.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Detroit Edison Co.

[Docket No. ER92-180-000]

January 17, 1992

Take notice that on January 13, 1992, Detroit Edison Company tendered for filing an amendment to its November 6, 1991, filing in the above-referenced docket.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Consumers Power Co.

[Docket No. ER92-273-000]

January 17, 1992

Take notice that on January 13, 1992, Consumers Power Company tendered for filing Supplement No. 7 to the Transmission Service Agreement dated December 20, 1985 (Rate Schedule FERC No. 60) between Consumers Power Company and the Michigan Public Power Agency. The filed Supplement provides for the extension of the transmission agreement through December 31, 1992.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generation Corp.

[Docket No. EL92-10-000]

January 17, 1992

Take notice that on December 31, 1991, the Consumer Advocate Division of the Public Service Commission of West Virginia (WV Consumer Advocate), the Maryland People's Counsel (People's Counsel) and the Pennsylvania Office of Consumer Advocate tendered for filing a joint complaint against Allegheny Generating Corporation (AGC). In the complaint the three agencies assert that the current return on equity in the formula rate for sales by AGC to Monongahela Power Company, Potomac Edison Company and West Penn Power Company is unjust and unreasonable and should be reduced.

Comment date: February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp Electric Operations

[Docket No. ER92-271-000]

January 17, 1992

Take notice that PacifiCorp Electric Operations (PacifiCorp), on January 13, 1992, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, the Power and Transmission Services Agreement (PTSA) among Public Service Company of Colorado (PSCo), Tri-State Generation and Transmission Association, Inc. (Tri-State) and PacifiCorp and the Long-Term Power Sale Agreement (Sales Agreement) between PacifiCorp and PSCo.

Under the terms of the PTSA, PSCo will have an option to purchase energy from PacifiCorp; PSCo, Tri-State and PacifiCorp may make unused generating capacity available to the other parties; Tri-State and PacifiCorp will enter into a seasonable exchange of capacity; and PSCo will provide firm transmission service to PacifiCorp. Under the terms of the Sales Agreement PacifiCorp will sell to PSCo system firm capacity and energy from the effective date of the Sales Agreement through October 31, 2022.

Copies of this filing were supplied to PSCo, Tri-State, the Colorado Public Utilities Commission, the Public Utility Commission of Oregon, the Utah Public Service Commission, Public Utilities Commission of the State of California, the Washington Utilities and Transportation Commission, the Montana Public Service Commission, the Public Service Commission of Wyoming and the Idaho Public Utilities Commission.

Comment date: January 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Kansas Gas and Electric Co.

[Docket No. ER92-211-000]

January 17, 1992

Take notice that on January 2, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a Revised Exhibit to the Generating Municipal Electric Service Agreement between the City of Girard, Kansas and KG&E.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standards Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1964 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2423-001 New Hampshire]

James River-New Hampshire Electric, Inc.; Application Tendered for Filing With the Commission and Establishing a Deadline for Submission of Final Amendments

January 21, 1992.

The license for the Riverside Project No. 2423 located on the Androscoggin River in Coos County, New Hampshire, expires on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. The project consists of a 21-foot-high dam, a 7-acre reservoir and a powerhouse with an installed capacity of 7,900 kW. An application for new license has been filed as follows:

Project No. & filing date	Applicant	Contact
P-2423-001; 1/9/91.	James River-New Hampshire Electric, 650 Main Street, Berlin, NH 03570.	George W. Hill, 650 Main Street, Berlin, NH 03570, (603) 752-4600.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with section 4.32 of the Commission's regulations, must be filed no later than 60 days from the date of this notice.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
March 31, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Upon receipt of all additional information and the information filed in response to the public notice deadline of the notice that the application is ready for environmental analysis, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Julie Bernt at (202) 219-2814.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1961 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2326-002 New Hampshire]

James River-New Hampshire Electric, Inc.; Application Tendered for Filing With the Commission and Establishing a Deadline for Submission of Final Amendments

January 21, 1992.

The license for the Cross Power Project No. 2326 located on the Androscoggin River in Coos County, New Hampshire, expires on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. The project consists of a 467-long dam, a 22-acre reservoir and a powerhouse with an installed capacity of 3,200 kW. An application for new license has been filed as follows:

Project No. and filing date	Applicant	Contact
P-2326-002; 9/27/91.	James River-New Hampshire Electric, 650 Main Street, Berlin, NH 03570.	George W. Hill, 650 Main Street, Berlin, NH 03570 (603) 752-4600.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with Section 4.32 of the Commission's regulations, must be filed no later than 60 days from the date of this notice.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
February 4, 1992	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date any information is due.
February 15, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.

The Commission's deadline for the filing of a final amendment is March 31, 1992.

Upon receipt of all additional information and the information filed in response to the public notice deadline of the notice that the application is ready for environmental analysis, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Julie Bernt at (202) 219-2814.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1962 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-26-000]

MDU Resources Group, Inc., Application

January 21, 1992.

Take notice that on January 10, 1992, MDU Resources Group, Inc. (MDU) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authority to guarantee the refinancing of certain pollution control refunding revenue bonds in the amount of $20,850,000. MDU also requests exemption from the Commission's competitive bidding regulations.

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 February 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1963 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, February 17, 1992, 9 a.m.-5 p.m. Tuesday, February 18, 1992, 9 a.m.-3 p.m.

Place: National Science Foundation, Rm 540, 1800 G Street, NW., Washington, DC 20550.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, February 17, 1992, and Tuesday, February 18, 1992

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Presentation and discussion of NSF and DOE Budget Requests for Fiscal Year 1993
—Status Report on Activities of the 1992 HEPAP Subpanel on the U.S. Program of High Energy Physics Research
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 23, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-2044 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of December 13 Through December 20, 1991

During the Week of December 13 through December 20, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 13 through December 20, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 12, 1991	Gohmann Asphalt & Construction, Inc., Clarksville, IN.	RR272-84	Request for modification/rescission in the crude oil refund proceeding. If granted: The December 4, 1991 Dismissal Letter (Case No. RF272-73790) issued to Gohmann Asphalt & Construction, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Dec. 16, 1991	Roy P. Lessy, Jr. & Bradley W. Jones, Washington, DC.	LFA-0172	Appeal of an information request denial. If granted: Roy P. Lessy, Jr. and Bradley W. Jones would receive access to certain records involving leaking cesium capsules.
Dec. 16, 1991	Gulf/Dinkins Service, Inc., Atlantic Beach, FL	RR300-121	Request for modification/rescission in the Gulf refund proceeding. If granted: The September 12, 1991 Decision and Order (Case No. RF300-12258) issued to Dinkins Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Dec. 19, 1991	Arundel Corporation, Sparks, MD	RR272-85	Request for modification/rescission in the crude oil refund proceeding. If granted: The October 16, 1991 Decision and Order (Case No. RF272-72080) issued to Arundel Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Dec. 20, 1991	Gulf/Tom Owens Gulf, Woodbridge, VA	RR300-122	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11040) issued to Tom Owens Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of December 13 to December 20, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/91	Midwest Products Supply	RF349-36
12/16/91	Progas, Inc.	RF349-37
12/17/91	City of Burlington	RC272-152
12/17/91	Delores H. Hamilton	RF335-54
12/17/91	Mrs. Rey G. Andes	RF335-55
12/18/91	James R. & Linda L. West	RF307-10206
12/19/91	Presidio Exploration, Inc.	RF340-38
12/19/91	Urium Carbide Clement Company	RF340-39
12/20/91	Jack W. Trout	RF340-40
12/20/91	Hickory Company Commission	RF335-56
12/13/91 thru 12/20/91	Texaco refund, applications received	RF321-18121 thru RF321-19133
12/13/91 thru 12/20/91	Crude Oil, applications received	RF272-90877 thru RF272-90909
12/13/91 thru 12/20/91	Gulf Oil refund, applications received	RF300-18802 thru RF300-18820
12/13/91 thru 12/20/91	Apex/Clark refund, applications received	RF342-74 thru RF342-86
12/13/91 thru 12/20/91	Atlantic Richfield, applications received	RF304-12655 thru RF304-12667

[FR Doc. 92-2045 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $1,141,628.14, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with the Energy Corporation of America, Inc. (Case No. LEF-0036) and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell (Case No. LEF-0037). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 F.R. 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refund" and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1992. Any party who has previously filed an Application for Refund in crude oil proceedings should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $1,141,628.14 that has been remitted by Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan, refunds to the states will be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should must be postmarked no later than June 30, 1992. As we stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

January 22, 1992.

Implementation of Special Refund Procedures

Names of Firms: Energy Corporation of America, Inc., Fuel Oil Supply & Terminaling, Inc. and The Estate of Eddie E. "Bud" Hadsell.

Date of Filings: October 10, 1991.

Case Numbers: LEF-0036, LEF-0037.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On October 10, 1991, the ERA filed two Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Energy Corporation of America, Inc. (ECA) (Case No. LEF-0036) and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell (FOSTI) (Case No. LEF-0036). This Office issued a Remedial Order against ECA for violations of the crude oil price regulations during the period from September 1973 through July 1975. *Energy Corporation of America,* 9 DOE ¶ 83,030 (1982). ECA subsequently appealed the Remedial Order to the United States District Court for the Eastern District of Louisiana (the Court). On April 17, 1984, the Court approved an Agreed Final Judgement entered into by ECA and the DOE under which ECA agreed to remit $487,328, plus interest accruing on any unpaid amount beginning January 1, 1984, in various installments in settlement of the DOE's claims. The DOE collected a total of $650,568.54 from ECA. The Court subsequently approved a Modification of

Agreed Final Judgement on August 18, 1987 that extended the period of payment. On December 5, 1985, the DOE issued a Remedial Order which found that FOSTI committeed violations of the price regulations covering the resale of crude oil during the period July 1978 through September 1978. *Fuel Oil Supply and Terminaling, Inc.*, 13 DOE ¶ 83,054 (1985). FOSTI appealed the Remedial Order to the Federal Energy Regulatory Commission. In January 1990, the DOE and FOSTI entered into a Settlement Agreement which satisfied the DOE's claim against FOSTI. The DOE collected a total of $491,061.60 from FOSTI in settlement of this matter.

In sum, ECA and FOSTI remitted a total of $1,141,628.14 to the DOE. This Decision and Order establishes the OHA's procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from ECA and FOSTI and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroluem products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case *In re: The Department of Energy Stripper Well Exemption Litigation*, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges, *Id.* at 1323–24.

II. The Proposed Decision and Order

On November 7, 1991, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from ECA and FOSTI. 56 FR 57887 (November 14, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the ECA and FOSTI settlement funds. Consequently, the procedures will be adopted as proposed.

III. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $1,141,628.14 remitted by ECA and FOSTI, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $228,325.62, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751–760, and was primarily produced from crude oil at a crude oil refinery. *E.g., Anchor Continental, Inc.*, 22 DOE ¶ _____, Case No. RF272–62992 (January 3, 1992). Following subpart V precedent, reasonable estimates of purchase volumes of covered products may be submitted. *E.g., Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of covered petroleum products purchased during the period of price controls. *E.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g., NYP*, 18 DOE at 88,701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption it must present evidence relevant to the specific factual situation of the applicant. *In re: The*

Department of Energy Stripper Well Exemption Litigation, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord*, Boise Cascade Corp., 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($1,141,628.14) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000056 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one Application for Refund from the crude oil overcharge funds. *E.g.*, Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1992 as the current deadline for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. *E.g.*, *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. *See Texaco Inc.*, 19 DOE ¶ 85,200 at 88,347, *corrected*, 19 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,477–78 (1989); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $913,302.52, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $913,302.52, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $456,651.26, plus interest, into an interest-bearing subaccount for the states, and one-half, or $456,651.26, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share of ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $1,141,628.14 (plus interest) from the Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell subaccounts, Account Numbers 640C00124W and 650X00284W, pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $456,651.26 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The director of Special Accounts and Payroll shall transfer $456,651.23 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The director of Special Accounts and Payroll shall transfer $228,325.62 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE 010Z.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–2046 Filed 1–27–92; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $443,073.30, plus accrued interest, in alleged oil overcharge funds obtained from Strasburger Enterprises, Inc., Case No. LEF–0014. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than January 29, 1993, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Jodi Lox, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018 (Tedrow), (202) 586–6602 (Lox).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Strasburger Enterprises, Inc. to the DOE to settle alleged pricing and allocation violations with respect to the firm's sales of motor gasoline. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund may now be filed by injured purchasers of Strasburger motor gasoline. Applications from the Strasburger escrow fund must be filed in duplicate and received no later than January 29, 1993. All applications should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1 p.m. and 5 p.m.,

Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Ave, SW., Washington, DC 20585.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 22, 1992.

Name of Firm: Strasburger Enterprises, Inc.
Date of Filing: February 23, 1990.
Case Number: LEF-0014.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR part 205, subpart V. On February 23, 1990, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Strasburger Enterprises, Inc. (Strasburger).

I. Background

Strasburger was a "reseller-retailer" of motor gasoline, as that term was defined in 10 CFR 212.31, located in Temple, Texas. A DOE audit of Strasburger's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. Specifically, the audit revealed that between August 19, 1973 and January 27, 1981, Strasburger may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Strasburger entered into a Consent Order with the DOE on December 16, 1986. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Strasburger does not admit any such violations. Under the terms of the Consent Order, Strasburger was required to deposit $395,000 into an escrow account for ultimate distribution by the DOE. On February 2, 1990, Strasburger made a full payment of $443,073.30 into this account. On September 12, 1991, the OHA issued a Proposed Decision and Order (PD & O) setting forth tentative procedures under which firms and individuals who purchased Strasburger refined petroleum products during the consent order period could apply for refunds from the Strasburger consent order fund. In order to give notice to all affected parties, a copy of the PD & O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 56 FR 181 (September 18, 1991). We received no comments concerning the proposed refund procedures for Strasburger. Therefore, we will adopt the procedures in the PD & O as final procedures for the distribution of the Strasburger escrow account.

II. Final Refund Procedures

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. In order to determine the potential refunds for these purchasers, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all of Strasburger's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service,* 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of motor gasoline that it purchased from Strasburger during the period August 19, 1973 through January 27, 1981, multiplied by a volumetric factor of $0.006801 per gallon.[1] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Strasburger funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.,* 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286 (b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 2,206 gallons of Strasburger motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether it was injured by its purchases from Strasburger, *i.e.,* whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Presumptions Concerning Injury

The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Strasburger motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Strasburger. In addition, we will presume that resellers and retailers of Strasburger gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Strasburger motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. *End users.* First, in accordance with prior subpart V proceedings, we will presume that end users, *i.e.,* ultimate consumers of Strasburger motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corp.,* 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Strasburger motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. *Regulated firms and cooperatives.* Second, public utilities, agricultural cooperatives, and other firms whose prices were regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,538 (1982); *Office of Special Council,* 9 DOE ¶ 82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. *Reseller and retailer small claims.* Third, we will presume that a reseller or a retailer seeking a refund of $5,000 or less, excluding accrued interest, was injured by Strasburger. Without this presumption, such an applicant would have to gather records dating as far back as 1973 in order to demonstrate that it absorbed Strasburger's alleged overcharges.

[1] We computed the volumetric factor by dividing the $443,073.30 received from Strasburger by the total volume of covered products sold by the firm during the consent order period (65,147,743 gallons).

The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Therefore, a small claimant must only document the volumes of products that it purchased from Strasburger in order to demonstrate injury. *See Texaco Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

d. *Resellers and retailers filing mid-level claims.* Fourth, in lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[2] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analyses in order to determine product-specific levels of injury. *See e.g. Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 83,381 at 88,737 (1987), we determined that based upon the available data, it was accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach to be sound in the absence of more detailed information for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Strasburger motor gasoline during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $5,000, whichever is greater.

e. *Spot purchasers.* Fifth, resellers and retailers that were spot purchasers of Strasburger motor gasoline, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. *See Vickers* at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally, we will presume that consignees of Strasburger motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Strasburger's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Allocation Claims

We may also receive claims based upon Strasburger's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. Non-Presumption Demonstration of Injury

A reseller or retailer that claims a refund in excess of $5,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that it purchased from Strasburger. Cost banks should cover the period August 19, 1973 through January 27, 1981.[3] If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers.

(1) The weighted average gross profit margin that the firm received from the product on May 15, 1973.

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, August 19, 1973 through January 27, 1981; and

(3) A monthly schedule of the firm's purchase or sales volumes of the products during the period, August 19, 1973 through January 27, 1981.[4]

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Strasburger were higher than average market prices for the same level of distribution. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Strasburger for each grade of motor gasoline during the period August 19, 1973 through January 27, 1981.

If a reseller or retailer that is eligible for a refund in excess of $5,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $5,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above mentioned data and we subsequently conclude that the firm should receive a refund of less than the $5,000 small claims threshold, the firm cannot opt for a fully $5,000 refund.

C. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applications have been processed, the funds in the Strasburger escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

III. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased Strasburger motor gasoline between August 19, 1973 and January 27, 1981. No "class claims" on behalf of groups of claimants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number LEF–0014 and the name and address of the applicant during the period for which the claims is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the application;

(3) The manner in which the applicant used the Strasburger product, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) A monthly schedule of the number of gallons that the applicant purchased from Strasburger during the August 19, 1973 through January 27, 1981 refund period. If the claimant elects to rely on the DOE's records of this purchases, it need not submit a monthly schedule of purchases. If a claimant was an indirect purchaser of Strasburger products, it must also submit the name of its immediate supplier;

(5) All relevant material necessary to support its claim in accordance with the

[2] That is, claimants who purchased between 1,837,965 gallons and 18,379,650 gallons of Strasburger motor gasoline during the consent order period (mid-level claimants) may elect to utilize this presumption. Claimants who purchased more than 18,379,650 may elect to limit their claim to $50,000.

[3] We generally require applicants to submit cost banks that continue until a product's decontrol date. Retailers and resellers of motor gasoline, however, were only required to maintain banks through July 15, 1979 and April 30, 1980, respectively, rather than the January 27, 1981 date of product decontrol.

[4] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 3.

injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Strasburger, an explanation of the nature of that affiliation;

(7) The form of the business, whether it was a corporation, a partnership or a sole proprietorship;

(8) The dates of ownership including the month and year. The applicant must also submit a statement as to whether there has been a change in ownership of the applicant's firm during or since the refund period. The applicant must inform the OHA of any change in status while its Application for Refund is pending. *See* CFR 205.9 (d);

(9) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings of private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(10) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Strasburger proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Strasburger proceeding; and

(12) The following statement signed by the applicant of a responsible official of the business or organization claiming the refund: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 10001."

Applications for Refund should be sent to: Strasburger Refund Proceeding, Case No. LEF-0014, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by January 29, 1993. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copes of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Strasburger Enterprises, Inc. pursuant to a Consent Order finalized on December 16, 1986, may now be filed.

(2) All applications must be postmarked by January 29, 1993.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-2047 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(FRL-4097-1)

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 OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests OMB Approvals

EPA ICR # 1135.04; New Source Performance Standards for Magnetic Tape Coating Facilities (Subpart SSS); was approved 11/15/91; OMB # 2060-0171; expires 11/30/94.

EPA ICR # 1487.03; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; was approved 12/09/91; OMB # 2010-0020; expires 12/31/94.

EPA ICR # 1353.02; Hazardous Waste Management System: Land Disposal Restrictions "No-Migration" Variances; was approved 12/09/91; OMB # 2050-0062; expires 12/31/92.

EPA ICR # 1588.01; Final Regulatory Revisions to Expand State Identification of Point Sources Discharging Toxics into Impaired Waters (CWA Section 304(1)); was approved 12/16/91; OMB # 2040-0152; expires 06/30/92.

EPA ICR # 1391.01; Information Request for State Revolving Fund Program; was approved 12/30/91; OMB # 2040-0118; expires 12/31/94.

EPA ICR # 1361.03; Technical Amendments to the Final Rule to Regulate the Burning of Hazardous Waste in Boilers and Industrial Furnaces; was approved 12/31/91; OMB # 2050-0073; expires 01/31/94.

EPA ICR # 1442.03; Land Disposal Restrictions; was approved 01/06/92; OMB # 2050-0085; expires 01/31/95.

OMB Disapprovals

EPA ICR # 1286.02; Used Oil Management Standards; was not approved 12/03/91.

EPA ICR # 0229.05; NPRM—Notice of Draft General Permit for Storm Water Discharges Associated with Industrial Activity; was not approved 12/27/91.

EPA ICR # 1548.01; Reporting and Recordkeeping for Facilities Subject to Oil Pollution Prevention Regulations; was not approved 01/06/92.

OMB Extension of Expiration Date

EPA ICR # 0262.03; RCRA Hazardous Waste Permit Application Part A; OMB # 2050-0034; expiration date extended to 03/31/92.

Dated: January 22, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-2036 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4097-2]

Ecological Processes and Effects Committee; Great Lakes Water Quality Subcommittee, Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Great Lakes Water Quality Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on February 18-20, 1992. This meeting will be held at the Ramada Hotel-O'Hare Location, 6600 North Mannheim Road, Rosemont, Illinois.

The meeting will start at 8:30 a.m. on February 18 and will adjourn no later than 5 p.m. on February 20, and is open to the public. The main purpose of this meeting is to review guidance documents that the EPA and the states of the Great Lakes Basin have developed to meet the requirements of the Great Lakes Critical Programs Act. The documents were developed under the Great Lakes Water Quality Initiative and are intended to establish a consistent approach to water quality criteria for aquatic life, wildlife and human health for the states within the Great Lakes Basin. The SAB has been given a charge by EPA to review these documents and comment on the scientific validity of the proposed methods for water quality criteria, the calculations of wildlife criteria, the assumptions and databases used for risk assessments, and the development and use of bioaccumulation factors for the wildlife and human health criteria. The human health criteria may receive further review at the next meeting of the Drinking Water Committee of the Board which is being planned for April. Copies of background documents and the charge to the SAB for this review are available from Ms. Joan Karnauskas, U.S. EPA, Region V, 77 West Jackson

Boulevard, Chicago, IL 60604-3590 (Phone: (312) 886-6090).

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 February 7, 1992. 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 seven minutes. Seating at the meeting will be on a first come basis.

Dated: January 17, 1992.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 92-2037 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44580; FRL-4044-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126-73-8), submitted pursuant to a final test rule. Test data were also received on 4-nonylphenol, branched (CAS No. 84852-15-3) pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on December 23, 1991. The submission describes the early life-stage toxicity of TBP to rainbow trout, *Oncorhynchus mykiss*, in a flow-through system. Environmental effects testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the Plutonium Uranium Reduction Extraction process; as a deformer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for 4-nonylphenol, branched were submitted by the Chemical Manufacturers Association's Alkylphenol and Ethoxylates Panel pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on December 19, 1991. The submission describes a bioconcentration test with nonylphenol and the fathead minnow, *Pimephales promelas*. Environmental effects testing is required by this testing consent order. This chemical is used: (1) As an intermediate in the production of nonionic ethoxylated surfactants, (2) as a reactive intermediate in lube additives formaldehyde resins, polymeric stabilizers and epoxy resins, and (3) in the manufacture of phosphate antioxidant, oil additives, synthetic lubricants and corrosion inhibitors.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44580). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 16, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2039 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-140169; FRL-4009-7]

Access to Confidential Business Information by ICF International, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia, and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 11, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D1-0126, contractor ICF, of 9300 Lee Hwy., Fairfax, VA, and 1850 K St., NW., suite 1000, Washington, DC, will assist the Office of Pollution Prevention and Toxics, (OPPT) in the assessment of human health and ecological effects of new and existing chemicals under sections 4, 5, 6, and 8 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D1-0126, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI

materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ICF's Fairfax, VA, and Washington, DC sites only.

ICF will be authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA will approve ICF's security certification and perform the required inspection of its facilities and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 17, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2038 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new noncommercial FM station:

Applicant, City and State	File No.	MM docket No.
A. North Carolina Central University; Durham, NC.	BPED-890313MY	91-291
B. Central Florida Educational Foundation, Inc.; Durham, NC.	BPED-900717MC	

Issue heading and applicants

1. Environmental impact, A, B.
2. 307(b)—Noncommercial Educational, A, B.
3. Ultimate, A, B.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media bureau.

[FR Doc. 92-2065 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act: Property Availability; 100 Acres, Lee County, Florida

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Homewood Subdivision, Blocks 1 through 25, according to the plat thereof as recorded in Plat Book 7, Page 52 of the Public Records of Lee County, Florida is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until April 27, 1992.

ADDRESSES: All written Notices of Serious Interest must be submitted to Denise Langlois Brown, Legal Department, Federal Deposit Insurance Corporation, P.O. Box 725003, Orlando, Florida 32872-5003, (407) 249-5387, Fax (407) 282-0180.

SUPPLEMENTARY INFORMATION: The property is more fully described as Homewood Subdivision, Blocks 1 through 25, according to the plat thereof as recorded in Plat Book 7, Page 52 of the Public Records of Lee County, Florida. The property consists of 100 acres of unimproved land in Lee County, Florida. The property to the east of subject property is owned by the City of Fort Myers and is being used as a municipal golf course. The property is currently zoned low density residential.

Written Notices of Serious Interest to purchases or effect other transfer of the property must be submitted by April 27, 1992 to Denise Langlois Brown at the above address and in substantially the following form:

NOTICE OF SERIOUS INTEREST: RE: 100 Acres, Lee County, Florida. This Notice of Serious Interest is tendered in accordance with section 10 of the Coastal Barrier Improvement Act and publication in the Federal Register of a Notice of Availability on January 28, 1992 with respect to the 100 Acre property in Lee County, Florida.

The *(Name and Address of the Agency or Other Qualified Organization)* is eligible to submit this notice under criteria set forth Public Law 101-591, section 10(b)(2).

The *(Name of Agency or Other Qualified Organization)* intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows: [Insert Terms of Purchase].

Dated: January 22, 1992.

Federal Deposit Insurance Corp.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-2050 Filed 1-27-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Community Bankers, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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 February 18, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Community Bankers, Inc., Granbury, Texas; to engage *de novo* in making and acquiring commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in North Central Texas.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1983 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

Northwest Financial Corp.; 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 February 18, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northwest Financial Corp, Spencer, Iowa; to acquire Northwest Federal Savings Bank, Spencer, Iowa, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); making, acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1); acting as agent in the sale of credit related insurance pursuant to § 225.25(b)(8)(i); and the sale of general insurance in towns with populations of less than 5,000 pursuant to § 225.25(b)(8)(iii); and acting as agent for the sale of load and no-load mutual funds and also providing discount brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1984 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

Peoples Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 18, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Peoples Financial Corporation, Paducah, Kentucky; to acquire 100 percent of the voting shares of Bank of Murray, Murray, Kentucky.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1985 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged

by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on September 28, 1990, and October 1, 1990.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Kristina Riffle on behalf of Lindsay Kiser, Charleston, West Virginia, Claims Court Number 90-2025 V
2. Ronald Mayfield on behalf of Josh Mayfield, Shawnee Mission, Kansas, Claims Court Number 90-2026 V
3. John Gasque on behalf of Jennifer Gasque, Dillon, South Carolina, Claims Court Number 90-2027 V
4. Patricia Greway on behalf of John Greway, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90-2028 V
5. Chris Foster on behalf of David Foster, Deceased, North Hollywood, California, Claims Court Number 90-2029 V
6. Peggy Risso on behalf of Brian Risso, Bellevue, Washington, Claims Court Number 90-2030 V
7. Teresa Pratt on behalf of Michael Pratt, Tacoma, Washington, Claims Court Number 90-2031 V
8. Delores Williams on behalf of David Williams, Portsmouth, Virginia, Claims Court Number 90-2032 V
9. Roland Joseph on behalf of Tamara Joseph, Deceased, Lawrenceville, New Jersey, Claims Court Number 90-2033 V
10. Catherine Howett, South Bend, Indiana, Claims Court Number 90-2034 V
11. Karen Meyer on behalf of Joshua Banks, Deceased, Englewood, Colorado, Claims Court Number 90-2035 V
12. Mary Lassiter on behalf of Eric Lassiter, New York, New York, Claims Court Number 90-2036 V
13. John Brown on behalf of Billy Brown, Chattanooga, Tennessee, Claims Court Number 90-2037 V
14. Bonnie Ware on behalf of Christopher Bonniwell, Richmond, Virginia, Claims Court Number 90-2039 V
15. Robert and Adrienne Koon on behalf of Caroline Koon, Deceased, Delta Junction, Alaska, Claims Court Number 90-2040 V
16. Kathy Anderson on behalf of Devan Anderson, Bridgeport, Connecticut, Claims Court Number 90-2041 V
17. Lawrence Callahan on behalf of Rebecca Callahan, Fairfax, Virginia, Claims Court Number 90-2042 V
18. Howard Hansen, Jr., on behalf of Howard Hansen, III, Fort Gordon, Georgia, Claims Court Number 90-2043 V
19. Brian Berg on behalf of Teresa Berg, Collingswood, New Jersey, Claims Court Number 90-2044 V
20. Martha Ultimo on behalf of Dante Ultimo, Rutherford, New Jersey, Claims Court Number 90-2045 V
21. Clayton Lincoln on behalf of Erica Lincoln, Baton Rouge, Louisiana, Claims Court Number 90-2046 V
22. Lorenzo and Violet Silva on behalf of Gary Silva, Northern Mariana Islands, Guam, Claims Court Number 90-2047 V
23. Cynthia Hand on behalf of Dylan Gould, Palm Bay, Florida, Claims Court Number 90-2048 V
24. Deborah Farnsworth on behalf of Melissa Farnsworth, Commack, New York, Claims Court Number 90-2049 V
25. Mary Kunz on behalf of Edward Kunz, Midland Park, New Jersey, Claims Court Number 90-2050 V
26. Kathleen Fern on behalf of Kevin and Patrick Fern, Washington, D.C., Claims Court Number 90-2051 V
27. Edward Cousins on behalf of Shannon Cousins, Alexandria, Virginia, Claims Court Number 90-2052 V
28. Nostratollah Jadali on behalf of Maryam Jadali, Wheaton, Maryland, Claims Court Number 90-2053 V
29. Gwendolyn Babin on behalf of Lolita Babin, Alexandria, Virginia, Claims Court Number 90-2054 V
30. Dolores Balough on behalf of Joseph Balough, Deceased, Defiance, Ohio, Claims Court Number 90-2055 V
31. Linda Jordan, Burlington, Iowa, Claims Court Number 90-2056 V

32. Linda Pepe on behalf of Michael Pepe, Alexandria, Virginia, Claims Court Number 90-2057 V
33. Cynthia Brake on behalf of Christopher Brake, Pittsburgh, Pennsylvania, Claims Court Number 90-2058 V
34. Margaret Bride on behalf of Deborah Bride, Caparra Heights, Puerto Rico, Claims Court Number 90-2059 V
35. Richard Clark on behalf of Brandon Clark, Dequincy, Louisiana, Claims Court Number 90-2060 V
36. Terry McIver on behalf of Jason McIver, Tampa, Florida, Claims Court Number 90-2061 V
37. Robert and Judith Scutt on behalf of Christopher Scutt, Kingston, New York, Claims Court Number 90-2062 V
38. Kathleen Martin on behalf of Clifton Martin, Deceased, Lakehurst, New Jersey, Claims Court Number 90-2063 V
39. W. Allen Lee, III, on behalf of Mary Lee, Deceased, Trenton, New Jersey, Claims Court Number 90-2064 V
40. Bryan Rucker Sr., on behalf of Bryan Rucker, Jr., San Bernardino, California, Claims Court Number 90-2065 V
41. Brad Reger on behalf of Naomi Reger, Susanville, California, Claims Court Number 90-2066 V
42. Doris Knudsen on behalf of Debra Knudsen, Sioux City, Iowa, Claims Court Number 90-2067 V
43. Stephen Drumm on behalf of Matthew Drumm, Denver, Colorado, Claims Court Number 90-2068 V
44. Jennifer Rudinser, Huron, Ohio, Claims Court Number 90-2069 V
45. Janice and Virgil Hoffman on behalf of Mary Hoffman, Hickory, North Carolina, Claims Court Number 90-2070 V
46. Richard Chase, Baltimore, Maryland, Claims Court Number 90-2071 V
47. Daniel Harvey on behalf of Kirt Harvey, Peru, Indiana, Claims Court Number 90-2072 V
48. Michael Hewitt on behalf of Sean Hewitt, San Antonio, Texas, Claims Court Number 90-2073 V
49. Carolyn Busby on behalf of Wayne Batchan, Huntsville, Alabama, Claims Court Number 90-2074 V
50. Guillermo Paniagua on behalf of Kristina Paniagua, Santa Clara, California, Claims Court Number 90-2075 V
51. Haskell Hensley on behalf of Josh Hensley, Johnson City, Tennessee, Claims Court Number 90-2076 V
52. Tuomo Kanervikkoaho on behalf of Erkki Kanervikkoaho, Hopewell Junction, New York, Claims Court Number 90-2077 V
53. Frederic Kirkpatrick on behalf of Jeremy Kirkpatrick, Deceased, Pasadena, Texas, Claims Court Number 90-2078 V
54. Anthony Bloink on behalf of Ann Bloink, Deceased, Port Huron, Michigan, Claims Court Number 90-2079 V
55. Donald Benton, Jacksonville, Florida, Claims Court Number 90-2080 V
56. Rufus Cook on behalf of Jonathan Cook, Deceased, Monroe, Louisiana, Claims Court Number 90-2081 V
57. James Hawxwell on behalf of Jeffrey Hawxwell, Windham, Maine, Claims Court Number 90-2082 V
58. Roman Brunner on behalf of Charles Brunner, Mauston, Wisconsin, Claims Court Number 90-2083 V
59. Martha Yuhnke on behalf of Michael Yuhnke, Anaheim, California, Claims Court Number 90-2084 V
60. Mary Denning on behalf of William Denning, Jr., Dunn, North Carolina, Claims Court Number 90-2085 V
61. Walter Jonas on behalf of Kevin Jonas, Marshfield, Wisconsin, Claims Court Number 90-2086 V
62. Lisa La Rock on behalf of Nathan La Rock, Green Bay, Wisconsin, Claims Court Number 90-2087 V
63. Sara Knutson on behalf of Camden Hookstead, Janesville, Wisconsin, Claims Court Number 90-2088 V
64. Lucille Layne on behalf of Terence Layne, Oradell, New Jersey, Claims Court Number 90-2089 V
65. Jimmie Branam on behalf of Jeffrey Branam, Portland, Oregon, Claims Court Number 90-2090 V
66. Keane Kitzman on behalf of Jennifer Kitzman, Scottsdale, Arizona, Claims Court Number 90-2091 V
67. Wayne Stevenson on behalf of Nicole Stevenson, Fresno, California, Claims Court Number 90-2092 V
68. Sudhir Patel on behalf of Rupal Patel, Philadelphia, Pennsylvania, Claims Court Number 90-2093 V
69. Sherry Bryan on behalf of Misty Bryan, Tyler, Texas, Claims Court Number 90-2094 V
70. Kelly Peterson on behalf of Tucker Peterson, Helena, Montana, Claims Court Number 90-2095 V
71. Gregory LeMair on behalf of Brooke LeMair, Deceased, Sioux Falls, South Dakota, Claims Court Number 90-2096 V
72. Lynette Rupp, Xenia, Ohio, Claims Court Number 90-2097 V
73. Jamie Travis on behalf of Christy McCarthy, Bay City, Texas, Claims Court Number 90-2098 V
74. Thomas Harris on behalf of Stefani Harris, RAF Alconbury, United Kingdom, Claims Court Number 90-2099 V
75. Roderick Kulik, Pittsburgh, Pennsylvania, Claims Court Number 90-2100 V
76. Jolea Swann on behalf of Rebecca Swann, Cuyahoga Falls, Ohio, Claims Court Number 90-2101 V
77. Debbie Powers on behalf of Ryan Gray, Toledo, Ohio, Claims Court Number 90-2102 V
78. Michael Gabbard on behalf of Adam Gabbard, Bowling Green, Kentucky, Claims Court Number 90-2103 V
79. Cheri Gillespie on behalf of Megan Gillespie, Urbana, Illinois, Claims Court Number 90-2104 V
80. James Kitchin on behalf of James Kitchin, Jr., Deceased, Nuernberg, West Germany, Claims Court Number 90-2105 V
81. Lyle Koopman on behalf of Chad Koopman, Hendricks, Minnesota, Claims Court Number 90-2106 V
82. Ellen Dauchy, Berkeley, California, Claims Court Number 90-2107 V
83. Elizabeth Duhs, Cincinnati, Ohio, Claims Court Number 90-2108 V
84. Kenneth Orashan on behalf of Katherine Orashan, Aurora, Colorado, Claims Court Number 90-2109 V
85. Jerry Bissegger, Montpelier, Idaho, Claims Court Number 90-2110 V
86. Gary Levis on behalf of Ashley Levis, Chalmette, Louisiana, Claims Court Number 90-2111 V
87. Catherine Fiorenza, Beaumont, Texas, Claims Court Number 90-2112 V
88. Donald Bliss on behalf of David Bliss, Ann Arbor, Michigan, Claims Court Number 90-2113 V
89. Barbara Judd on behalf of Latosha Judd, Ft. Ritchie, Maryland, Claims Court Number 90-2114 V
90. Gerald Hartman on behalf of Shannon Hartman, St. Paul, Minnesota, Claims Court Number 90-2115 V
91. Melissa Lamar on behalf of Joshua Lamar, Starkville, Mississippi, Claims Court Number 90-2116 V
92. David Fennel on behalf of Sarah Fennel, Irving, Texas, Claims Court Number 90-2117 V
93. Redmond Hutchison, Jackson, Mississippi, Claims Court Number 90-2118 V
94. Lester Garner on behalf of Lenore Garner, Natchitoches, Louisiana, Claims Court Number 90-2119 V
95. Kalynn Unger, Akron, Ohio, Claims Court Number 90-2120 V
96. Maurine Brown on behalf of Cynthia Brown, Salem, Oregon, Claims Court Number 90-2121 V
97. Judy Pennywell on behalf of Antonio Pennywell, Shreveport, Louisiana, Claims Court Number 90-2122 V
98. Jack Nichols on behalf of Tristian Nichols, Bozeman, Montana, Claims Court Number 90-2123 V
99. Carol Lyman, Watertown, New York, Claims Court Number 90-2124 V
100. Deborah Brinson, Glencoe, Illinois, Claims Court Number 90-2125 V
101. Raymond Andews on behalf of Kristen Andrews, Chillicothe, Ohio, Claims Court Number 90-2126 V
102. William Stevenson on behalf of Chadrick Stevenson, Amory, Mississippi, Claims Court Number 90-2127 V
103. Robert W. Collins, New York, New York, Claims Court Number 90-2128 V
104. Daniel Lambert, Grand Junction, Colorado, Claims Court Number 90-2129 V
105. James and Carol Rein on behalf of Scott Rein, Hastings, Minnesota, Claims Court Number 90-2130 V
106. Philip Connell on behalf of Kristi Connell, Long Branch, New Jersey, Claims Court Number 90-2131 V
107. Beverly Lopez on behalf of Sally Lopez, Pueblo, Colorado, Claims Court Number 90-2132 V
108. Patrick Wertz on behalf of Amanda Wertz, Murrysville, Pennsylvania, Claims Court Number 90-2133 V
109. Rozelle Smith on behalf of Julie Owen, Canton, North Carolina, Claims Court Number 90-2134 V
110. Fred Newman on behalf of Mary Newman, North Miami Beach, Florida, Claims Court Number 90-2135 V

111. James Golden on behalf of Alisha Golden, Decatur, Alabama, Claims Court Number 90-2136 V
112. Sharon Straw on behalf of Theresa Straw, Biloxi, Mississippi, Claims Court Number 90-2137 V
113. Kristan Clark on behalf of Brian Clark, Bakersfield, California, Claims Court Number 90-2138 V
114. Darrick Crouse, Eldora, Iowa, Claims Court Number 90-2139 V
115. George Johnson, Jr., Miami, Florida, Claims Court Number 90-2140 V
116. Greg Perkins on behalf of Jared Perkins, Deceased, Provo, Utah, Claims Court Number 90-2141 V
117. Chad Thornburg on behalf of Leslie Thornburg, Shelby, North Carolina, Claims Court Number 90-2142 V
118. Ruthann Evans on behalf of Kevin Evans, Fontana, California, Claims Court Number 90-2143 V
119. Mark Sese on behalf of Daniel Sese, Milwaukee, Wisconsin, Claims Court Number 90-2144 V
120. Larry Booker on behalf of Krista Booker, Belen, New Mexico, Claims Court Number 90-2145 V
121. Mary Ann McKavanagh, New York, New York, Claims Court Number 90-2146 V
122. James Schulte on behalf of Luke Schulte, Deceased, Manchester, Iowa, Claims Court Number 90-2147 V
123. Jan Benedict on behalf of Bryan Totterdale, St. Clairsville, Ohio, Claims Court Number 90-2148 V
124. David McLeod on behalf of Addie McLeod, Orlando, Florida, Claims Court Number 90-2149 V
125. Susan Fraenzl, Milwaukee, Wisconsin, Claims Court Number 90-2150 V
126. Kristi Fry on behalf of Justin Fry, Muskogee, Oklahoma, Claims Court Number 90-2151 V
127. Paul Ciaccio on behalf of Anita Ciaccio, Brooklyn, New York, Claims Court Number 90-2152 V
128. Rocky Rider, Ville Platte, Louisiana, Claims Court Number 90-2153 V
129. Sheila and Brad Kahler on behalf of Kirk Kahler, Winner, South Dakota, Claims Court Number 90-2154 V
130. George Kleinpeter, Houston, Texas, Claims Court Number 90-2155 V
131. Hal Smith on behalf on Laura Smith, Valley, Alabama, Claims Court Number 90-2156 V
132. Emerick Huber on behalf of Christopher Huber, Omaha, Nebraska, Claims Court Number 90-2157 V
133. Paula Schultz, Homewood, Illinois, Claims Court Number 90-2158 V
134. Anthony Marone on behalf of Stephen Marone, Deceased, New York, New York, Claims Court Number 90-2159 V
135. Robert Brieske on behalf of Amanda Brieske, La Crosse, Wisconsin, Claims Court Number 90-2160 V
136. Lonna Otis on behalf of Ron Otis, Portage, Indiana, Claims Court Number 90-2161 V
137. Opal Carr, Laurel, Mississippi, Claims Court Number 90-2162 V
138. Elizabeth Ward, Bronte, Texas, Claims Court Number 90-2163 V
139. Ilene Byrne on behalf of Lori Byrne, West New York, New Jersey, Claims Court Number 90-2164 V
140. Mary Pearce on behalf of Jenny Pearce, Abington, Pennsylvania, Claims Court Number 90-2165 V
141. Mark Huffman on behalf of Sarah Huffman, Santa Ana, California, Claims Court Number 90-2166 V
142. Kathleen Spitznagel on behalf of David Spitznagel, Covington, Louisiana, Claims Court Number 90-2167 V
143. Linda Smart on behalf of Johnathan Smart, Mobile, Alabama, Claims Court Number 90-2168 V
144. Mary Kelly, Houston, Texas, Claims Court Number 90-2169 V
145. Nancy Dingley on behalf of Rebecca Dingley, St. Matthews, South Carolina, Claims Court Number 90-2170 V
146. Cecil Butler on behalf of Bobby Butler, Augusta, Georgia, Claims Court Number 90-2171 V
147. Sondria Graham on behalf of James Graham, Deceased, Fort Worth, Texas, Claims Court Number 90-2172 V
148. Danna Mattson, Moreno Valley, California, Claims Court Number 90-2173 V
149. Antoinette Grewal, Westminster, California, Claims Court Number 90-2174 V
150. Ethel Baskin on behalf of Bobby Baskin, Chicago, Illinois, Claims Court Number 90-2175 V
151. Janice Perlman, Atlanta, Georgia, Claims Court Number 90-2176 V
152. David and Donna Quist on behalf of Michael Quist, Columbus, Ohio, Claims Court Number 90-2177 V
153. Richard Hill on behalf of Wendy Hill, Wichita, Kansas, Claims Court Number 90-2178 V
154. Joseph Dunn on behalf of Kendra Dunn, Deceased, Ventura, California, Claims Court Number 90-2179 V
155. Armando Torres on behalf of Armando Colon, Coamo, Puerto Rico, Claims Court Number 90-2180 V
156. Joyce Robertson, Birmingham, Alabama, Claims Court Number 90-2181 V
157. Herbert Scofield on behalf of Connie Scofield, Deceased, La Porte, Indiana, Claims Court Number 90-2182 V
158. Robert Nurin on behalf of Michael Nurin, Rutland, Vermont, Claims Court Number 90-2183 V
159. Judith Rizzo, on behalf of Ryan Rizzo, Youngtown, Ohio, Claims Court Number 90-2184 V
160. Margaret Lambert on behalf of Donald Lambert, Grand Rapids, Michigan, Claims Court Number 90-2185 V
161. Linda Peace on behalf of Desiree Peace, Scottsdale, Arizona, Claims Court Number 90-2186 V
162. Phyllis Volkens on behalf of Audrey Farr, Des Moines, Iowa, Claims Court Number 90-2187 V
163. Carol Jones on behalf of Richard Cave, Philadelphia, Pennsylvania, Claims Court Number 90-2188 V
164. Carolyn Hulbert on behalf of Travis Hulbert, Salt Lake City, Utah, Claims Court Number 90-2189 V
165. Steve and Mary Gaub on behalf of Chris Gaub, Plentywood, Montana, Claims Court Number 90-2190 V
166. Ruth Reed on behalf of Jonathan Reed, Chelmsford, Massachusetts, Claims Court Number 90-2191 V
167. Iris Martin on behalf of Margaret Aho, Deceased, Louisville, Kentucky, Claims Court Number 90-2192 V
168. Francisco Gomez on behalf of Marco Gomez, Dallas, Texas, Claims Court Number 90-2193 V
169. Joanne Coones on behalf of Susan Coones, Ilion, New York, Claims Court Number 90-2194 V
170. Mario Dominquez, Odessa, Texas, Claims Court Number 90-2195 V
171. Howard Grimes on behalf of Andrew Grimes, Atlanta, Georgia, Claims Court Number 90-212196 V
172. Lane Goff on behalf of Adam Goff, Mobile, Alabama, Claims Court Number 90-2197 V
173. Maria Skalka on behalf of Lisa Skalka, Deceased, Chicago, Illinois, Claims Court Number 90-2198 V
174. Peter Muserlian on behalf of Jane Muserlian, Syracuse, New York, Claims Court Number 90-2199 V
175. Charles Joines on behalf of Christopher Joines, Russellville, Kentucky, Claims Court Number 90-2200 V
176. Joseph Eanes on behalf of Rowdy Eanes, Hanau, Germany, Claims Court Number 90-2201 V
177. Jacqueline Brown on behalf of Michael Ligoci, Deceased, Syracuse, New York, Claims Court Number 90-2202 V
178. Marin Diaz on behalf of Carlin Diaz, West New York, New Jersey, Claims Court Number 90-2203 V
179. Cordelia Allen on behalf of Melissa Allen, Winston-Salem, North Carolina, Claims Court Number 90-2204 V
180. Randy Whewell on behalf of Rebecca Whewell, Jacksonville, Illinois, Claims Court Number 90-2205 V
181. Mary Jones on behalf of Tami Jones, Fort Carson, Colorado, Claims Court Number 90-2206 V
182. Kenneth Harris, Embudo, New Mexico, Claims Court Number 90-2207 V
183. Donna Wagner, Durham, North Carolina, Claims Court Number 90-2208 V
184. Cheryl Zaag, Ocean City, New Jersey, Claims Court Number 90-2209 V
185. Erik Larsen, Burbank, California, Claims Court Number 90-2210 V
186. Joseph and Rosemary Popp on behalf of Annette Popp, Deceased, Royalton, Minnesota, Claims Court Number 90-2211 V
187. Erika Cain on behalf of David Cain, Demotte, Indiana, Claims Court Number 90-2212 V
188. Catherine Vincuilla on behalf of Jamie Vincuilla, Waltham, Massachusetts, Claims Court Number 90-2213 V
189. Christopher Baggot, Union City, California, Claims Court Number 90-2214 V
190. Carol Pitczko on behalf of Tammie Petrozelle, Mercer, Pennsylvania, Claims Court Number 90-2215 V

191. Millicent Pierce on behalf of Vanessa Pierce, Deceased, Morgantown, West Virginia, Claims Court Number 90-2216 V
192. Bennie Pittman on behalf of Joe Pittman, Muskogee, Oklahoma, Claims Court Number 90-2217 V
193. Timothy McGuire on behalf of James McGuire, Omaha, Nebraska, Claims Court Number 90-2218 V
194. Robert Rosales on behalf of Robert Garcia, Huehuetenango, Guatemala, Claims Court Number 90-2219 V
195. Raymond G. Boyd on behalf of Raymond D. Boyd, Fairbanks, Alaska, Claims Court Number 90-2220 V
196. Donnie Hartmann on behalf of Jennifer Hartmann, Ashland, Kentucky, Claims Court Number 90-2221 V
197. Deborah Farley on behalf of Rebecca Farley, Los Gatos, California, Claims Court Number 90-2222 V
198. Terrance Murphy on behalf of David Murphy, Zanesville, Ohio, Claims Court Number 90-2223 V
199. Debra Kemppainen on behalf of Ryan Kemppainen, Boston, Massachusetts, Claims Court Number 90-2224 V
200. Rita Lachman on behalf of Maxine Lachman, Bridgeton, Missouri, Claims Court Number 90-2225 V

Dated: January 18, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-1914 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the twentieth meeting of the Fogarty International Center (FIC) Advisory Board, February 11, 1992, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:30 p.m. The morning agenda will include a report by the Director, FIC, a review of the AIDS International Research and Training Program, a report on the meeting of the Advisory Committee to the Director, NIH, and a report on the impact of global geopolitical changes on U.S. science and technology policy.

The afternoon agenda will include a presentation by the Director, NIH.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 2:30 p.m. to adjournment for the review of International Research Fellowship and Senior International Fellowship applications, Fogarty International Research Collaboration Awards, Scholars nominations, and proposals for Scholars' conferences and international studies.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), Building 31, room B2C08, telephone 301-496-1491, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome and No. 93.989, Senior International Awards Program).

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1935 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory Board Subcommittee on Cancer Centers meeting which was published in the **Federal Register** (57 FR 1916) on January 16, 1992.

The meeting was originally scheduled to be held on January 26, 1992 at Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland. It will now be held on January 27 at the National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892. This meeting is being re-scheduled due to conflicts in schedules of subcommittee members.

The meeting will be open to the public on January 27 from 7 a.m. to adjournment. Attendance by the public will be limited to space available.

Dated: January 22, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1937 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Director, NCRR; and an update on the GCRC Program by Dr. Judith L. Vaitukaitis, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: General Clinical Research Centers Committee.

Date of Meeting: February 25-27, 1992.

Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: 8 a.m. until 9:30 a.m.

Closed:

February 25, 9:30 a.m. until recess.
February 26, 8 a.m. until recess.
February 27, 8 a.m. until adjournment.

Mr. James J. Doherty, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Dr. Bela J. Gulyas, Scientific Review Administrator, GCRC Committee, NCRR, (301) 402-0627, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health).

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1931 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which

time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: February 19-21, 1992.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open:

February 19, 6:45 p.m. until recess

Planning and Agenda Subcommittee, Building 12A, room 4007.

February 20, 9 a.m. until 3 p.m.

February 21, 8:30 a.m. until adjournment.

Conference Room 10, Building 31C.

Closed:

February 20, 3:15 p.m. until recess.

Conference Room 10, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, Room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, Room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389 Research Centers in Minority Institutions; 93.198, Biological Models and Material Resources; 93.167 Research Facilities Improvement Program; National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1933 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health (NIH)

National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on February 13 and 14, 1992, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, February 13, 1992. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, February 13 until adjournment on Friday, February 14 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A04, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 93.867, Retinal and Choroidal Diseases Research; 93.868, Anterior Segment Diseases Research; and 93.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1934 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 23-25, 1992, The Columbia Inn, Wincopin Circle, Columbia, Maryland, 21044.

The meeting will be open to the public on February 23, from 7 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on February 23, from approximately 8 p.m. to 10 p.m., on February 24, from 8 a.m. to 6 p.m., and February 25, from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 5508, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1932 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 6-7, 1992, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on February 6 from 9 a.m. to 5 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., section 10(d) of Public Law 92-463, the Council meeting will be closed to the public on February 7 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A-17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1936 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference On Triglyceride, High Density Lipoprotein, and Coronary Heart Disease

Notice is hereby given of the NIH Consensus Development Conference on "Triglyceride, High Density Lipoprotein, and Coronary Heart Disease," which will be held on February 26-28, 1992, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Heart, Lung, and Blood Institute and the NIH Office of Medical Applications of Research. The conference will start at 8:30 a.m. each day.

Great progress has been made over the past 30 years in identifying cardiovascular risk factors and in developing and implementing measures to correct them. The guidelines developed by the Adult Treatment Panel of the National Cholesterol Education Program identified low-density lipoprotein (LDL) as the major atherogenic lipoprotein and high levels of LDL cholesterol as the primary target for cholesterol-lowering therapy. Low levels of high-density lipoprotein (HDL) cholesterol were recognized as a major risk factor for coronary heart disease and the Adult Treatment Panel made general recommendations to raise HDL concentrations by hygienic means. However, drug therapy was not advocated specifically to raise HDL in patients without high LDL cholesterol levels.

The Adult Treatment Panel also addressed hypertriglyceridemia, using definitions and recommendations of the 1983 National Institutes of Health Consensus Development Conference on Treatment of Hypertriglyceridemia. The panel regarded the relationship between plasma triglyceride levels and cardiovascular disease as controversial. Hygienic measures were recommended for all patients with hypertriglyceridemia; however, drug therapy was advocated only for those with marked hypertriglyceridemia that did not respond adequately to diet modification.

New scientific evidence, both laboratory and clinical, which has become available over the past few years, warrants a further look at the role of triglyceride and HDL cholesterol in atherogenesis and to what extent they should be the foci of treatment.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weight the scientific evidence and write a draft statement in response to the following questions:

—Is the relationship of high triglyceride and/or low HDL cholesterol with coronary heart disease causal?
—Will reduction of high triglyceride and/or elevation of HDL cholesterol help prevent coronary heart disease?
—Under what circumstances should triglycerides and HDL cholesterol be measured?
—Under what circumstances should active intervention to lower triglyceride and/or raise HDL cholesterol be considered in high risk individuals and the general population?
—What can be accomplished by dietary, other hygienic, and drug treatments?
—What are the significant questions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Carol Sadler, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: January 22, 1992.

Bernadine P. Healy,

Director.

[FR Doc. 92-1930 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research: Action Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of April 29, 1991 (56 FR 19776), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) on May 30, 1991.

I. Background Information and Decision on Action Under the NIH Guidelines

A. Addition of Appendix D–XXIII to the NIH Guidelines

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990, and forwarded to the Recombinant DNA Advisory Committee on February 4, 1991, for its approval. The Recombinant DNA Advisory Committee deferred approval and sent the protocol back to the Human Gene Therapy Subcommittee for further deliberations on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more information be provided about the quantitative assays of gene-marked tumor infiltrating lymphocytes. It was suggested that the consent form concerning the gene marking of tumor infiltrating lymphocytes be separated from the consent form regarding interleukin-2 and interleukin-4.

Tthe Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991, meeting.

The request was published for consent in the **Federal Register** on April 29, 1991 (56 FR 19776).

During the meeting on May 30–31, 1991, the Recombinant DNA Advisory Committee met to review the protocol and recommendations from the Human Gene Therapy Subcommittee.

Two additional modifications were made to the informed consent document. One involved the addition of a clarifying sentence concerning the minor risk of infection associated with the biopsy of subcutaneous tumor nodules. The second involved the addition of a sentence indicating that there was no requirement for patients undergoing interleukin therapy to take part in the gene marking study. Following a discussion of the data on the quantitative aspects of polymerase chain reaction (PCR), the Recombinant DNA Advisory Committee, by a vote of 18 in favor, 0 opposed, and no abstentions, approved the protocol pending receipt of additional data showing the detection of Neo-R-transduced cells by PCR at a dilution of 1 in 10^5 non-transduced cells. The review of this additional data can be conducted by the Office of Recombinant DNA Activities (ORDA) staff and the primary reviewer of the protocol.

On November 12, 1991, Dr. Lotze submitted to ORDA the PCR data from mixing experiments with Neo-R-transduced cells. To satisfy the Recombinant DNA Advisory Committee's request, ORDA requested additional experiments. On December 17 and December 27, 1991, additional data were supplied.

Following consultation between ORDA staff and the primary reviewer of the protocol, it was determined that the experimental results, submitted on December 27, 1991, showed the requested level of sensitivity, i.e., it was possible to detect Neo-R-transduced cells by PCR at a dilution of 1 in 10^5 non-transduced cells. Since this meets the request of the Recombinant DNA Advisory Committee, the following section may be added to Appendix D:

"Appendix D–XXIII

"Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, can conduct a series of experiments on 20 patients with metastatic melanoma who have failed conventional therapy. Tumor infiltrating lymphocytes (TILs) will be the targets for retroviral mediated gene transfer. This system will transfer a bacterial gene for neophotransferase activity (NEO–R) that confers resistance to the neomycin analogue G418. This marker gene is required to separately identify autologous TIL cells from the patient's endogenous cells. By using a tracer population of TIL cells, the following questions can be addressed: (1) How long can the TIL cells be detected in vivo in the peripheral blood of the patients? (2) How do combinations of interleukin-2 and interleukin-4 affect localization and survival of TIL in tumor sites?"

I accept this recommendation and Appendix D–XXIII of the NIH Guidelines will be added accordingly.

II. Summary of Action

The following section is added to Appendix D:

A. Addition of Appendix D–XXIII to the NIH Guidelines

"Appendix D–XXIII.

"Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, can conduct experiments on 20 patients with metastatic melanoma who have failed conventional therapy. A gene transfer experiment will be performed, transducing the patients' tumor infiltrating lymphocytes (TILs) with the gene for neomycin resistance. Through the use of this gene marking technique, it is proposed to determine how long TIL cells can be detected in vivo in the peripheral blood of the patients, and how the administration of interleukin-2 and interleukin-4 affects localization and survival of TIL cells in tumor sites."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: January 17, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92–2040 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3280; FR3218-N-01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1992, is 7½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1992, is 8 percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 1992, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning January 1, 1992. This interest rate will be rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1992.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅝	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1992, is 7½ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1992.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-1946 Filed 1-27-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-22834]

Alaska Native Claims Selection

January 22, 1992.

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(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Doyon, Limited, for approximately 9 acres. The lands involved are in the vicinity of Toklat, Alaska, located within Sec. 6, T. 9 S., R. 12 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. 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 February 27, 1992, 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.

G. Steve Flippen,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 92-1975 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-JA-M

Salmon District Grazing Advisory Board; Meeting

[ID-040-02-4320-10]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATES: The meeting will be held Tuesday, February 25, 1992, at 10 a.m.

ADDRESSES: The meeting will be held at the Salmon District Office, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The meeting is open to the public; public comments will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by February 23, 1992. The agenda items include discussion of the upcoming election, the Challis Resource Management Plan (RMP), funding of projects, the status of Lemhi grazing agreements, and any other issues dealing with grazing management in the Salmon District. Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: January 14, 1992

Roy S. Jackson,

District Manager.

[FR Doc. 92-1993 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-XXXX); Washington, DC 20503, telephone (202) 395-7340, with copies to the Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Alaska Outer Continental Shelf (OCS) Social Effects Survey.

OMB approval number: 1010-XXXX

Abstract: Respondents supply answers to a Social Effects Questionaire which will provide MMS with information on the long-term social, economic, and cultural consequences of the *EXXON Valdez* oil spill. The purpose of the questionnaire is to directly measure fundamental aspects of the well-being of popluations potentiallly affected by OCS activities and to provide comprehensive baseline measures to be used in the preparation of environmental impact statements.

Bureau form number: None.

Frequency: Annually.

Description of respondents: Residents in rural Alaska potentially affected by OCS activity.

Estimated completion time: .9 hour.

Annual responses: 1,036.

Annual burden hours: 932.4.

Bureau clearance officer: Dorothy Christopher (703) 787-1239.

Dated: January 14, 1992.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 92-1997 Filed 1-27-92; 8:45,am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 18, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 12, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Clarke County

Gainestown Schoolhouse, W. side Gainestown—Suggsville Public Rd. N of Good Hope Church, Gainestown, 92000033

Elmore County

East Wetumpka Commercial Historic District, Roughly, Company St. from Spring St. to E. Bridge St. and E. Bridge and Commerce Sts. from Main to Hill Sts., Wetumpka, 92000055

Madison County

Urguhart House, 8402 Pulaski Pike, Huntsville vicinity, 92000034

ARKANSAS

Clark County

Clear Spring Tabernacle, Jct. of AR 26 and Bobo Rd., Okolona vicinity, 92000057

ILLINOIS

Cook County

Gibbs, William and Carolina, House, 515 N. 3rd Ave., Haywood, 92000048

Lynch, Timothy J., House (Maywood MPS). 416 N. 4th Ave., Maywood, 92000047

Nichols, Harry H., House (Maywood MPS), 216 S. 4th Ave., Maywood, 92000045

Robinson House (Maywood MPS), 602 N. 3rd Ave., Maywood, 92000046

Knox County

Knox County Courthouse and Hall of Records, Public Sq., Main St., Knoxville, 92000051

Knox County Jail, Public Sq., Market St., Knoxville, 92000050

White County

Gray, William H., House, 119 N. Court St., Grayville, 92000049

KANSAS

Atchison County

Glick-Orr House, 503 N. Second St., Atchison. 92000060

LOUISIANA

Beauregard Parish

DeRidder USO Building, Jct. of Pine and 7th Sts., DeRidder, 92000037

Iberville Parish

Plaquemine High School, 600 Plaquemine St., Plaquemine, 92000041

St. James Parish

Lutcher United Methodist Church, 2347 Texas St., Lutcher, 92000042

West Baton Rouge Parish

Bank of Addis, 7843 Ray Rivet St., Addis, 92000038

West Feliciana Parish

Oak Grove Plantation Dependencies, US 61 S of jct. with LA 421, St. Francisville vicinity, 92000036

MASSACHUSETTS

Norfolk County

Central Square Historic District, Roughly, Broad St. from Middle to Putnam Sts. and Middle from Charles to Center Sts., Weymouth, 92000040

Worcester County

Bigelow Tavern Historic District, 60, 64 and 65 Worcester St., West Boylston, 92000043

Winchendon Village Historic District, Roughly, N side Central St. from Summer to Front Sts. and N side Front from Academy to Spring Sts., Winchendon, 92000056

MISSISSIPPI

George County

Bilbo Basin Shell Deposits Site, Address Restricted, Lucedale vicinity, 92000039

NORTH DAKOTA

Grand Forks County

Washington School, 422 N. Sixth St., Grand Forks, 92000035

OREGON

Josephine County

Oregon Caves Historic District, Caves Hwy., Oregon Caves NM, Siskiyou NF, Cave Junction vicinity, 92000058

SOUTH CAROLINA

Oconee County

Walhalla Graded School, 101 E. N. Broad St., Walhalla, 92000059

VIRGINIA

Albemarle County

Southwest Mountains Rural Historic District, Roughly bounded by I-64, VA 20, Orange Co. line and C & O RR tracks, Keswick vicinity, 92000054

Highland County

Cifax Rural Historic District, Jct. of VA 644 and VA 643 and surrounding valley area, Cifax, 92000052

Northumberland County

Heathsville Historic District, US 360 at jct with VA 634 and VA 201, Heathsville, 92000053

Orange County

Bloomsbury, Off VA 20 W of jct. with VA 600, Orange vicinity, 92000044

[FR Doc. 92-2008 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30192]

Dart Transit Co.,—Petition for Declaratory Order—Leasing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: In response to a request by Dart Transit Company, the commission has instituted this declaratory-order proceeding, under 5 U.S.C. 554(e), to interpret the Commission's regulations concerning leasing, in 49 CFR part 1057. An opportunity for interested persons to participate in the proceeding is provided, and their comments are invited.

DATES: Any person interested in participating in this proceeding as a party of record, by filing and receiving written comments, must file a notice of intent to do so by February 12, 1992. A copy of the notice should be sent to petitioner's representative. A service list of the parties will then be issued. Petitioner will have 10 days after the service of this list to provide each party with a copy of the petition and any additional material that it may file with the Commission in support of its position. Initial written comments (an original and 10 copies) must be filed within 30 days after service of the list. All parties will have 50 days after service of the list to reply. A copy of all comments and replies must be sent to each party of record.

ADDRESSES: Send written notices of intent to participate to: Office of the Secretary, Case Control Branch, room 1324, Attn: Docket No. MC-C-30192, Interstate Commerce Commission, Washington, DC 20423, and to petitioner's representative: James C. Hardman, P. O. Box 64110, St. Paul, MN 55164-0110.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 927-5303

or

Richard B. Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Petitioner, an authorized motor common carrier of property, employs independent drivers to provide equipment for its operations. An affiliate of petitioner is a rental agency, which leases motor-vehicle equipment to such independent drivers, subject to a requirement that the equipment be used only in service for (*i.e.*, "leased" to) petitioner. The rental agency maintains a reserve fund for maintenance of the vehicles. Approximately half of petitioner's independent drivers use equipment leased from the rental agency under this arrangement, but petitioner does not treat any of its independent drivers differently if they obtain equipment from other sources.

The equipment rental contracts between the rental agency and these independent drivers require the drivers to request petitioner (the carrier) to remit rental payments and maintenance reserve funds to the rental agency. Petitioner asserts, accordingly, that these remittances are not made on the request of the rental agency or of any other third party, and thus that the leases between it and its independent drivers need not specify the terms of those equipment rental contracts. Petitioner argues that the Commission's regulations are specific and clear, applying only if the basis for the carrier's deduction is the third-party purchase or lease agreement, which must directly give the carrier the right to make the deductions.

The Commission's regional office has issued warning letters to petitioner, relying on No. MC-C-30050, Central Transportation, Inc.—Petition for Declaratory Order (not printed), served July 7, 1988. In these warning letters, the regional office maintains that petitioner's leases (a) violate the prohibition against requiring independent drivers to purchase or rent any products, equipment, or services from the carrier as a condition of entering into the lease agreement and (b) do not specify the terms of the equipment rental contracts between the drivers and the rental agency, which, it maintains, do give the carrier the right to make deductions from the drivers' compensation for purchase or rental payments.

Petitioner also argues that the maintenance reserve funds maintained by the rental agency is not a "carrier's escrow fund" under 49 CFR 1057.2(*l*). The maintenance reserve fund, it asserts, is solely an arrangement between the driver and the rental agency; petitioner does not assume responsibility for the fund and has no control over the purpose for which the money is spent.

Petitioner is requesting the Commission to issue a declaratory order determining, under the leasing regulations at 49 CFR part 1057, subpart B: (1) Whether a lease must specify the terms of a separate, independent, equipment purchase or rental contract between the lessor and a third party, which does not directly give the carrier (lessee) the right to make deductions from the lessor's compensation for purchase or rental payments; and (2) whether a motor carrier must treat money remitted to a third party's escrow fund as the carrier's own escrow fund, merely because the third party and the carrier are affiliated companies. The Commission has determined that the petition presents a controversy sufficient to warrant instituting a proceeding under 5 U.S.C. 554(e).

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) 927-7428. (Assistance for the hearing impaired is available through TDD services: (202) 927-5721.)

Decided: January 14, 1992.

By the Commission, David M. Konschnik Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-2005 Filed 1-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub. 318X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In McKenzie County, North Dakota

On February 12, 1990, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 36.46-mile line of railroad between milepost 0.60, near East Fairview, and milepost 36.60, near Watford City, in McKenzie, ND.[1]

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of itnent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992.[4] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 17, 1992 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) has prepared an environmental assessment (EA), which will be served concurrently with this notice. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after publication. SEE recommends that conditions be imposed: (1) Requiring BN to retain its interest in and take no steps to alter the historic integrity of the Truss Bridge over the Yellowstone River at milepost 3.2 and the tunnel at milepost 3.5 until completion of the section 106 process of the National Historic Preservation Act (16 U.S.C. 470); (2) prohibiting BN from removing and/or salvaging the bridge across the Yellowstone River until the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) are met; and (3) requiring that the removal of ties, rail or appurtenances be performed by BN in such a manner as to preserve the existing roadbed height and all existing water flows. The recommended conditions will be imposed.

Public use, trail use/rail banking, or any additional environmental conditions will be imposed, where appropriate, in a subsequent decision.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Under 49 CFR 1152 Subpart F—Exempt Abandonments, the notice of exemption for the abandonment of the above described line is accepted, subject to: (1) The employee protective conditions in Oregon Short Line R. Co.—

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[1] In docket No. AB-6 (Sub-No. 318X), Brulington Northern R.R.—Abandonment Exempt.—In McKenzie County, ND (not printed), served March 12, 1990, the Commission concluded that it was barred from authorizing abandonment of the East Fairview-Watford City line due to the 350-mile limitation on BN abandonments in North Dakota imposed by section 402 of the Department of Transportation and Related Agencies Appropriation Act of 1982, Pub. L. No. 97-102, 95 Stat. 1442, 1465 (1981). Consequently, the agency rejected the notice of exemption. Subsequent to the Commission denying BN's petition for reconsideration (served November 9, 1990), the carrier challenged the rejection of its notice of exemption in the United States Court of Appeals, D.C. Circuit. After the Department of Transportation and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-143, section 343 (Oct. 28, 1991), was signed into law, which amended section 402 by narrowing the restriction on processing BN abandonment applications so that it no longer applies to exemptions of out of service rail lines, the Commission jointly filed a motion with the Department of Justice and BN to remand the case for consideration of the notice of exemption in light of the amended statute. On November 15, 1991, the D.C. Circuit granted the motion to remand.

Under 49 U.S.C. 10327(g)(1), the Commission can "at any time on its own initiative" reopen, reconsider and change an earlier action based on substantially changed circumstances. The enactment of section 343 empowers the Commission to accept BN's notice for filing and the agency is required to apply the law in effect at the time of its decision if doing so is in accord with Congressional intent. *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno,* 110 S.Ct. 1570, 1577 (1990).

[2] Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Abandonment—Goshen; 360 I.C.C. 91 (1979); (2) the condition that BN retain its interest in and take no steps to alter the historic integrity of the Truss Bridge over the Yellowstone River at milepost 3.2 and the tunnel at milepost 3.5 until completion of the section 106 process of the National Historic Preservation Act (16 U.S.C. 470); (3) the condition that BN cannot remove and/or salvage the bridge across the Yellowstone River until the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) are met; and (4) the condition that the removal of ties, rail or appurtenances is to be performed by BN in such a manner as to preserve the existing roadbed height and all existing water flows.

3. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration).

4. Comments on environmental and energy concerns must be filed within 15 days after publication.

5. Petitions to stay that do not involve environmental issues, formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2), and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992. Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 17, 1992.

Decided: January 20, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2006 Filed 1-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 404X)]

CSX Transportation, Inc.—Abandonment Exemption—In Hamilton County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 2.16-mile line of railroad between mileposts M-382.39 and M-384.55, in McLeansboro, Hamilton County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trade use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2004 Filed 1-27-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Bureau of Prisons

Contract Health Care Services; Reimbursement and Medicare Allowable Rates

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The Bureau of Prisons is issuing this Statement of Policy to inform the public that when it becomes necessary to supplement the direct delivery system of health care the Bureau provides to persons committed to its custody, the Bureau ordinarily will contract to purchase health services only with those hospitals, physicians and other health care providers which agree to accept, as payment in full, reimbursement at rates no higher than the prevailing Medicare allowable rates (including deductibles and co-payments). This encompasses those rates established by the Health Care Financing Administration as "sole community providers" or "regional referral centers". The Bureau will phase this policy into the administration of its contract health services program.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Dann, Health Services Division, Bureau of Prisons, 320 First Street NW., HOLC Room 1000, Washington, DC 20534. Telephone No.: (202) 307-3055.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons purchases health services from hospitals, physicians and other health care providers to supplement the Bureau's direct delivery system. Although the Bureau has obtained discounts from some providers through competitive contracting

processes, generally, the Bureau has paid full billed charges for contract health services. The billed charges which the Bureau pays substantially exceed allowable Medicare rates for the same services. This diminishes the purchasing power of the Bureau's contract health service dollars. In order to stay within limited program budgets, the Bureau has been forced to rely upon stringent medical priorities for use of contract health service funds.

It will be the policy of the Bureau of Prisons to contract only with those hospitals, physicians and other health care providers which agree to accept as payment in full, reimbursement at rates no higher than the prevailing Medicare allowable rates (including deductible and co-payments). This encompasses those rates established for hospitals designated by the Health Care Financing Administration as "sole community providers" or "regional referral centers." Non-contract providers will be used only in two situations: (1) In emergency situations for services necessary to stabilize a patient prior to transfer to a Bureau medical facility or to a contract provider, or (2) in situations when the patient's health requires that the services be rendered by a particular provider which does not have a contract with the Bureau. The Bureau will phase this policy into the administration of its contract health services programs.

The term "Medical allowable rate" in this notice means one hundred percent of the Medicare allowable rate for that service (including deductibles and co-payments) determined in accordance with Medicare methodologies in effect at the time the services were performed. Any contract entered into by the Bureau of Prisons would be premised upon Bureau payment being accepted by the provider as payment in full.

Under this policy, the Bureau will contract at or below the Medicare rate. The Medicare allowable rate will be a ceiling on the fee the Bureau will contract to pay for services that are covered by the Medicare schedule. The Bureau will use competitive processes to negotiate the most favorable rates available, up to that ceiling. This policy is not intended to restrict the Bureau to Medicare rates when more favorable rates may be negotiated.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 92-1966 Filed 1-27-92; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC this 13th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Adobe Resources Corp. (Wkrs)	Midland, TX	01/13/92	12/21/91	26,721	Oil and Gas.
Arco Oil and Gas Co. (Co)	Midland, TX	01/13/92	01/06/92	26,722	Oil and Gas.
Arco Oil and Gas Co. (Co)	Dallas, TX	01/13/92	01/06/92	26,723	Oil and Gas.
Arco Oil and Gas Co. (Co)	Lafayette, LA	01/13/92	01/06/92	26,724	Oil and Gas.
Ashland Leather Co. (Co)	Waynesville, NC	01/13/92	01/06/92	26,725	Shoulders and Bends.
Chicago Pneumatic Tool Co. (IAM)	Utica, NY	01/13/92	01/07/92	26,726	Industrial & Automotive Air Tools.
Halliburton Geodata (Co)	Houston, TX	01/13/92	01/08/92	26,727	Oil and Gas.
Halliburton Logging Serv. (Gulf) (Co)	New Orleans, LA	01/13/92	01/08/92	26,728	Oil and Gas.
Halliburton Logging Serv. (Vann) (Co)	Houston, TX	01/13/92	01/08/92	26,729	Oil and Gas.
Halliburton Logging Serv. (Hqts) (Co)	Houston, TX	01/13/92	12/17/91	26,730	Oil and Gas.
Halliburton Logging Serv. (Mid Cont) (Co)	Oklahoma City, OK	01/13/92	01/08/92	26,731	Oil and Gas.
Halliburton Logging Serv. (Research) (Co)	Houston, TX	01/13/92	01/08/92	26,732	Oil and Gas.
ICI Americas (Co)	Dighton, MA	01/13/92	12/31/91	26,733	Azo Dyes For Fabrics.
Jefferson Mills, Inc. (The) (Co)	Jefferson, GA	01/13/92	12/10/91	26,734	Corduroy Finished Fabrics.
Latrobe Die Casting Co. (UAW)	Latrobe, PA	01/13/92	01/03/92	26,735	Aluminum & Zinc Castings.
M. H. Rhodes, Inc, (IAM)	Avon, Ct	01/13/92	12/03/91	26,736	Electrical Switches, Light Timers etc.
M.K. Hotshot, Inc. (Co)	Casper, WY	01/13/92	01/02/92	26,737	Oil Transporting.
Molycorp, Inc. (Co)	Questa, NM	01/13/92	01/03/92	26,738	Molybdenum Mining.
Niagara Cutter, Inc. (NCIS)	North Tonawanda, NY	01/13/92	12/10/91	26,739	Milling Cutters.
Scott Paper Co. (UPIU)	Winslow, Me	01/13/92	12/26/91	26,740	Paper.
Sears, Roebuck & Co. (Wkrs)	Melrose Park, IL	01/13/92	11/10/91	26,741	Distribution of Repair Parts.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
United Penn Dress Co. (Wkrs)	York, PA	01/13/92	12/23/91	26,742	Ladies' Dresses.

[FR Doc. 92-2032 Filed 1-27-92; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,498; Workwear, Inc., Palestine, TX.

TA-W-26,379; Eagle Picher Industries, Inc., Eagle Picher Automotive Group, Willoughby, OH.

TA-W-26,401; Advanced Refractory Technology, Inc., Buffalo, NY.

TA-W-26,399; Wilson Automation, Warren, MI.

TA-W-26,495; Trak Microwave Corp., Tampa, FL.

TA-W-26,468; Kensington Knit Fashions, Long Island City, NY.

TA-W-26,426; Debbie-Jo Frocks, Inc., Shenandoah, PA.

TA-W-26,262; ACPC, Inc., Massena, NY.

TA-W-26,364; Huron St. Clair, Lake City, FL.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,569; Hudson Tool & Die Co., Inc., Newark, NJ.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,528; Auto Plaza of Poughkeepsie/Duke Pontiac-GMC, Poughkeepsie, NY.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,306; Shell Oil Co., Shell Chemical, Houston, TX.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,300; GTE Products Corp., Williamsort, PA.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,532, and TA-W-26,533; Dual Drilling Co., Dallas, TX and Broussard, LA.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,563; Co2, Inc., Denver City, TX.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,596; Epson Portland, Hillsboro, OR.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,553; Sundor Brands, Inc., Weslaco, TX.

U.S. imports of bottled and canned soft drinks are negligible.

TA-W-26,561; Brunswick Corp., Defense Div., Marion, VA.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,558; Woodstream Corp., Lititz, PA.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,510; Emmes Investors, Limited, Carlstadt, NJ.

A certification was issued covering all workers separated on or after October 21, 1990.

TA-W-26,419; TRA Vehicle Safety Systems, Louisville, MS.

A certification was issued covering all workers separated on or after September 25, 1990.

TA-W-26,448; Al Kamen Coat Co., West Bergen, NJ.

A certification was issued covering all workers separated on or after October 2, 1990.

TA-W-26,493; Sparta Mosaics, Cast Sparta, OH.

A certification was issued covering all workers separated on or after October 1, 1990.

TA-W-26,490; Marianna Mills, Inc., Marianna, AR.

A certification was issued covering all workers separated on or after October 9, 1990.

TA-W-26,489; Grieco Brothers, Inc., Lawrence, MA.

A certification was issued covering all workers separated on or after October 15, 1990.

TA-W-26,521; Mars Gloves Co., Inc., LaFayette, GA.

A certification was issued covering all workers separated on or after October 23, 1991.

TA-W-26,467; Joshua Meier Corp., North Bergen, NJ.

A certification was issued covering all workers separated on or after October 1, 1991.

TA-W-26,514; Groshire Clothing, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

TA-W-26,515; Grossman Clothing, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

TA-W-26,576; Ohio Coil Service, Newcomerstown, OH.

A certification was issued covering all workers separated on or after November 1, 1990.

TA-W-26,518; Harry Irwin, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

I hereby certify that the aforementioned determinations were issued during the month of January, 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 21, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-2031 Filed 1-27-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act, Title IV, Section 451, Part D—National Level Multi-State Programming to Train and Employ the Disabled

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor, announces the intent to award grant(s) on a competitive basis for the conduct of programs designed to train and employ the disabled. This notice provides a synopsis of the SGA. Grant awards will be made by July 1, 1992.

DATES: The applications will be available February 12, 1992. The requests must be made in writing to the address below. Telephone and telefacsimile (FAX) will not be honored. The request must cite SGA/DAA 92-001 and must include two (2) self-addressed labels. Requests will be honored on a first come, first served basis until the supply of 300 is exhausted. The closing date for receipt of proposals will be available March 13, 1992, 2 p.m. Eastern time.

Any applications not meeting the designated place, date, and time of delivery will not be considered.

ADDRESSES: Mail your request for Solicitation of Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue NW, room C-4305, Washington, DC 20210, Attention: Gwendolyn Simms, Reference GSA/DAA 92-001.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Baron-Simms, Telephone: (202) 535-8702 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award approximately 8-10 grants under the Job Training Partnership Act (JTPA) for the conduct of programs designed to train and employ the disabled through national level, multi-State programs. Funding for the grants is authorized by section 451, part D of the Act. The Department anticipates that $3.9 million will be available for Program Year 1992 for the intended grant awards.

The period of performance will be 12 months from the date of execution. The general purpose of this program is to increase the number and quality of job opportunities for disabled individuals and assist in eliminating the barriers they face by providing specialized outreach services, tailored training, job development and unsubsidized employment.

Awards under this solicitation will be made to national level, multi-State, non-profit organizations that administer training and employment programs for the disabled. Therefore, only applications from those organizations meeting the above statutory requirements will be accepted. Individuals are not eligible to apply.

Based on the availability of funding, effective program operation and the needs of the Department, the grants may be extended for up to two (2) additional years.

Signed at Washington, DC on January 15, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92-2030 Filed 1-27-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sheep Fork Energy, Inc.

[Docket No. M-91-128-C]

Sheep Fork Energy, Inc., P.O. Box 262, Toler, Kentucky 41569 has filed a petition to modify the application of 30 CFR 75.1704-1(a) (escapeways and escape facilities) to its No. 2 Mine (I.D. No. 46-01939) located in Mingo County, West Virginia. The petitioner proposes to install a substantially constructed stairway with hand railing from the bottom of the slope to the surface and as wide as clearance will permit to facilitate safe exit of persons in the event of an emergency instead of a six foot wide escapeway.

2. Southern Ohio Coal Co.

[Docket No. M-91-129-C]

Southern Ohio Coal Company, Route 3, State Route 687, Albany, Ohio 45710 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Meigs No. 2 Mine (I.D. No. 33-01173) and its Meigs No. 31 Mine (I.D. No. 33-01172) both located in Meigs County, Ohio. The petitioner proposes to use an internal ground check conductor smaller than No. 10 (A.W.G.).

3. Eagle Run Coal Co., Inc.

[Docket No. M-91-130-C]

Eagle Run Coal Company, 416 Chestnut Street, Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its 7 Vein Slope (I.D. No. 36-08246) located in Northumberland County, Pennsylvania. The petitioner proposes to operate gunboats to transport persons with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device.

4. Peabody Coal Co.

[Docket No. M-91-131-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420-1990 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mine No. 10 (I.D. No. 11-00585) located in Christian

County, Illinois. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure instead of ventilating directly into the return.

5. Gideon Coal Co.

[Docket No. M-91-132-C]

Gideon Coal Company, HC 81, Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-17143) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets.

6. Eastern Association Coal Corp.

[Docket No. M-92-01-C]

6. Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia. The petitioner proposes to use high-voltage cables to supply power in the 8 Right, 2 Left and 3 Left, 4 North Mains longwall sections of the mine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 27, 1992. Copies of these petitions are available for inspection at that address.

Dated: January 21, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-2029 Filed 1-27-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before March 13, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of Commerce, National Fish and Seafood Promotional Council (N1-40-92-1). Comprehensive records schedule.

2. Department of Justice, Immigration and Naturalization Service (N1-85-91-5). United States citizens' identification cards, 1924-45.

3. Department of Justice, Immigration and Naturalization Service (N1-85-91-7). Applications, instructions, supplemental material and change of address forms for the Replenishment Agricultural Worker program.

4. Department of Labor, Bureau of Labor Statistics (N1-257-92-2). Consumer Price Index user survey questionnaires, 1988.

5. Department of the Treasury, Financial Management Service (N1-425-92-1). Bureau of Accounts Emergency Relief authorizations, 1935-42.

6. Federal Communications Commission, Mass Media Bureau (N1-173-91-5). Survey of horse racing results broadcast over radio stations, 1962-66.

7. Federal Emergency Management Agency (N1-304-91-1). Regional records of the Federal Civil Defense Administration relating to disaster relief and emergency preparedness.

8. National Archives and Records Administration (N1-GRS-92-5). General Records Schedule item for donated leave program records.

9. Tennessee Valley Authority, Resource Development (N1-142-90-9). Cost allocation records for multipurpose dams and reservoirs.

Dated: January 22, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-1998 Filed 1-27-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

MEETING

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Public meeting.

SUMMARY: Notice is hereby given pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on January 30–31, 1992, in St. Michaels, Maryland. The precise location of the meeting will be the St. Michaels Harbour Inn, 101 North Harbour Road, St. Michaels, Maryland 21663.

The January 30th meeting will convene at 1:30 p.m. and will adjourn at approximately 5:15 p.m.

The January 31st meeting will convene at 8:45 a.m. and will adjourn at approximately 4:30 p.m.

AUTHORITY: The meeting will be the first one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President *pro tem* of the Senate, the President, the Chief Justice of the United States and the Conference of Chief Justices. The National Commission was established by Public Law 101–650 (Title IV) and assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline or removal of judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith attempts will be made to follow the spirit of the law.

FOR FURTHER INFORMATION CONTACT: Michael J. Remington or Victoria Y. Smith at the National Commission of Judicial Discipline and Tenure, Suite 690, 2100 Pennsylvania Avenue NW., Washington, DC 20007.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission offices approximately thirty working days following the meeting.

Victoria V. Smith,

Administrative Officer.

[FR Doc. 92–2048 Filed 1–27–92; 8:45 am]

BILLING CODE 6820-DB-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 22, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 20, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Individuals with significant experience in the arts are used by the Endowment to serve on application or policy review panels. These individuals reflect diverse backgrounds and expertise in the arts and reside throughout the country. In order to identify and select qualified panelists, the Endowment is enhancing its computerization of information about qualified individuals by means of an automated panel bank system. Individuals who believe they are qualified to serve as a member of an Endowment panel will need to complete a twelve-item questionnaire and submit it, supplemented by a current resume, to the Endowment. This information will then be electronically scanned and stored in the automated system which will be used to identify potential members of application or review panels. Several of the questions require the respondent to pick the most appropriate response from coded listings accompanying the questionnaire and then transfer those codes to the spaces provided. The first five questions ask for items of identification: Social Security Number; name; form of address; mailing address; and telephone number(s). The next 6 questions ask: Is the respondent a lay person; what are their special characteristics; their areas(s) of work/type(s) of business; the type(s) of organization(s) they are with; their areas(s) of arts expertise; and the source of recommendation for possible panel service, if any. Responses to these questions will be made by entering the appropriate codes form listings provided with the form. The last question is a small (6 line) space for any additional optional narrative information the respondent may wish to provide.

Title: Automated Panel Bank System Data Collection Form.

Frequency of Collection: One time.

Respondents: Peer review panelist candidates.

Use: Panel Bank Data Collection Form elicits relevant information from individuals wishing to be considered for service as a panelist at the National Endowment for the Arts.

Estimated Number of Respondents: 4000.

Average Burden Hours Per Response: .5.

Total Estimated Burden: 2000.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–1969 Filed 1–27–92; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is

hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions A Section) to the National Council on the Arts will be held on February 18–20, 1992 from 9:15 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 18 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on February 18 from 10 a.m.–5:30 p.m. and February 19–20 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

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.

Dated: January 22, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–2009 Filed 1–27–92; 8:45 am]

BILLING CODE 7537-01-M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning (formerly Inter-Arts) Advisory Panel (Partnerships in Commissioning Section) to the National Council on the Arts will be held on February 18, 1992 from 9 a.m.–6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 5 p.m.–6 p.m. The topics will be guidelines review and policy discussion.

The remaining portion of this meeting from 9 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

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.

Dated: January 22, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–2010 Filed 1–27–92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Power Co., Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.62(c)(3) to the Consumers Power Company (the licensee) for the Big Rock Point Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.62(c)(3). On December 29, 1986, the licensee requested an exemption from 10 CFR 50.62(c)(3), which requires that each boiling water reactor (BWR) must have an alternate rod injection (ARI) system that is diverse (from the reactor trip system) from sensor output to the final actuation device. Specifically, the licensee would not be required to install an ARI system.

The Need for the Proposed Action

Section 50.62 of 10 CFR part 50 imposes requirements for operating nuclear reactor facilities which are intended to reduce the chance of or mitigate the potential consequences of an anticipated transient without scram (ATWS) event. Section 50.62(c)(3) requires that each BWR licensee install a diverse and redundant system for inserting control rods into the reactor. In the Statements of Consideration for the ATWS rule (49 FR 26036), the Commission's staff states that older plants (those licensed for operation prior to August 22, 1969) may be granted exemptions from these requirements if they can demonstrate that their risk from ATWS is sufficiently low. A number of potential factors in the determination of low risk could include power level, unique design features that could prevent or mitigate the consequences of an ATWS event, remaining plant operating lifetime, or remote siting. The Commission's staff further stated that a reduction in the frequency of challenges to plant safety systems should be a prime goal of each licensee.

By letter dated October 1, 1986, the licensee submitted a plant-specific evaluation of the risks associated with ATWS events at Big Rock Point. The licensee concluded that the risk reduction from the installation was not significantly greater than the reduction provided by improving secondary system stability, and that the increased cost of the installation of ARI was not justified. The licensee has completed modifications to the plant (the installation of a single recirculation pump trip) to achieve greater stability in accordance with the October 1, 1986 submittal. Thus, the licensee has proposed an alternative action to that

required by 10 CFR 50.62(c)(3) and an exemption from the specific requirements of the rule is required.

Environmental Impacts of the Proposed Action

The proposed exemption would provide relief from the requirements of 10 CFR 50.62(c)(3) that an ARI system be installed at the Big Rock Point Plant. The licensee has performed a risk analysis to determine the efficacy of the implementation of ARI. This risk analysis included evaluations of alternatives to the installation of an ARI system, including (1) the installation of a simplified ARI, and (2) the improvement of secondary system stability following a load rejection event. The risk analysis determined that the installation of a full ARI system provided little benefit beyond the risk reduction associated with the improvement of secondary system response to transients from high power levels. The licensee has determined that the installation of an ARI would result in a core damage frequency (CDF) of 3.2E-5/RY (reactor year), while improvement of secondary system stability would result in a CDF of 3.6E-5/RY. The Commission's staff has previously reviewed this risk analysis and concurs with its findings.

Based on the above, the Commission's staff has determined that granting the proposed exemption would not significantly affect the ability of the Big Rock Point Plant to prevent or mitigate ATWS events. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does effect a change in the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in an increased financial burden on the licensee.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The Commission's staff did not consult other agencies in making its decision on this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission's staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated December 29, 1986. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan.

Dated at Rockville, Maryland this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Edmund J. Sullivan,

Acting Director, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1919 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the Long Island Lighting Company (LILCO, or the licensee), in connection with its Shoreham Nuclear Power Station, Unit 1 (SNPS), located in Suffolk County, New York. The exemption would grant relief from certain security requirements of 10 CFR 73.55 that are no longer necessary for a nuclear facility that is in a shutdown and permanently defueled condition such as SNPS.

Environmental Assessment

Identification of Proposed Action

The exemption will modify security requirements to eliminate certain vital areas and equipment, systems and procedures, and reduce the number of required armed responders, which are now unnecessary for SNPS, as it is a nuclear facility that is in a shutdown and permanently defueled condition. SNPS is a boiling water reactor that was licensed for commercial operation from April 21, 1989 to June 14, 1991.

Need for Proposed Action

The exemption is necessary to grant relief from physical security requirements that are inappropriate for a facility in a shutdown and permanently defueled condition.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because (1) SNPS is shutdown and permanently defueled, (2) LILCO is not allowed to put fuel back into the reactor building without prior Commission approval, and (3) potential offsite exposures from accidents are reduced to less than Environmental Protection Agency (EPA) protective action guidelines (PAG). Thus, an act of sabotage that would result in a significant offsite radiological release is no longer a credible event at SNPS.

The licensee's analysis demonstrated that the potential risk to the public is significantly reduced and the range of credible accidents and accident consequences are limited after the shutdown and defueling of SNPS. The worst case accident for this facility is a fuel handling accident. The licensee's analysis shows that the offsite doses resulting from a fuel handling accident would not exceed the EPA PAGs offsite. For example, the lower level EPA guideline for protective action is 1 Rem whole/body dose. The licensee's analysis shows that, for a fuel handling accident, the integrated whole-body and skin doses are less than 0.00005 percent of the 10 CFR part 100 limits.

The staff has also determined that the proposed action involves no increase in the amounts, and no significant change in the types of radiological effluents that may be released offsite and that there would be no increase in individual or cumulative occupational radiation exposures.

With regard to nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes

that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed exemption, any alternatives with equal or greater impact need not be evaluated.

The principal alternative would be to deny the requested action. This would not reduce environmental impacts associated with present level of plant activities.

Alternative Use of Resource

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the operation of the SNPS (NUREG–0285), dated October 1977.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed action, and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's application of October 9, 1990, as supplemented on November 4 and 8, 1991. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 21st day of January 1992

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1917 Filed 1–27–92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards

Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 6–8, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 23, 1992.

Thursday, February 6, 1992

8:30 A.M.–8:45 A.M.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 A.M.–10:00 A.M.: Policies and Practices of Public Utility Commissions (Open)—The Committee will hear a briefing by and hold a discussion with an invited expert regarding the impact that policies and practices of Public Utility Commissions have on the safety of nuclear power plants.

10:15 A.M.–12:15 P.M.: Integral Systems Testing for the Westinghouse AP–600 Nuclear Plant (Open/Closed)—The Committee will review and report on integral systems testing requirements for the Westinghouse AP–600 standardized nuclear power plant.

Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

1:15 P.M.–3:15 P.M.: Meeting with Senior NRC Staff Managers (Open)—The Committee will hold a discussion regarding proposed reconciliation of ACRS comments and recommendations regarding several safety related and regulatory matters such as consistent use of PRA in the regulatory process, the NRC Regulatory Impact Survey, and criteria to accommodate severe accidents in containment design.

3:30 P.M.–5:00 P.M.: Reactors Operating Experience (Open)—The Committee will bear a briefing by and hold a discussion with representatives of the NRC staff regarding recent events and incidents at operating nuclear power plants, including the causes and consequences of a turbine overspeed failure at the Salem Nuclear Generating Station and a main coolant system leak at the Oconee Nuclear Station.

Representatives of the licensees and other elements of the nuclear industry will participate, as appropriate.

5 P.M.–5:45 P.M.: Key Technical Issues (Open)—The Committee will discuss proposed plans for resolution of key technical issues in need of early resolution with respect to future nuclear power plant designs.

5:45 P.M.–6:30 P.M.: Preparation of ACRS Report (Open)—The Committee will discuss issues to be addressed in reports related to matters considered during this meeting session.

Friday, February 7, 1992

8:30 A.M.–10:45 A.M.: Design Acceptance Criteria (Open)—The Committee will review and report on proposed use of Design Acceptance Criteria as a mechanism to define plant design features in the certification process for standardized nuclear plants in accordance with 10 CFR 52.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:45 A.M.–12 Noon: Accident Sequence Precursor Program (Open)—The Committee will hear a briefing by and hold a discussion with representatives of the NRC staff regarding the program to identify and evaluate accident precursors.

Representatives of the nuclear industry will participate, as appropriate.

1 P.M.–2:30 P.M.: Meeting with Director, NRC Office of Nuclear Regulatory Research (Open–Closed)—The Committee will hear a briefing by and hold a discussion with the Director, NRC Office of Nuclear Regulatory Research, regarding various aspects of the NRC safety research program, including matters such as the need for an NRC Office of Research, priorities assigned to various portions of the research program, and the NRC research budget and its management.

Portions of this meeting related to anticipated budget and programmatic changes will be closed to discuss information the premature release of which is likely to significantly frustrate the agency in the performance of its statutory function.

2:45 P.M.–3:45 P.M.: Proposed Revision of 10 CFR Part 100, Appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants (Open)—The Committee will review and report on proposed revision of 10 CFR Part 100, Appendix A to update these regulatory criteria in accordance with developments in this field.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:45 P.M.–4:15 P.M.: Reactor Safety Research Program (Open)—The Committee will discuss the proposed annual ACRS report to the U.S.

Congress on the NRC safety research program and budget.

4:15 P.M.–4:45 P.M.: Federal Advisory Committee Act (Open)—The Committee will discuss proposed Committee comments to the U.S. Senate Committee on Government Affairs on the proposed 1991 amendment of the Federal Advisory Committee Act.

4:45 P.M.–5:45 P.M.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of assigned ACRS subcommittee activities including items proposed for consideration by full Committee (Planning and Procedures Subcommittee) and a proposed ACRS report to the NRC on its research program (Safety Research Program Subcommittee).

5:45 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss issues to be addressed in reports related to matters considered during this meeting.

Saturday, February 8, 1992

8:30 A.M.–11:30 A.M.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports regarding items considered during this meeting.

11:30 A.M.–12:30 P.M.: Miscellaneous (Open)—The Committee will complete discussion and related action regarding items considered during this meeting and items which were not completed at previous meeting as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept and questions may be asked only by members of the Committee, it consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552b(c)(4) and information the premature release of which is likely to significantly frustrate the agency in the performance of its statutory function per 5 U.S.C. 552b(c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: January 22, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–2021 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

Local Public Document Room for Callaway Plant at the John M. Olin Library, Washington University, St. Louis, Missouri, to Close

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closing of local public document room for Callaway Plant located at the John M. Olin Library, Washington University, St. Louis, Missouri.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to Callaway Plant located at the John M. Olin Library, Washington University, St. Louis, Missouri.

DATES: The Callaway LPDR located at the John M. Olin Library, Washington University, St. Louis, Missouri, will close effective February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4344, or Toll-Free 1–800–638–8081.

SUPPLEMENTARY INFORMATION: Since 1974 the NRC has maintained two LPDRs for Callaway Plan located in Fulton, Missouri. They are the Callaway County Library, Fulton, Missouri, which is about ten miles southeast of the site, and the John M. Olin Library, Washington University, St. Louis, Missouri, which is approximately eighty miles west of the site. The LPDR located in St. Louis, Missouri, was established as an exception to our usual practice of locating LPDRs in the immediate vicinity of nuclear power plants. We agreed to maintain this LPDR to serve the population center in St. Louis during the Agency's review of the proposed Callaway facility. The Callaway Plant was licensed and began commercial operation in 1984.

In a letter dated December 19, 1991, the Director, Industrial Contracts and Licensing, of the Washington University, St. Louis, Missouri, stated they will no longer continue as a LPDR after January 31, 1992. Therefore the Callaway LPDR located in St. Louis, Missouri, will be closed effective February 1, 1992.

Dated at Bethesda, Maryland, this 23rd of January, 1992.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 92–2020 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

Cintichem, Inc.; Issuance of a License Amendment To Renew License No. SNM–639 and Approval of Decommissioning Plan

The Nuclear Regulatory Commission has issued an amendment under the provisions of title 10 of the Code of Federal Regulations, part 70 (10 CFR part 70) to Cintichem, Inc. authorizing the renewal of Special Nuclear Materials License SNM–639 for the purpose of decommissioning the Cintichem facility located in Tuxedo, New York. This amendment also approves the decommissioning plan submitted by the licensee.

The licensee requested this amendment in a letter dated April 17, 1991, which referenced a decommissioning plan, an environmental report and a radiological accident analysis that had previously been submitted to the Commission on October 19, 1990.

The amendment authorizes the licensee to perform decommissioning of the: (a) Laboratory/hot cell building (Building 2) and associated structures; (b) areas in the reactor building (Building 1) and associated structures subject to this license amendment; and (c) the waste storage building (Building 6) and associated structures in accordance with the licensee's decommissioning plan. The amendment also authorizes the renewal of SNM-639 for the possession, use and storage of special nuclear material as necessary to allow the decommissioning of the facility.

On May 22, 1991, (56 FR 23601) the Commission announced in the **Federal Register** that it was considering issuing this amendment to the licensee. At that time the Commission provided notice that it was proceeding to review an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2.

On November 20, 1991, (56 FR 58589) the Commission announced in the **Federal Register** that it had reviewed the proposed decommissioning plan submitted to the Commission on October 19, 1990, as supplemented on January 11, 14, and 28, February 19, March 8, April 24, May 21, June 25, July 17, August 6, and October 2, 1991, and had prepared an Environmental Assessment and Safety Evaluation Report (the licensee has also requested, on January 8, 1992, to increase the timeframe for decommissioning from 26.5 to 36 months). Based on the Environmental Assessment the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant impact on the quality of the human environment. For further details with respect to this action see the licensee's request for amendment dated April 17, 1991, which is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 17th day of January, 1992 for the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Section, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92-1920 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to reflect the conversion to a Zircaloy-clad fuel assembly design, prohibit three loop operation for Modes 1 and 2 for Cycle 17, and change the required boron shutdown margin concentration. The Technical Specification changes will allow for the use of Zircaloy-clad fuel assemblies in the core.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rule and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 31, 1991 (56 FR 36175). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 27, 1991, as supplemented December 10, 1991, (2) Amendment No. 148 to License No. DPR-61, (3) the Commission's related Safety Evaluation, (4) the Commission's related Environmental Assessment (56 FR 65920).

All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2017 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas at Austin; Notice of Issuance of Facility Operating License No. R-129

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. R-129 for the University of Texas at Austin (the licensee) to operate the TRIGA Mark II research reactor located on the licensee's site in Austin, Texas.

Facility Operating License No. R-129 authorizes a power level not in excess of 1100 kilowatts (thermal) and in the pulse mode, with pulse step reactivity insertion not in excess of 2.2 percent $\Delta k/k$. The license will expire twenty years from its date of issuance.

The license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I. Those findings are set forth in the license. Opportunity for hearing was afforded in the notice of the Proposed Issuance of Construction Permit and Facility Operating License in the **Federal Register** on March 29, 1985, at 50 FR 12669. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The facility has been inspected by representatives of the Commission who have determined that the facility was constructed in substantial conformity with the terms and conditions of the construction permit and the application, as amended.

The Commission has prepared a Safety Evaluation Report (NUREG-1135) and Supplement 1 to NUREG-1135

regarding the construction permit and operating license for the University of Texas and has, based on that report, concluded that the facility can be constructed and operated by the licensee without endangering the health and safety of the public.

The Commission also prepared a Finding of No Significant Environmental Impact which was published in the **Federal Register** on May 30, 1985 (50 FR 23088) for the construction and subsequent operation of the reactor and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for construction permit and operating license of November 9, 1984, as supplemented; (2) Construction Permit No. CPRR-123; (3) Facility Operating License No. R-129; (4) the related Safety Evaluation Report (NUREG-1135); (5) Supplement 1 to NUREG-1135; and (6) the Finding of No Significant Environmental Impact of May 30, 1985. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Copies of NUREG-1135 and Supplement 1 to NUREG-1135 may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Rockville, Maryland, this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1918 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Correction to Federal Register Notice Virginia Electric and Power Company

On January 21, 1992, a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for the North Anna Power Station, Unit No. 1 was published. On page 2292, column 2, 3rd paragraph, the date "February 18, 1992" should be changed to "February 20, 1992."

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2018 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Notice of Transmittal of Final Sequestration Report to the President and Congress

January 14, 1992.

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1992 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 92-1967 Filed 1-27-92; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council agenda for this meeting includes further discussions on issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATES: February 11, 1992, beginning at 9:30 a.m..

ADDRESSES: Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth O'Donnell, Chief of Salary Systems Division, room 6H31, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001 Telephone number: (202) 606-2838.

FOR THE PRESIDENT'S PAY AGENT:

Constance Berry Newman,

Director.

[FR Doc. 92-1938 Filed 1-27-92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee Schedule

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Intergovernmental Policy Advisory Committee meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting of the Intergovernmental Policy Advisory Committee is scheduled for February 4, 1992, from 2-4 p.m.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, Grand Ball Room, 1331 Pennsylvania Avenue, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-2128 Filed 1-27-92; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30265; File No. SR-Amex-91-29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Percentage Orders

January 17, 1992.

I. Introduction

On October 17, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to make permanent the amendments to Exchange Rules 131 and 154, as those rules relate to percentage orders, which

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

were temporarily approved by the Commission for a one-year pilot period due to expire on January 17, 1992.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 29969 (November 20, 1991), 56 FR 60134 (November 27, 1991). No comments were received on the proposal.

The proposal herein is intended to amend permanently the Exchange's percentage order procedures to conform them substantially to similar procedures currently in place at the New York Stock Exchange, Inc. ("NYSE").[4] The Exchange believes that the changes made to these rules for the one-year pilot period have contributed to the efficiency of the Exchange's market by providing specialists with the necessary flexibility to handle and service large-size orders.

In this regard, the Exchange submitted to the Commission a report detailing the Exchange's experience with the proposed amendments during the one-year pilot program which began on January 17, 1991 (see letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, dated October 18, 1991). In addition, the Exchange submitted a subsequent report evaluating in a more detailed manner the proposed percentage order procedures during the pilot period (see letter from Claudia Crowley to Mary Revell, dated January 9, 1992, and note 33, *infra* and accompanying text).

Essentially, the proposed permanent amendments to Rules 131 and 154 will broaden a specialist's ability to represent percentage orders, which are defined by Amex Rule 131(n) as limited price orders to buy (or sell) 50% of the volume of a specified stock after its entry, and generally expand the types of percentage orders allowed to be effected on the Exchange. The proposed rule change is intended to broaden the ability of an Amex specialist to represent percentage orders by (1) permitting a specialist to accept "last sale" and "buy minus—sell plus" percentage orders; [5] (2) permitting the conversion of a percentage order into a limit order on a destabilizing tick; and (3) allowing conversions that would have the effect of bettering the market.[6] The Exchange is proposing that these new conversion opportunities be subject to certain limitations and conditions designed to prevent conversions of percentage orders from unduly influencing the market. The Amex believes that the permanent approval of this proposed rule change will contribute to the efficiency of the Exchange's market by providing the specialist with the necessary flexibility to handle and service large-size orders, thereby enhancing the overall quality of the Exchange's auction market system.

II. Background of Amex's Percentage Order Procedures

The Exchange developed Amex Rules 131 and 154 in order to free a floor broker from having to remain in the crowd to assure proper execution of a large order. The percentage order can be left by a broker with the specialist as a potential order on record that becomes an actual limit order on the specialist's "book" under certain circumstances. The Amex percentage order rules currently provide procedures by which the specialist mechanically introduces the order into the auction process without unduly influencing the market price. Prior to the implementation of the one-year percentage order pilot program, there existed two procedures by which percentage orders could be activated into live limit orders pursuant to Amex Rules: (1) Transaction elections and (2) stabilizing tick conversions.

(A) Transaction Elections

The basic provisions regarding percentage orders provide that trade occurring in the market "elect" portions of a percentage order to become regular limit orders. A portion of the percentage order is "elected" into a limit order in the following manner:

—As a certain number of shares of the stock that is the subject of the percentage order is traded on the Exchange ("triggering transaction"),

—an equal number of shares is entered on the specialist's book as a regular limit order at the price specified on the order, and

—the percentage order is reduced by the certain number of shares.

The portion "elected" is always equal in size to the triggering transaction. The elected portion, or course, may not be immediately filled because there may not be orders on the opposite side at the proper price. To that extent, the elected portion will be treated as a new limit order and take its place behind other limit orders at the same price on the book. The mechanics of the market, therefore, determine the time of execution and the number of shares executed at any given time. The specialist merely supervises and logs the orderly progression of the execution.[7]

At his or her option, the floor broker placing the percentage order (the "entering broker") may give the specialist written permission to be on parity with the order, thereby allowing the specialist to trade along with the order. At no time, however, may the specialist participate in an amount greater than that of any "elected" portion(s), except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. Further, the specialist may never trade ahead of, or with, other orders on the book.

(B) Stabilizing Tick Conversions

Current Rule 154 was designed to provide for percentage order participation in large contra-side interest entering the market, and to permit a specialist, under specified conditions, to convert an unelected percentage order into a limit order without waiting for all or part of the order to be elected. The current rules permit the order to trade directly with contra-side interest as that interest enters the market. Any portion of the temporarily-converted order that does not participate in the trade reverts back to the percentage order.

Percentage orders accompanied by conversion instructions are designated "convert" orders. Furthermore, convert orders permitting the specialist to be on "parity" are commonly referred to as

[3] See Securities Exchange Act Release No. 28792 (January 17, 1991), 56 FR 2965 (order temporarily approving File No. SR-Amex-90-11).

[4] See Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (order approving File No. SR-NYSE-85-1); NYSE Rules 13 and 123A.30. Amex's proposed rule change in identical to the NYSE Rules governing percentage orders, with the following two exceptions: (1) Pursuant to the Amex proposal, a specialist is required to obtain Floor Official approval before converting percentage orders for consecutive or contemporaneous trades on destabilizing ticks (*see* text accompanying note 17, *infra*), while NYSE Rule 123A requires Floor Governor approval; and (2) the Amex proposal requires a 5,000 share minimum for plus and minus destabilizing transactions (see note 16, *infra* and accompanying text), rather than the 10,000 share minimum in effect at the NYSE.

[5] Pursuant to current Amex Rule 131, only so-called "straight limit" orders can be executed on the Exchange. For a definition of "straight limit," "buy minus-sell plus," and "last sale" percentage orders, see text accompanying note 19, *infra*.

[6] A transaction which betters the market either narrows the spread, adds depth to a prevailing bid or offer, or establishes a new bid or offer immediately after a transaction has cleared all bids and offers.

[7] When such an elected-portion/limit order is executed, it does not trigger other portions of the same or other percentage orders. Thus, execution of percentage orders have no influence on the same or other percentage orders (*i.e.*, there is no compounding or "snow-balling" effect).

"CAP" orders on the Floor.[8] Under current Amex Rule 154, however, a specialist can execute an unelected portion of a CAP order only if the transaction is stabilizing (*i.e.*, on a "minus" or "zero minus" tick in the case of a buy order, and on a "plus" or "zero plus" tick in the case of a sell order).[9] In addition, when accompanied by written instructions, a convert or CAP order may be executed on a zero plus or zero minus destabilizing tick provided the order causing the conversion is for at least 5,000 shares. The broker entering such an order may specify in writing that only half of the order may be converted.[10]

III. Description of the Proposal

(A) Proposed Amendments to Amex Rule 154 [11]

The proposal to amend permanently Amex Rule 154 adds two additional conversion events to the current conversion events described in Section II above: (1) Conversions on plus and minus destabilizing ticks, provided certain requirements are satisfied; and (2) conversions to better the market. Under the Exchange's proposal, however, the two new conversion events will be accompanied by limiting provisions that will assure that the increased opportunities for conversions of not come at the cost of disadvantaging other orders in the market or of unduly influencing overall market trends.

[8] "CAP" is an acronym for "convert on parity." The "parity" instruction on a CAP order permits the specialist to be on parity (able to trade along) with a percentage order. If the specialist holds more than one percentage order in the same stock, he may not be on parity with the orders unless each one of the entering brokers has permitted the specialist to be on parity with his individual order.

[9] More specifically, the buy (sell) transaction must be either lower (higher) than the last sale or it can be equal to the last sale if the last transaction at a changed price was at a lower (higher) price than the last preceding sale. Furthermore, note that a converted percentage order must go behind any limit orders in the specialist's possession at the same or a better price.

[10] As an example, assume that the market in XYZ is 29 ¾ – 30⅛ with a last sale at 30, a plus tick. Further, assume that the specialist then accepts a CAP order to buy 10,000 shares of XYZ stock with a top limit of 30 and that, thereafter, a market order to sell 4,000 shares enters the market. The specialist can convert the unelected CAP order and execute it against the contra-side interest at 29⅞, since the execution will be a minus tick. If the sell order had been for 5,000 or more shares, however, the CAP order, coupled with appropriate written instructions, could have been executed at 30, a zero plus tick.

[11] It should be noted that this proposed rule change is concerned only with the conversion aspect of the percentage order rules; the election aspect is not proposed to be changed.

(1) Destabilizing Tick Conversions

Current Amex Rule 154 recognizes that allowing a specialist to make conversions on stabilizing and zero destabilizing ticks,[12] and to execute percentage orders in stabilizing and zero destabilizing transactions, is consistent with his market-making and agency obligations.[13] The current tick restrictions were designed to assure that the specialist, in converting percentage orders, would not unduly influence market prices or market trends. In order to maintain this assurance, the Exchange's proposal to permit conversions on plus and minus destabilizing ticks is accompanied by three limitations.

First, the specialist may convert percentage orders on plus and minus destabilizing ticks only for participation in trades of 5,000 shares or more.[14] Second, the specialist only may convert percentage orders for participation in trades at a price that is no more than ¼ point away from the last sale.[15] Third, a specialist cannot convert percentage orders for consecutive trades on destabilizing ticks, or for a series of contemporaneous trades on destabilizing ticks even if not consecutive, without the approval of a Floor Official.

The Exchange believes that the proposed rule change is modest in scope when viewed from the perspective of the circumstances when the tick restrictions will remain. The first two limitations (*i.e.*, 5,000 shares and ¼ point limitations) have the effect of continuing to preclude conversions on plus and minus destabilizing ticks to: Buy (sell) stock in trades of less than 5,000 share size at a price or prices higher (lower) than the last sale, and buy (sell) stock in trades of any size at a price that is more (less) than ¼ point above (below) the last sale.[16] The modification recognizes that large-size trades ordinarily can be anticipated to move the market as much as ¼ point, and that such a price movement would not be considered unusual or improper given the size of the trade. The proposed rule change, therefore, would permit the specialist, for the first time, to execute percentage orders along with the market trend, thereby servicing entering brokers in the way they and their customers desire.

The third limitation, which prohibits a series of trades on destabilizing ticks, prevents the specialist from "splitting" his conversions and executions among a series of trades. This prohibition precludes the specialist from creating a series of consecutive or contemporaneous trades which could work to create a market trend, even though each trade meets the ¼ point limitation.

When coupled with the percentage order's price limit and the interest of the customer in achieving executions of percentage orders at the most appropriate prices possible, the Exchange believes that the limitations governing conversions on destabilizing ticks will permit the specialist to service the auction market more efficiently, while still maintaining restrictions designed to prevent converted percentage orders from unduly influencing market prices or trends.

Allowing the specialist to convert percentage orders on destabilizing ticks, however, creates a potential problem in regard to cross transactions. This proposal substantially increases the potential for large orders left with the specialist to displace other large orders brought to the Floor by members for execution in cross transactions. In order to address this problem, the Amex has proposed to preclude the specialist from converting percentage orders on a destabilizing tick when a member wants to cross stock, unless the specialist can provide a better price to either side of the cross at or within the ¼ point price parameter. The specialist, therefore, cannot interfere with the proposed cross unless he is playing a positive market role by providing a more advantageous price to either the buyer or seller on the cross. The ability of the specialist to circumvent this limitation by effecting a proprietary trade that creates a new last sale price extending the ¼ point price parameter, thereby allowing the specialist to interfere with the proposed cross, would be prohibited.

[12] A zero destabilizing tick occurs where a transaction is effected on a zero minus tick for sell orders or on a zero plus tick for buy orders.

[13] See generally Amex Rule 170.

[14] It should be noted that the Amex's proposed rule change differs from the existing NYSE percentage order rules with respect to the definition of block size trades. In this regard, in recognition of the generally lower volume and transaction size which exists on the Amex, the Amex determined to proposed a 5,000 share minimum to plus and minus destabilizing transactions, rather than the 10,000 share minimum in effect at the NYSE. In addition, unlike the NYSE Rules, the Amex has proposed that no volume limitations apply to zero destabilizing transactions, because the Amex believes that these transactions have a minimal, if any, effect on the market.

[15] With the approval of a Floor Official, however, the entering broker can waive the ¼ point limitation. See proposed Amex Rule 154, Comm. 15, fourth paragraph.

[16] Subject to waiver as described in note 17, *supra*.

(2) Bettering the Market

The Exchange believes that "quote conversions," under appropriate circumstances, will help the specialist to reflect more accurately the trading interest in the market. The proposal permits the specialist to convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The Exchange believes that this provision is appropriate because stabilizing transactions traditionally are viewed as being beneficial to the marketplace.

Furthermore, in order to add size to a prevailing bid or offer, the Amex proposal also permits the specialist to convert a percentage order on a destabilizing tick to increase the size of a bid or offer. The Exchange believes that this provision is appropriate because it will permit the specialist to reflect more accurately market interest at a price which is set by other market participants.

Additionally, the proposal permits the specialist to convert a percentage order on a destabilizing tick to make a bid or offer, in such size as he deems appropriate, (1) immediately following a transaction where such transaction has cleared the Floor of bids and offers or (2) to narrow the quotation spread. In these two situations, however, the specialist's destabilizing bid or offer may not be more than ⅛ point away from the last sale. Even though there may be times when it would be appropriate to allow a specialist to reflect large buying (selling) interest in the market at a price above (below) the last sale, the Exchange has imposed this ⅛ point restriction so that any price movement, which is the result of a destabilizing bid or offer, would be limited to only the minimum variation of trading on the Exchange.

Additionally, as noted above, the proposal restricts a specialist from effecting consecutive or contemporaneous destabilizing "active" conversions to participate in a trade of at least 5,000 shares, while also limiting the specialist's ability to take consecutive destabilizing actions that would move the stock's price in the absence of an established or confirmed price level by other market participants.

In this regard, when converting a percentage order to better the market, the specialist may not (1) make an active conversion to participate in a trade of at least 5,000 shares and then make a bid (offer) at a higher (lower) price; (2) make a bid (offer) at a price higher (lower) than the last sale, and then, if a sale occurs at the bid (offer) price, make an active destabilizing conversion; or (3) make a bid (offer) higher (lower) than the last sale, and then make a higher (lower) bid (offer). The Exchange believes that these three restrictions strike an appropriate balance between minimizing the specialist's ability to convert percentage orders to unduly influence market prices on the one hand, and permitting the specialist to accurately represent market interest, thereby strengthening the auction market, on the other hand.

(B) Proposed Amendments to Amex Rule 131

The proposal also provides for a revision of Amex Rule 131 in order to expand the types of percentage orders permitted to be entered on the Exchange, thereby corresponding to those permitted at the NYSE. Currently, Amex Rule 131 provides for straight limit percentage orders exclusively. Pursuant to the proposal, a straight limit percentage order would retain the current definition of a percentage order,[17] while last sale and buy minus—sell plus percentage orders would be added to Amex Rule 131.[18]

Pursuant to a last sale percentage order, the elected portion of the order would be executable only at the last sale or better, provided such price is at or better than the limit price specified in the order. Until it is executed, the elected portion of a last sale percentage order would remain on the book at the limit price at which it was elected. The elected portion of a buy minus—sell plus percentage order would become a limit order executable only on a stabilizing tick. The elected portion of such an order would be adjusted in price as the stock moves, as long as it is able to be executed on the correct tick.

With respect to these three types of percentage orders, all volume subsequent to the receipt of the order at the specialist's post would be applied in determining the elected portion of the new percentage orders.

(C) Other Amex Rules Affected

The proposed rule change contains three provisions designed to clarify the application of several other Exchange rules to the specialist's conversion of percentage orders. These three provisions clarify the following: (1) The specialist may be the contra party to a converted percentage order, but must permit the other party, in compliance with Exchange Rule 155, to reject the trade; (2) the specialist must remain fully subject to Exchange rules as to purchases for his own account on destabilizing ticks; and (3) the specialist must give priority to conventional limit orders already on his book when converting percentage orders.

Additional, current Amex Rule 154 prohibits a specialist who is on parity with one or more percentage orders from participating in a transaction for his own account in an amount larger than that received by each percentage order in the transaction.[19] The proposal would make clear, however, that this prohibition would not prevent a specialist from participating for his or her own account in an amount greater than the amount of any percentage order when the size specified in the percentage order has been satisfied in the transaction.

IV. Commission Findings

After careful review, the Commission has determined, based on the reasons set forth below, that the permanent approval of the Amex's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) and 11(b) of the Act.[20]

To begin, as the Commission noted in the order approving the Amex's percentage order proposal for a one-year pilot period, a substantially similar proposal submitted by the NYSE previously was approved by the Commission.[21] Consequently, percentage order procedures similar to those proposed by the Amex herein have been in effect on the Floor of the NYSE since their approval by the Commission in 1987. The Commission carefully and extensively reviewed the NYSE's percentage order proposal prior to its approval. Given the fact that the Amex has proposed procedures substantially identical to the NYSE's current percentage order procedures, the Commission believes that the Amex's proposal raises few new regulatory issues.[22]

[17] See note 6, *supra*.

[18] The various types of percentage orders differ only in terms of execution, and not the process by which they are elected.

[19] Under Amex Rule 154, the specialist must obtain the entering broker's permission to be a parity with the percentage order. Further, when a specialist is handling more than one percentage order, he or she may not be on parity with any such order unless permission has been obtained from all brokers for whom he or she is holding percentage orders in the particular stock.

[20] 15 U.S.C. 78f and 78k(b) (1988).

[21] See note 4, *supra*.

[22] The Commission believes that the two differences between the Amex proposal and the NYSE Rules (see note 4, *supra*) are not substantively material differences, and are justified.

Continued

As discussed below, the Amex proposal, like the NYSE's, adequately addresses any regulatory concerns over the relaxation of percentage order restrictions. The Amex s proposal includes limiting and protective provisions designed to help ensure that the proposal's broadened conversion provisions are not inconsistent with the specialists' obligations to maintain fair and orderly markets. In particular, the portion of the proposal relating to block cross trades provides for a 5,000 share and ¼ point restriction designed to ensure that such a conversion is implemented only to respond to large contra-side interest, without disrupting price continuity. Moreover, the requirement that contemporaneous or consecutive trades occur only after the specialist secures Floor Official approval will act as a check against specialists using this technique to influence the market by splitting conversions and subsequent executions among a series of trades that, although satisfying separately the ¼ point requirement, as a whole create a disruptive market trend.

In determining to approve permanently the proposal, the Commission also has relied on the proposed provision which permits the conversion of an order for the purpose of interacting with an established cross transaction only if the specialist can provide a superior price to one side of the cross. The Commission believes that this provision should prevent specialists from interfering with normal crossing procedures, while ensuring that the block conversion procedures will be utilized solely for purposes of price improvement.

The proposal also provides for conversions in order to better the market. Such conversions, however, may only be effected at or within the existing quotation spread. The Commission remains confident that these limiting parameters should guard against specialist abuse of these conversion procedures. Furthermore, the Commission believes that the cancellation provision embodied in the proposed bettering the market rule (requiring a specialist to cancel a converted order and revert it back to a percentage order if subsequent interest enters the market and establishes a superior quote) should ensure that the conversion procedures will not impede the section 6(b)(5) requirement of maintaining a free and open market, while at the same time alleviating the potential for specialist manipulation of stock prices.

In addition, the proposal's restriction against consecutive quotation conversions without a "meaningful," "intervening" transaction should reduce substantially any potential manipulative concern.[23] The restriction should prevent the specialist from causing a rapid increase or decline in any particular security via quotation conversions. Further, the ⅛ point conversion limitation in connection with the restrictions on contemporaneous or consecutive block conversions, as well as the restrictions on connected block and quote conversions, make it difficult for a specialist to use the conversion mechanism to influence the price of market.

The Commission also believes that allowing the specialist to reflect unelected portions of percentage orders in the quote should make the quote more representative of the buy and sell interest present in the market, and may act to draw contra-side interest into the market that otherwise might not develop. This capability should complement effectively the specialist's negative and affirmative obligations in the marketplace.[24] In this regard, the necessity for specialist proprietary trading will be reduced to the extent that the conversion provisions create a quote which is more representative of the actual market for the security. The conversion provisions should, therefore, further assist the specialist in his duty of maintaining fair and orderly markets, consistent with sections 6(b)(5) and section 11(b) of the Act.

Further, the Commission believes that the proposal also is consistent with the prohibition in section 11(b) of the Act against providing discretion to a specialist in the holding of an order. When the Commission reviewed the NYSE's proposal to extend the percentage order conversion and quotation provisions, which is nearly identical to Amex's proposal being considered herein (see note 4, *supra*), it expressed a concern as to whether these extended provisions provide the specialist with "discretion" in violation of section 11(b).[25] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[26] The Commission previously has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by the specialist.[27] In the order approving the NYSE's percentage order proposal,[28] the Commission concluded, and again concludes with respect to the Amex proposal, that it is appropriate to treat percentage orders, even under the revised procedures, as equivalent to limit orders. While the Amex proposal permits the specialist to employ his judgment to a greater extent than under the current percentage order requirements, the Commission still believes that the requirements imposed on the specialist when converting a percentage order for execution or quotation purposes provide sufficiently stringent guidelines to ensure that the specialist will implement the conversion provisions only in a manner consistent with his or her market making duties and section 11(b).

The Commission notes that the concept of a limit order with conditions subsequent is not unique.[29] For example, a stop limit order is a limit order that is unexecutable prior to the satisfaction of a future event (a transaction at or better than the stop

First, the Amex stated that it proposed to require Floor Official approval, as opposed to Floor Governor approval, due to the limited number of Floor Governors at the Amex (approximately three to four Governors). The Amex believes that the Governors would be over burdened if required to approve the designated transactions as provided for under the proposed procedures (telephone conversation on July 24, 1990 between Joseph Tietjen, Director, Rulings Department, Amex and Laurie Petrell, Staff Attorney, SEC). Second, the Amex chose a 5,000 share minimum to plus and minus destabilizing transactions due to the generally lower volume and transaction size which exists on the Amex as compared to that which exists on the NYSE.

[23] As a general matter, the Commission expects that such an "independent," "meaningful" transaction would, at a minimum, exceed an average-sized transaction for that security.

[24] See 17 CFR 240.11b–1(a)(2); NYSE Rule 104. Generally, pursuant to NYSE Rule 104, the specialist shall effect purchases or sales of any security in which he is registered only if such dealings are reasonably necessary to permit the specialist to maintain a fair and orderly market.

[25] 15 U.S.C. 78k(b). section 11(b) permits a specialist to accept only market or limit orders.

[26] See H. Rep. No. 1383, 73rd Cong. 2d Sess. 22, S. Rep. 792, 73d Cong. 2d Sess. 18 (1934).

[27] See *e.g.*, SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., part 2, 72 (1963) (noting that "Section 11(b) * * * prohibits, without exception, a specialist's effecting any transaction except upon a market or limit order").

[28] See Securities Exchange Act Release No. 24505, *supra* note 4.

[29] See, *e.g.*, NYSE Rule 13, which defines "limit order" as "an order to buy or sell a stated amount of a security at a specified price, or at a better price, if obtainable after the order is represented in the Trading Crowd."

price). Similarly, in the stop limit order situation, as with a percentage order, the triggering transaction can be effected by the specialist through a proprietary trade.

Finally, in making its determination to grant permanent approval to the Amex's proposal, the Commission relied on the Exchange's report evaluating the effects of the proposed percentage order rules during the pilot period.[30] In order to review and evaluate the proposed procedures, the Exchange's Trading Analysis Division conducted a special study of all CAP.D percentage orders entered on October 9, 1991.[31] The special study revealed that six CAP.D orders were entered on this day, and out of the 30 executions effected, 29 were effected on stabilizing ticks.[32]

The Commission believes that the conclusions reached by the Amex during its evaluation of the pilot program support permanent approval of the proposed percentage order procedures. The Amex's report indicates that the proposed conversion procedures have enhanced the Amex specialists' ability to fulfill their obligation of maintaining a fair and orderly market by enabling them to convert percentage orders to establish new bids or offers as they deem appropriate, ultimately adding depth and liquidity to the market. Further, as noted in the Exchange's report, the CAP.D orders were, for the most part, properly handled in accordance with proposed Rules 131 and 154.[33] Moreover, the Amex states that its review did not disclose any abuses in the handling of CAP.D orders under the new conversion procedures, nor was there any evidence to suggest that these orders unduly influenced the market. Therefore, the Amex's review of the proposed procedures during the pilot program supports the Exchange's original belief that the noted benefits of the new conversion methods do not come at the cost of undue influence on the market or abuse of the auction market system.

In sum, relying on the reasons set forth above, the Commission remains confident that the limitations and conditions implemented in connection with the conversion provisions will continue to prevent the specialist from using the conversion provisions to influence the market, while providing him or her with increased opportunities to provide for efficient executions of large institutional orders and maintain a fair and orderly market. Thus, the Commission believes that the proposed amendments to Amex Rules 131 and 154 should be approved on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[34] That the above mentioned proposed rule change be, and hereby is approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1954 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

[30] Actually, the Amex filed two separate reports with the Commission (see note 5, *supra*). While both reports discuss the same six CAP.D orders reviewed by the Exchange, the most recently filed report provides a fuller description of the Exchange's method of review and actual results. For the remainder of this order, therefore, any reference to the Exchange's report will refer to the report submitted to the Commission on January 9, 1992.

[31] According to its report filed with the Commission on January 9, 1992 (see note 5, *supra*), the Amex needed to conduct a special study of the percentage order procedures because the Exchange's ordinary surveillance procedures, which rely on a semi-annual order ticket review for four randomly selected trading days, did not uncover any CAP.D percentage orders.

[32] The one instance in which an order was effected on a destabilizing tick involved an election of 300 shares to facilitate a buy order on a "zero minus" tick.

[33] The Amex's report does highlight two situations in which percentage orders were improperly handled due to the particular specialist's unfamiliarity with the new rules. Fortunately, according to the Amex, neither order was disadvantaged by its election, and in each case, the order received an equal or superior execution. The Amex has reminded the specialists to properly elect CAP.D orders in the future.

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30270; File No. SR-Amex-91-05]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Stopping Stock

January 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. On January 7, 1992, the Amex filed with the Commission and amendment to the proposal. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional spread market under certain limited circumstances. The Exchange proposes to implement the amendments as a one year pilot program. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

An agreement to "stop" stock at a specified price constitutes a guarantee by the member who "grants the stop" that the order of the member who "accepts the stop" will be executed at the stop price or better. Exchange Rule 109 describes the circumstances under which a specialist is permitted to grant a stop. The Exchange proposes to amend Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional spread market, *i.e.*, when the quotation spread is already at its narrowest. Exchange Rule 127 currently provides that for securities trading at $1.00 or more, the minimum fractional change is ⅛ of a point. In such a market, the proposal would allow a specialist, subject to the conditions described below, to grant a stop to any order of not more than 2,000 shares, up to an aggregate of 5,000 shares for all such stops at any given time. In addition, with the approval of a Floor Official, a specialist could grant a stop to an order of larger size or have such stops in effect

for more than an aggregate of 5,000 shares.

The Exchange would place certain conditions on the granting of a stop in a minimum fractional market. In order for a specialist to grant a stop in such a market, there would have to be an imbalance on the opposite side of the order being stopped, and the imbalance would have to be of sufficient size, given the characteristics of the security, to suggest the likelihood of price improvement. In addition, the Exchange will require that a stop granted by a specialist be reflected in the quoted bid or offer size.

The Exchange believes that allowing a specialist to grant stops in a minimum fractional change market when there is a large imbalance on one side of the market will be beneficial to the market since it will increase the market's depth. For example, assume the market in XYZ stock is quoted 10 to 10⅛, with 500 shares bid for and 10,000 shares offered. If a specialist receives a market order to buy 2,000 shares, he could simply execute the order against the prevailing offer of 10⅛. However, in view of the large sell-side imbalance it is likely that subsequent transactions would be at a lower price. If the broker entering the market order to buy requests a stop, under the proposed rules the specialist would be permitted to grant the stop at 10⅛ and add the order to the bid of 10, thereby increasing the depth of the bid to 2,500 shares. The customer would be guaranteed a price of no higher than 10⅛ and would have a reasonable opportunity of paying only 10. The specialist could handle subsequent orders of 2,000 shares or less—up to an aggregate of 5,000 shares—in a similar fashion, adding additional depth to the market. If further warranted by market circumstances, the specialist could obtain Floor Official approval to grant stops to larger size orders and for a greater aggregate number of shares.

The Exchange proposes to implement this rule change on a one year pilot program basis and carefully monitor compliance with the program. The Exchange will monitor compliance with the pilot program by: (1) Using existing information from the Exchange's order system database and transaction quotation files to identify situations where the quotation is the minimum variation and the size of the order(s) stopped exceed the Rule's parameters; (2) examining records to determine if Floor Official approval was obtained by the specialist to exceed the Rule's limits; (3) reviewing executions of stopped orders to determine the percentage of time such orders are executed at the stop price and the percentage of time such orders receive a price that is better than the stop price; and (4) developing programs that compare the size of the stopped order to the existing quote size and quote size imbalance, if any, to review market depth in a stock when a stop is granted in a minimum variation market. In addition, if a Floor Official has granted new order size or aggregate share size parameters, the Exchange will review all subsequent stops against those new parameters. The Exchange will submit a report on its findings with respect to the pilot program to the Commission before expiration of the one year program. Based on these findings, the Exchange may determine to seek permanent approval of the proposed rule change. The current proposal will not apply to the trading of options contracts. In March 1991, the Commission approved similar amendments to the rules of the New York Stock Exchange.[1]

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed amendments to Rule 109 are consistent with these objectives in that they provide a market mechanism which contributes to continuity and depth in the markets for exchange-traded securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-05 and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1956 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M.

[1] See Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR-NYSE-90-48)

[Release No. 34-30267; File No. SR-91-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Debit Put Spread Pilot Program

January 21, 1992.

Pursuant to section 19(b)(1) of the securities exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the American Stock Exchange, Inc., ("Amex") which established one year pilot programs allowing approved public customers with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[1] The CBOE now proposes to clarify the definition of a qualified debit put spread by specifying that the strike price of the long leg of the spread must exceed the strike price of the short leg. The text of the proposed rule change is available at the office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.The self-rgulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In November 1991, the Commission approved proposals submitted by the CBOE and Amex which established one year pilot programs allowing approved public customers with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[2] The Debit Put Spread Approval Order defined a debit put spread as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) equals or exceeds the strike price of the short put(s). The CBOE now proposes to clarify the definition of a debit put spread under CBOE Rule 24.11A(f) to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg.

(2) Basis

The CBOE believes that the proposal is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning of an existing CBOE rule in that it clarifies the CBOE's policy with respect to eligibility to participate in the debit put spread pilot program. In addition, by clarifying the requirements applicable to eligible debit put spread, the proposal will facilitate the orderly administration of the pilot program. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1952 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

[1] See Securities exchange Act Release No. 29992 (November 26, 1991), 56 FR 63526 (order approving File Nos. SR-Amex-91-14 and SR-CBOE-91-17 ("Debit Put Spread Approval Order").

[2] *See* Debit Put Spread Approval Order, *supra* note 1.

[Release No. 34-30266; File No. SR-NASD-90-53 Amendment]

Self-Regulatory Organizations; Filing of Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Retention of Jurisdiction and Conforming Changes to the Rules of Fair Practice

January 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is

[1] The NASD, in response to comments from the Commission, has reconsidered and amended the proposed rule change originally filed with the Commission and published for comment in the Federal Register, 55 FR 50432 (December 6, 1990). In

Continued

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, section 5 and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice [2] to retain jurisdiction over member firms and associated persons for two years from the date of resignation, cancellation or revocation of membership or the termination or revocation of an associated person's registration. Proposed new language is in italics; proposed deletions are in brackets.

Proposed Amendments to NASD By-Laws

Article III

Membership

Resignation of Members

Sec. 5 [(a)] Membership in the Association may be voluntarily terminated only by formal resignation. Resignations of members must be in writing and addressed to the Corporation which shall immediately notify the appropriate District Committee. Any member may resign from the Corporation at any time. Such resignation shall not take effect until thirty (30) days after receipt thereof by the Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member [and so long as any examination of such member is in process] *under the Code of Procedure.* The Corporation, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

[Sec. 5(b)] *Sec. 6.* A resigned member *or a member that has had its membership canceled or revoked* shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the effective date of the member's resignation from the Corporation *or the cancellation or revocation of its membership.* Any such complaint, however, shall be filed within [one] *two (2)* years after the effective date of the resignation, *cancellation or revocation.*

Current sections 6–9 renumbered as section 7–10, respectively.

ARTICLE IV

Registered Representatives and Associated Persons

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

Sec. 3(a). Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination, give written notice to the Association on a form designated by the Board of Governors of the termination of such association, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Association. A member [who] *which* does not submit such notification in writing, and provide a copy thereof to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually [or so long as any examination of the member or person associated with such member is in process] *under the Code of Procedure.* The Corporation, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the Association in writing by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the Association and provided to the person whose association with the member has been terminated not later that thirty (30) calendar days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the Corporation *or a person whose registration has been revoked* shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the termination *or revocation or upon such person's failure, while subject to the Corporation's jurisdiction as provided herein, to provide information requested by the Corporation pursuant to Article IV, Section 5 of the NASD Rules of Fair Practice,* but any such complaint shall be filed within:

(a) [one (1)] *two (2)* years after the effective date of termination of registration pursuant to Section 3 above, *provided, however, that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation shall operate to recommence the running of the two-year period under this paragraph;*

(b) two (2) years after the effective date of revocation of registration pursuant to Article V, Section 2 of the Association's Rules of Fair Practice; or,

(c) in the case of an unregistered person, within [(one(1)] *two (2)* years after the date upon which such person ceased to be associated with the member.

Proposed Amendments to NASD Rules of Fair Practice

Article IV

Complaints

Report and Inspection of Books for Purposes of Investigating Complaints

Sec. 5. For the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Corporation or any person associated with a member made or held in accordance with the Code of Procedure, any Local Business Conduct Committee, any District Business Conduct Committee, or the Board of Governors, or any duly authorized member or members of any such Committees or Board or any duly authorized agent or agents of any such Committee or Board shall have the right (1) to require any member of the Corporation, [or] person associated with a member, *or person no longer associated with a member when such*

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addition, the NASD submitted amendment No. 3 which set forth the member vote for the amended proposed rule change and Amendment No. 4 which makes technical changes to the amendment. These amendments are available for inspection and copying in the Public Reference Room.

[2] In response to a request for partial approval, the SEC approved the proposed amendments to Article V, Sections 1 and 3 of the Rules of Fair Practice originally filed with the SEC in SR–NASD–90–53. *See* Securities Exchange Act Release No. 29893 (November 1, 1991), 56 FR 57023 (November 7, 1991). Because there are no other changes proposed for those sections, the NASD is not including those sections in this amendment.

person is subject to the Corporation's jurisdiction to report, *either informally or on the record,* orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such member *or person* with relation to any matter involved in any such investigation or hearing. No *such* member or person [associated with a member,] shall [refuse] *fail* to make any report as required in this Section, or [refuse] *fail* to permit any inspection of books, records and accounts as may be validly called for under this section. *Any notice requiring an oral or written report or calling for an inspection of books, records and accounts pursuant to this section shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Corporation's records.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the amendment to the proposed rule change and discussed any comments it received on the proposed rule change as amended. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In October 1990, after approval by the Board of Governors and the membership, the NASD submitted SR-NASD-90-53 to the SEC proposing amendments to the NASD By-Laws and Rules of Fair Practice to, among other things, codify procedures currently employed by the NASD in processing terminations of associated persons and cancellations and revocations of member firms. The most significant aspect of the procedures currently employed and proposed to be codified by the NASD was the practice of "holding" the effectiveness of the resignation of the membership of a member firm or the termination of the registration of an associated person if the NASD is aware of or is investigating potential violations of the NASD's rules or the federal securities laws by the firm or person. The NASD also proposed to codify the practice of retroactively holding resignations of membership or terminations of registration if it becomes aware of matters which would have resulted in a hold after the termination has been allowed to take effect.

The rule filing also proposed amending the By-Laws to provide that the NASD would continue to retain jurisdiction over a member firm whose membership was cancelled or revoked and an associated person whose registration was revoked. The proposed rule change was intended to correct the situation under the current provisions where the NASD retains jurisdiction over a member who has resigned or an associated person who has terminated his registration, but loses jurisdiction over a member whose membership was cancelled or revoked and an associated person whose registration was revoked.

The NASD has determined to amend the proposed rule change to substitute a fixed two-year jurisdictional period for the proposal to codify the practice of holding the effectiveness of resignations and terminations. Under the current provisions of the By-Laws, the NASD has one year from the effective date of the filing of a resignation of membership [3] or a termination of registration [4] to file a complaint for any actionable misconduct prior to the resignation by the member or termination by the associated person. If the NASD is not aware of misconduct by an associated person at the time a termination takes effect, the time period for filing a complaint could run before action is taken. It is for this reason that the NASD currently retroactively holds resignations and terminations.

The NASD believes that in order to maintain the fairness and effectiveness of the NASD's disciplinary system, the NASD's current one-year time period for retaining jurisdiction to file a complaint should be extended to a fixed two years from the date a resignation or termination is filed or from the date of the NASD's revocation or cancellation of a member or associated person.[5] This proposed amendment will eliminate the need for the NASD to hold the effectiveness of resignations and terminations and to issue letter notices in connection therewith. The NASD believes such a fixed two-year time limit will be less intrusive than the current indefinite and potentially unlimited hold process, and will allow sufficient time to bring virtually all disciplinary actions.

With respect to associated persons, the NASD is also proposing that the two-year period commence from the date of the filing of the last amendment to a person's Form U-5 that is filed within the two-year period. This would provide for the situation where a routine Form U-5 is filed at the time of termination but a subsequent amendment discloses potential violations which would require an investigation. Running the two-year period from the time the last Form U-5 amendment is filed, so long as it is filed within the initial two-year period, will prevent a person from avoiding potential disciplinary action through his own active concealment or the dilatory conduct of others.[6] Moreover, because members are required to send any amended Form U-5s to the terminated person, he or she will have notice of the time from which the two-year period will run. The NASD also notes that the two-year limit would be consistent with current rules which permit a person to become associated with another member without the need to requalify by examination up to two years from his date of termination.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), (7) and (8) of the Act. In pertinent part, this section of the Act mandates that the rules of a national securities association be designed to protect investors and the public interest, provide for the disciplining of members and associated persons for violations of the securities laws, the rules and regulations thereunder, or the Association's rules, and that such rules provide a fair procedure for conducting disciplinary proceedings. By extending the jurisdictional period to a fixed two year period, the NASD is giving unambiguous notice to its members of the requirements of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the

[3] A member is required to advise the NASD of its resignation of membership on a Form BDW.

[4] A member is required to advise the NASD of a termination of or resignation by an associated person on Form U-5.

[5] *See infra* footnote 6.

[6] If a person's Form U-5 is amended on the last day of the two year period, the NASD will, therefore, retain jurisdiction for a total of four years after the effective date of the person's termination.

proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1955 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30269; File No. SR-Phlx-91-49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to the Election of Chairman and Vice Chairmen of Its Board

January 21, 1992.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 9, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the election of the Chairman and Vice Chairmen of its Board as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its By-Law article IV, section 4-2: Election of Chairman and Vice Chairmen of the Board as follows: (additions italicized) SEC. 4-2.

First and Second Paragraph: No change.

After serving two consecutive two-year terms to which he has been elected by the membership, the Chairman shall be ineligible for further service in such office until after an interval of at least one year.

After serving four consecutive one-year terms to which he has been elected by the membership, a Vice Chairman shall be ineligible for further service in such office until after an interval of at least one year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed By-Law amendment is to impose limitations on the number of terms that the Chairman or Vice Chairmen of the Board can be elected. In accordance with Exchange By-Law article XXII, section 22-2,[1] the proposed amendment to By-Law Article IV, section 4-2 was announced to the membership by circular #101-90 dated December 20, 1990. No written responses were filed with the Office of the Secretary requesting a special meeting respecting the proposed amendment. The Board of Governors of the Exchange tabled the consideration of ratification of the proposed By-Law amendment at its February 25 thru 26, 1991 conference. The matter was reconsidered by the Board at its December 18, 1991 meeting at which time it determined to adopt the proposed amendment.

The proposed rule change is consistent with section 6(b)(5) of the Act as it will permit new leadership in the governance of the Exchange, and thereby protect investors and promote the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

By circular #101-90, the Exchange membership was notified of the proposed By-Law amendment. No written comments were received pursuant to By-Law article XXII, section 22-2.

[1] In general, By-Law article XXII, section 22-2 states that any proposed amendment to the Exchange's By-Laws originating in the Board of Governors shall be proposed at a regular or special meeting of the Board, and if approved by twelve of the Governors, shall be announced to the members of the Exchange by sending copies of the proposal to such members. If, within ten days after notification of such proposal, at least seventeen members of the Exchange request, in writing, a special hearing on the proposal, the Chairman of the Board must call a special meeting at which each member of the Exchange in good standing will be entitled to vote. If no such request is made, the Board of Governors may consider the proposal at a regular or special meeting of the Board.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the Phlx. All submissions should refer to File No. SR-Phlx-91-49 and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1953 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 21, 1992.

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:

Agricultural Minerals Co. LP
Sr. Pref. Units, No Par Value (File No. 7-7821)

American Strategic Income Portfolio, Inc.
Common Stock, $0.01 Par Value (File No. 7-7822)

Banco Bilbao Vizcaya International (Gilbralter) Ltd.
American Depository Shares (Rep. one Non-Cum. Gtd. Pref. Share, Series A) (File No. 7-7823)

Bangor Hydro Electric Co.
Common Stock, $5.00 Par Value (File No. 7-7824)

Blackstone North American Government Income Trust
Common Stock, $0.01 Par Value (File No. 7-7825)

Duff & Phelps Utilities Tax-Free Income, Inc.
Common Stock, $0.01 Par Value (File No. 7-7826)

Duty Free International, Inc.
Common Stock, $0.01 Par Value (File No. 7-7827)

First Interstate Bancorp.
Depository Shares (Rep. 1/8th share of 9⅛% Series F pfd. stock, No Par Value) (File No. 7-7828)

Employee Benefit Plan, Inc.
Common Stock, $0.01 Par Value (File No. 7-7829)

Fisher Scientific International, Inc.
Common Stock, $0.01 Par Value (File No. 7-7830)

General Motors Corp.
Pfd. Q Stock, $0.10 Par Value (File No. 7-7831)

Greiner Engineering, Inc.
Common Stock, $0.50 Par Value (File No. 7-7832)

Guaranty National Corp.
Common Stock, $1.00 Par Value (File No. 7-7833)

Healthtrust Inc.—The Hospital Co.
Common Stock, $0.001 Par Value (File No. 7-7834)

Horace Mann Educators Corp.
Common Stock, $0.001 Par Value (File No. 7-7835)

Jundt Growth Fund
Common Stock, $0.01 Par Value (File No. 7-7836)

Lakehead Pipeline Partners LP
Pref. Units (Rep. LP Interests) (File No. 7-7837)

Marriott Corp.
Depository Shares (Rep. 1/1000th of Share Series A Cum. Conv. Pfd., No Par Value (File No. 7-7838)

MuniYield Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7-7839)

Nuveen Premier Insured Municipal Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7840)

Nuveen Premier Municipal Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7841)

Oceaneering International, Inc.
Common Stock, $0.25 Par Value (File No. 7-7842)

Office Depot, Inc.
Common Stock, $0.01 Par Value (File No. 7-7843)

Old Republic International Corp.
Ser. H Cum. Pfd. Stock, No Par Value (File No. 7-7844)

Orbital Engine Corp. Ltd.
American Depository Shares (Rep. 8 Ord. Shares of A, $0.50 each) (File No. 7-7845)

Seligman Quality Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-7846)

Snyder Oil Corp.
$4.00 Conv. Exch. Pfd. Stock, $0.01 Par Value (File No. 7-7847)

Tenneco, Inc.
Depository Shares (Rep. ½ share Ser. A Cum. Pfd. Stock, No Par Value (File No. 7-7848)

TRC Companies, Inc.
Common Stock, $0.10 Par Value (File No. 7-7849)

Tyco Toys, Inc.
Common Stock, $0.01 Par Value (File No. 7-7850)

Van Kampen Merritt Municipal Trust
Common Shares of Benefit, Int., $0.01 Par Value (File No. 7-7851)

Vitro Sociedad Anonima
American Depository Shares (Rep. 1 Ord. Part. Ctf.) (File No. 7-7852)

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 February 11, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications 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.

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[2] 17 CFR 200.30-3(a)(12) (1991).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1959 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

January 21, 1992.

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:

Bankers Trust New York Corporation
Put Warrants on the Nikkei Stock Average expiring 1/16/93 (File No. 7-7805)
Kingdom of Denmark
Put Warrants on the Nikkei Stock Average expiring 1/3/93 (File No. 7-7806)
A/S Eksportfinans
Put Warrants on the Nikkei Stock Average expiring 4/22/93 (File No. 7-7807)
Paine Webber Group
Call Warrants on the Nikkei Stock Average expiring 4/8/93 (File No. 7-7808)
Paine Webber Group
Put Warrants on the Nikkei Stock Average expiring 4/8/93 (File No. 7-7809)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring 1/19/93 (File No. 7-7810)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring 2/16/93 (File No. 7-7811)
Salomon, Inc.
Call Warrants on the Nikkei Stock Average expiring 4/6/93 (File No. 7-7812)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1992, 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 Fifth 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 application is 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. 92-1958 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 21, 1992.

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:

A/S Eksportfinans
Put Warrants on the Nikkei Stock Average expiring April 22, 1993 (File No. 7-7813)
Bankers Trust New York Corporation
Put Warrants on the Nikkei Stock Average expiring January 16, 1993 (File No. 7-7814)
Kingdom of Denmark
Put Warrants on the Nikkei Stock Average expiring January 3, 1993 (File No. 7-7815)
Paine Webber Group Incorporated
Put Warrants on the Nikkei Stock Average expiring April 8, 1993 (File No. 7-7816)
Paine Webber Group Incorporated
Call Warrants on the Nikkei Stock Average expiring April 8, 1993 (File No. 7-7817)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring January 19, 1993 (File No. 7-7818)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring February 16, 1993 (File No. 7-7819)
Salomon, Inc.
Call Warrants on the Nikkei Stock Average expiring April 6, 1993 (File No. 7-7820)

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 February 11, 1992, 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. 92-1957 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 21, 1992.

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:

Chrysler Corporation
13% Debs. due 97, 12% Debs. due 15, 9.60% Notes due 94 (File No. 7-7853)
Citicorp
8⅛% Notes due 07 (File No. 7-7854)
RJR Nabisco Holding
15% Debs. due 01, Disc. Debs. due 01, 10½ Sr. Notes due 98 17⅜ Sr. Debs. due 09 (File No. 7-7855)
Stone Container Corp.
11½% Notes due 99 (File No. 7-7856)
Unisys Corporation
10¾ Notes due 95, 13⅞ Notes due 92 (File No. 7-7857)
USG Corporation
10½ Pay in Kind Debs. due 08 (File No. 7-7858)
Salomon, Inc.
8% Notes due 96 (File No. 7-7859)

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 February 11, 1992,

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. 92-1960 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1559]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Friday, February 21, 1992, and Thursday, May 21, 1992 in room 1912 from 9:30 a.m. to 5 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

The agenda for the February 21 meeting will be to:

1. Approve November 13, 1991, meeting minutes
2. Review results and activities of CCITT Study Group XVIII Meeting (December 2-13, 1991)
3. Consider contributions
   —CCITT Study Group XI (March 9-20, 1992)
   —Others appropriate for Study Group B
4. Consider nominations for U.S. delegation to Study Group XI Meeting
5. Other business

The agenda for the May 21 meeting will be to:

1. Approve February 21, 1992, meeting minutes
2. Review results and activities of CCITT Study Group XI Meeting (March 9-20, 1992)
3. Consider contributions
   —CCITT Study Group XVIII (June 9-19, 1992)
   —Others appropriate for Study Group B
4. Consider nominations for U.S. delegation to Study Group XVIII Meeting
5. Other business

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Please Note: Persons intending to attend the above meeting must announce this not later than five days before the meeting to the Department of State, 202-647-0201 (fax 202-647-7407). The announcement must include name, social security number, and date of birth, if you have not already provided this personal data to this office. The above includes government and non-government attendees. All attendees must use the C-Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If document has been mailed, bring only 10 copies.

Dated: January 16, 1992.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92-2000 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1560]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday, February 18, 1992 at 8:30 a.m. at the Crown Sterling Suites, Fort Lauderdale, Florida. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D. C. 202522-1003, phone: 703/204-6185.

Dated: January 15, 1992.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 92-2003 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1561]

Shipping Coordinating Committee Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting February 26, 1992, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the agenda items to be considered at the thirty-second session of the Marine Environment Protection Committee (MEPC 32) of the International Maritime Organization to be held March 2-6, 1992. Proposed U.S. positions on the agenda items for MEPC 32 will be discussed. The major items for discussion will be the following:

1. Measures for the prevention of pollution including further discussion of requirements for double hulls on new and existing tank vessels to be incorporated into the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, relating thereto (MARPOL 73/78).
2. Guidelines for development of oil spill responsive plans under Regulation 26 of Annex I of MARPOL 73/78. The proposed content of such plans will be discussed.
3. Amendments to the oil discharge criteria of Regulation 9 Annex I of MARPOL 73/78.
4. Development of a comprehensive manual for reception facilities for all annexes of MARPOL 73/78.
5. Prevention of air pollution from ships, including further discussion of emission limits on nitrogen oxides, sulfur oxides, chlorofluorocarbons, and volatile organic carbons from ships. This topic will also touch on fuel oil quality and the impact it has on air pollution.
6. Prevention of pollution by noxious solid substances in bulk and possible development of a new Annex VI of MARPOL 73/78.
7. Transboundary movement of hazardous wastes.
8. Implementation of the International Convention on Oil Pollution

Preparedness, Response and Co-Operation, 1990, (OPRC 90) and resolutions adopted by the International Conference on Oil Pollution Preparedness and Response.

9. Reports of the enforcement of International Maritime Organization conventions by the various signatory member states.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact either Commander W. St. J. Chubb or Lieutenant M.L. McEwen, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street, SW., Washington, DC 20593-0001, telephone: (202) 267-0419.

Dated: January 14, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-2001 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-7-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During Week Ended January 17, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47947
Date filed: January 14, 1992
Parties: Membrs of the International Air Tranport Association
Subject: TC31 Reso/P0906 dated November 8, 1991, North America-TC3 (except Japan), R-1 to R-12 TC31 Reso/P 0907 dated November 8, 1991, North & Central Pacific Areawide, R-13 To R-17 TC31 Reso/ 0908 dated November 8, 1991, Central/South America-TC3, R-18 To R-29 TC31 Reso/P 0910 dated November 8, 1991, Bermuda-Japan, R-30
Proposed Effective Date: April 1, 1992
Docket Number: 47951
Date filed: January 16, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1154 dated November 8, 1991, Within Europe Resos, R-1 To R-26 TC2 Reso/P 1155 dated November, 8, 1991, Within Europe Resos, R-27 To R-30 TC2 Reso/P 1156 dated November 8, 1991, Within Europe Resos, R-31 To R-42 TC2 Reso/P 1157 dated November 8, 1991, Within Europe Resos, R-43 To R-48
Proposed Effective Date: April 1, 1992
Docket Number: 47952
Date filed: January 16, 1992
Parties: Members of the International Air Transport Association
Subject: IATA Traffic Conferences R-1 To R-116
Proposed Effective Date: April 1, 1992

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1951 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-62-M.

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 17, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47950.
Date filed: January 16, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 13, 1992.
Description: Application of Caribbean Air Services, Ltd., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests the issuance of a foreign air carrier permit authorizing nonstop service from Dominica to San Juan, Puerto Rico, nonstop from Dominica to St. Thomas, U.S. Virgin Islands and nonstop from Dominica to St. Croix.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1950 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds, Lincoln General Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30150 to reflect this addition:

Lincoln General Insurance Co. Business Address: 3350 Whiteford Road, York, Pennsylvania, 17402. Underwriting Limitation *b/*: $1,498,000. Surety Licenses *c/*: AL, GA, ID, IA, IN, KS, KY, LA, MD, MO, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, VA, WV, WY. Incorporated In: Pennsylvania.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: January 17, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1926 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-MO

[Dept. Circ. 570, 1991 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Correction, Sorema North America Reinsurance CO.

A notice was published in 57 FR 1513, dated January 14, 1992, whereby a Certificate of Authority as an acceptable surety on Federal bonds was issued to Sorema North America Reinsurance Company, under sections 9304 to 9308, title 31, of the United States Code. The effective date of this action is hereby changed to December 31, 1991, from January 7, 1992.

Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, to reflect this correction.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: January 17, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1928 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-M

Surety Companies Acceptable on Federal Bonds, Liquidation, Universal Security Insurance Co.

Universal Security Insurance Company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 50 FR 27134, July 1, 1985. The Company's authority was terminated by the Department of the Treasury effective May 30, 1986. Notice of the termination was published in the **Federal Register** of June 9, 1986, on page 20919.

On October 28, 1991, upon a petition by the Insurance Commissioner of the State of Tennessee, the Court issued an Order of Liquidation with respect to Universal Security Insurance Company. The Insurance Commissioner of the Commonwealth of Tennessee was appointed as the Liquidator. All persons having claims against Universal Security Insurance Company must file their claims by October 19, 1992, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713 who have not yet filed their claim should do so, in writing, to:

Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875.

Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against Universal Security Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724-7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874-6905.

Dated: January 16, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1927 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Rechartering of the Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS, 901 D Street, SW., room 224, Box 68, Washington, DC 20024, Telephone No. (202) 401-4128 (not a toll free number).

The Internal Revenue Service, Department of the Treasury, pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. I (1982) of October 6, and with approval of the Secretary of the Treasury, announces the renewal of the Charter of the Art Advisory Panel of the Commissioner of Internal Revenue. This determination follows consultation with the Committee Management Secretary, General Services Administration.

Purpose

The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by the taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2412 of the Internal Revenue Code of 1986.

In order for the panel to perform this function, Panel records and discussions must include tax information. Therefore, the Panel meetings will be closed to the public since all portions of the meeting will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest

It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the charter is filed with the appropriate Congressional committees, unless prior to the expiration of its charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5.U.S.C. chapter 6).

Dated: January 21, 1992.

David M. Nummy,

Assistant Secretary, (Management).

[FR Doc. 92-2002 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

American Civilization Workshop/Seminar and Lectureship Programs in the People's Republic of China; Research Grants in the People's Republic of China.

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions and organizations to: A) conduct workshops and seminars in China, B) administer programs to provide lectureships on American Civilization in China, C) administer programs to conduct research in China in areas which contribute to mutual understanding between the United States and the People's Republic of China. Applications may request funds for one, two, or three of the above programs. All program support is subject to the availability of funding.

Support is offered for three categories of institutional programs: Category A, Workshops/Seminars; Category B, Lectureships; and Category C, Research.

Each category has separate conditions and requirements, which are stated in this announcement. Institutions and organizations may compete in any or all of the three categories. Institutions or organizations requesting funds for more than one category may submit one application comprising the total request. However, each category must be described in a separate narrative and must have a separate, detailed budget. Institutions and organizations applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines as well, and are subject to final review by a USIA contracting officer.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Friday, March 20, 1992. Faxed documents will not be accepted, nor will document postmarked on the deadline date but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. Programs may not begin prior to October 1, 1992, or they will be deemed technically ineligible. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Ref: China Grants Competition, Office of Grants Management, E/XE, room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations and institutions should contact: William Shine, U.S. Information Agency, 301 4th Street SW., East Asian/Pacific Branch, Academic Exchanges Division, E/AEF room 238, Washington, DC 20547 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A: Workshops and Seminars

Grant funding under this category is intended to enhance and expand the scope of social science and humanities programs in American Society and Culture in the People's Republic of China. Specific disciplines would include American history, government, literature, law, economics, etc. Individual participants must be citizens of the U.S. Both existing and new projects are eligible.

Duration: Applications will be accepted for projects from at least 15 days to no more than 30 days duration. Programs may not begin earlier than October 1, 1992 and should be completed by September 30, 1993.

Overview: The purpose of this program is to provide opportunities for U.S. institutions and organizations to conduct workshops/seminars in China in American Civilization fields such as history, literature, law, economics, music, political science, art, etc. and thereby give the opportunity for Chinese institutions to offer their members access to recent information and perspectives in American Civilization disciplines, as well as to allow for the substantive exchange of ideas. Workshops and seminars may take place in more than one Chinese city. American organizations are encouraged to propose programs that would include participants from a variety of Chinese institutions. A workshop on American judicial process, for example, could include law professors, students, as well as national and provincial legal officials. Applicants should specify the workshop length and venue(s), the intended audience, the audience's level of sophistication, e.g., faculty, graduate students, researchers, government officials, and whether there would be any co-sponsor.

Guidelines: Preference will be given to organizations with demonstrated expertise in the proposed workshop/seminar fields. Previous experience with conducting workshops in China and/or current working relations with Chinese institutions will be considered a plus. A substantive history of organizing subject-specific programs led by acknowledged experts in the field who also have considerable teaching experience is highly advantageous. Proposals should present a very clearly designed program plan that enunciates specific objectives and that demonstrates the likelihood of substantive follow-through. Be specific as to what issues the workshop/seminar will address and who the intended audience is. In the context of the intended audience(s), please describe clearly the proposed approach, e.g., didactic, participatory, etc.

An experienced staff with excellent Chinese language skills will be a preference factor for this category.

Proposed Budget Category A

Projects: Project awards to U.S. institutions and organizations for Category A can be made in a range of amounts but will not exceed $75,000. The Agency reserves the right to reduce, revise or increase proposal budgets (up to the $75,000 cap). For organizations with less than four years of experience in international exchange activities, total grants (Categories A, B, C) will be limited to a maximum of $60,000 from USIA, and total proposed budget should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note: It is required that requested administrative funds not exceed 20 percent of the amount requested for travel and per diem expenses. This includes both direct and indirect administrative expenses; expenses both administrative and programmatic should be cost-shared to the maximum extent possible.

Category B: Lectureships

Grant funding under this category is intended to enhance the scope of U.S. academic activities with institutions in China which have established programs of instruction at the university level and which deal with American culture and political and social processes. The emphasis should be on graduate level instruction.

Duration: Applications will be accepted from institutions which can

provide lectureships for projects of at least one semester's duration. Grants generally will be made for lectureships occurring within a 12-month period.

Overview: The purpose of these grants is to provide discipline-specific American Civilization instruction at tertiary institutions in China with an established history of instruction in these disciplines and with graduate degree programs in these fields. Experience in curriculum and staff development will be considered a strong advantage. While the short-term goal of such lectureships is to give in-depth and up-to-date information in specific American Civilization disciplines, the longer-term intent is to substantively strengthen existing programs at Chinese institutions of higher education. There is no Chinese language requirement; lectures can be conducted in English.

Guidelines: Grantee organizations and institutions will be responsible for selecting individual participants who would receive funding. Such individuals must be at the Associate Professor level or above in a recognized American Civilization discipline at an American institution of higher education. While going to China to conduct courses or seminars in his or her discipline, an individual grant recipient would also evaluate and make suggestions for curriculum development at his or her host institution. U.S. faculty would be prepared to work closely with Chinese faculty regarding instructional approaches in the specific disciplines. The proposal should include specific topics for graduate-level courses. The proposal must include the criteria for and the mechanics of the actual selection process.

Allowable Costs for Category B

Projects: Project requests may not exceed $55,000 per faculty-participant. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note: A modest amount of support for the organizational or institutional grantee to cover such expenses as participant recruitment, selection and orientation will be allowed.

Category C: Research

Grant funding under this category is intended to enhance and expand the scope of U.S. scholarly research with Chinese institutions such as the Chinese Academy of Social Sciences or similar provincial organizations or institutions involved in social science or humanities research. Such research should assist in promoting mutual understanding between the U.S. and China. Research focusing on comparative approaches in areas such as law, political science, history, sociology, etc. would be especially relevant. Research could include a study on recent translations of American literature, or works of history or economics, or Chinese-American political/cultural relations. Other examples could include research into how and what Chinese university students learn about the American legal or political systems, or comparative studies involving these disciplines. Other topics might concern the history of Sino-American relations or aspects of contemporary China which are of interest to the American scholarly community. An excellent working knowledge of Chinese is required for any work involving comparative studies or field research. The grantee institution is responsible for verifying knowledge of Chinese when required by the research project.

Overview: The short-term objective of a research grant would be to give institutionally-sponsored scholars the opportunity to explore current and recent trends in his or her area of expertise in China. The longer-term goal is to encourage and maintain a scholarly dialogue based upon active research and the exchange of research information.

Guidelines: A Category C grant will be for institutions or organizations which provide a publicly announced, open competition selection process for choosing the recipients of individual research grants. The proposal should include the criteria for and the mechanics of the actual selection process. Individual grantees should be experienced researchers holding a doctorate in his or her field of expertise. The successful individual recipient would present a careful thought-out research design, preferably related to an on-going research project in which the grantee is currently involved. Preference should given to candidates whose research would enhance the exchange of substantive knowledge in his or her discipline between scholars in China and the United States.

Duration: Research projects should be for a minimum of three months duration. Grants will generally be made for exchanges occurring within a 12-month period.

Allowable Costs for Category C

Projects: While grants are likely to involve a wide range of amounts depending on the duration of the stay, cost per participant may not exceed $50,000, including administrative costs. All institutions/organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

* Please Note: A modest amount of support for the organizational and institutional grantee to cover such expenses as participant recruitment, selection and orientation will be allowed where appropriate.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of East Asian and Pacific Affairs, the Press and Culture section of the American Embassy in Beijing, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan—including academic rigor, thorough conception of project, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of Program Plan—capacity of the organization to conduct the exchange; proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity to promoting mutual understanding.

e. Value to U.S.-PRC Relations—the assessment of the need, potential impact, and significance of the project with the PRC.

f. Cost Effectiveness—the overhead and administrative components of grants, as well as salaries and

honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

g. Institutional Capacity—proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

h. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

i. Evaluation Plan—proposals should provide a plan for evaluation by the grantee institution and by individual participants in categories B and C.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1992. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: January 21, 1992.

Carl Howard,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 92-2041 Filed 1-27-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

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).

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Notice of Meeting

TIME AND DATE: Subcommittee meetings 8:00 a.m., February 3, 1992. Full Board 9:00 a.m., February 3, 1992.

PLACE: U.S. Naval Hospital, Portsmouth, Virginia—Commanders Conference Room.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m., Subcommittee Meetings
9:00 a.m., Meeting—Board of Regents

(1) Approval of Minutes—October 28, 1991; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; (10) Report of Dean's Search Committee.
New Business.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295-3028.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2196 Filed 1-24-92; 3:59 pm]

BILLING CODE 3810-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 30, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Prior Approval

a. Proposed Consolidation of the FCB of St. Louis and the FCB of the St. Paul to form Agribank, FCB.

Closed Session *

A. New Business

1. Enforcement Actions

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c) (8) and (9).

Dated: January 23, 1992.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 92-2130 Filed 1-24-92; 2:33 pm]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, February 3, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2174 Filed 1-24-92; 2:34 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-2]

TIME AND DATE: February 13, 1992 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Petitions and complaints: Certain dynamic sequential gradient devices (Docket Number 1668).
5. Inv. 731-TA-542-544 (Preliminary) (Potassium hydroxide, Liquid and Dry from Canada, Italy, and the United Kingdom)—briefing and vote.
6. Any items over from the previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: January 23, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-2129 Filed 1-24-92; 2:32 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 27, February 3, 10, and 17, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 27

Wednesday, January 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 3—Tentative

Wednesday, February 5

9:30 a.m.
Briefing on Pending Investigation (Closed—Ex. 5 and 7)
1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday February 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 10—Tentative

Wednesday, February 12

1:30 p.m.
Briefing on Requirements for Integral System Testing of Westinghouse AP-600 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 17—Tentative

Friday, February 21

10:00 a.m.
IG Briefing on Review of NRC Programs (Open/Closed to be determined)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: January 23, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92-2182 Filed 1-24-92; 2:35 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
January 28, 1992

Part II

Department of Education

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Years 1992 and 1993; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Years 1992 and 1993

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary proposes funding priorities for fiscal years 1992 and 1993 for the following:

Research in Education of Individuals with Disabilities Program, 84.023
- Initial Career Awards
- Research on Self-Determination in Individuals with Disabilities
- Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools
- Ombudsmen Projects for Children and Youth with Disabilities

Special Studies Program, 84.159
- State Agency—Federal Evaluation Studies Projects
- State Agency—Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness
- The Center for Special Education Finance

Technology, Educational Media and Materials for Individuals with Disabilities Program, 84.180
- Innovative Applications of Technology to Enhance Experiences in the Arts for Children with Disabilities
- Studying How the Design of Software and Computer-Assisted Media and Materials Can Enhance the Instruction of Preschool Children with Disabilities
- Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology

Program for Children and Youth with Serious Emotional Disturbance, 84.237
- School Preparedness for Developing Well Adjusted Students

These four programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal years 1992 and 1993. A separate competition will be established for each priority that is selected.

DATES: Comments must be received on or before February 27, 1992 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program; March 30, 1992 for the Research in Education of Individuals with Disabilities Program; and April 27, 1992 for the Special Studies Program.

ADDRESSES: Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3095—M/S 2313-2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732-1099. (TDD #: (202) 732-6153.)

SUPPLEMENTARY INFORMATION: This notice represents a consolidated notice for fiscal years (FY) 1992 and 1993 of proposed priorities for certain discretionary grant programs administered by the Office of Special Education Programs. Publication of these priorities does not preclude the Secretary from changing these priorities, or publishing additional priorities, nor is there any limitation on the Secretary to fund only these priorities, subject to meeting applicable rulemaking requirements. Closing dates for all fiscal year 1992 competitions will be announced with publication of the final priorities.

All of the proposed priorities will contribute in some way to including children with disabilities in the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors. Four priorities are expected to be particularly important in supporting that strategy.

Priority 4 of the Research in Education of Individuals with Disabilities Program would support projects to develop and implement systemic changes at the school level that will incorporate effective practices for children with disabilities into broader educational reform and restructuring initiatives.

Under the Special Studies Program, priorities 1 and 2, the Secretary has especially invited applications for State agency—Federal Evaluation Studies Projects that address reform policies and practices or that deal with the measurement of student outcomes as indicators of program effectiveness.

Also, priority 4 under the Special Studies Program would support a Center for Special Education Finance that would identify accounting procedures that would support greater flexibility in the use of Federal, State, and local funds.

Paperwork Reduction Act of 1980

These priorities contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priorities to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Public or private non-profit agencies, institutions, or organizations would be required to address the absolute priorities in order to be considered by the Secretary for grants under this program. The Secretary needs and uses this information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 42 hours per response for 30 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the 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.

Title of Program: Research in Education of Individuals with Disabilities Program

CFDA No. 84.023.

Purpose: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441-1443), provides: (1) Support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to learn successfully; and (2) research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Proposed Priorities: The secretary proposes to establish the following priorities for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a

doctoral program and graduated no earlier than the 1987–88 academic year for fiscal year 1992 awards. For fiscal year 1993 awards, individuals must have completed a doctoral program and graduated no earlier than the 1988–1989 academic year. Applicants are encouraged to recruit individuals who are members of racial or ethnic minority groups. This priority supports projects to conduct research and related activities focusing on early intervention services and special education consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to represent all inquiry related to the particular theory or conceptual framework. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution of the line of inquiry will substantially improve early intervention services and special education. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to conducting the proposed research. These experts do not have to be at the same institution or agency as the applicant. This interaction must be of sufficient frequency and duration for the researcher to develop the capacity to pursue effectively the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project procedures, findings, and conclusion must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 2: Research on Self-Determination in Individuals With Disabilities (CFDA 84.023J)

Issue

Individuals with disabilities have identified self-determination, self-efficacy, self-advocacy, and maximum independence as major goals for the disability movement. These goals emphasize the need for individuals with disabilities to learn to make choices, set goals regarding their lives and the services they receive, and to initiate actions to achieve those goals. The ability of individuals to make choices may also be an important component in being perceived by others as independent and self-determining.

Self-determination has also been described as including one or more of the following: Goal setting, social interaction, communication, assertiveness, decision making, and self-advocacy. These behaviors (as well as others yet to be identified) and groups of behaviors overlap, making distinctions difficult. Comprehensive conceptual framework representing alternative perspectives are needed to advance the assessment of current school practices in relation to the development of self-determinated behavior. There is a need to identify the relationships and influences of the major sub-components of self-determination in order to provide a stronger conceptual base on which to develop improved assessment. Procedures for defining, identifying, and validating assessment approaches need advancement.

Background

The value of participation in society by individuals with disabilities has prompted professionals and advocates to provide them with previously unavailable opportunities to participate in normalized environments and integrated community settings. While legislation, litigation, and publicly supported programs have promoted the inclusion of individuals with disabilities into the mainstream, many of the barriers to successful inclusion remain beyond the remedy of legislatures, courts, and professional advocacy. An increasing consensus by individuals with disabilities is that full inclusion will require the individual to overcome the stereotypes of disability. These stereotypes are viewed as promoting passive acceptance, learned helplessness, and political inaction. The keys to change are programs, parents, and education or rehabilitation professionals that emphasize independence as more than the performance of basic social and vocational skills. The development of individuality, self-esteem, goal oriented behavior, assertive behavior, and decision making ability are also critical outcomes.

The development of self-determined behavior and attitudes in students with disabilities has been hampered by lack of a definition of self-determination, limited models of programs or methodologies for achieving self-determination, limited expectations of parents and professionals, and emphasis on the development of services as opposed to the development of the individual. Although all of these factors have impeded the development of self-determination in students, none is more critical than the development of valid and operational definitions of self-determination. It is essential to develop approaches for assessing its level in order to include it as a component in program design and service delivery.

Purpose

The purpose of this priority is to fund up to three cooperative agreements for up to two years to provide an operational definition for self-determination and assessment approaches for determining the level of self-determination. The assessment approaches must also provide methodologies for improving the operational definition of self-determination.

Project activities must also develop a better understanding of self-determination as an outcome of schooling. The nature and scope of traditional outcome measurement must be broadened to assess the degree to which individuals with disabilities set goals and initiate and sustain actions to achieve those goals. It is anticipated that the development of a validated assessment of self-determination will provide for a better balance between societal and individual outcomes as well as provide educators a vehicle for defining and measuring self-determination as an explicit educational goal. Finally, project activities will result in a conceptual model and tool for assessing a program's contribution to developing self-determining behaviors and attitudes of individuals with disabilities.

Activities

Projects must: (1) Develop a conceptual framework of self-

determination; (2) identify the individual characteristics and behaviors of self-determination; (3) develop, validate, and field test an assessment approach for operationally defining and measuring self-determination; (4) collaborate with other projects to maximize project benefits; and, (5) disseminate project findings to individuals with disabilities and professionals involved in service delivery planning or evaluation.

Develop a Conceptual Framework. Several activities are required in developing a conceptual framework of the constructs of self-determination. Information must be gathered from multiple sources and methodologies to produce a conceptual framework that is comprehensive, sensitive to individual differences, and can provide the framework for the project. Sources must include: (1) Professional research and theoretical literature from education, rehabilitation, and other relevant disciplines; (2) interviews with individuals with disabilities exhibiting self-determination; and (3) interviews with service providers and researchers. Projects must analyze this information and develop a conceptual framework comprised of the constructs identified as a result of these activities. The conceptual framework must identify hypothesized relationships that may be correlated with identified variables of self-determination. After the conceptual framework has been developed, each project must convene a panel consisting of individuals with disabilities, parents of individuals with disabilities, instructional personnel, and other persons providing services in the area of disabilities. These panels must provide input as to the validity of the conceptual framework in delineating the diverse concept of self-determination.

Identify the Individual Variables of Self-Determination. Once the conceptual framework has been developed, the project must develop procedures for identifying the variables for each construct. These variables will serve as the basis for the development of an assessment approach to provide information regarding the individual relevant to self-determination. The approach may represent self-determination as developmental in nature or as demonstrated at particular points in time. From a developmental perspective self-determination might include the progressive stages of skills, attitudes, and knowledge representing identified constructs. These stages may be grade referenced (e.g., K–3, 4–6, etc.) or age referenced. For the latter approach, the individual's level of self-determination would be considered at a particular point in time for a specific purpose (e.g., choosing a roommate). The level could be determined by observation or a rating provided by an individual familiar with the individual's abilities and limitations. Regardless of the approach, the variable must be sensitive to individual characteristics affecting self-determination such as: age, level of functioning, cultural differences, and nature of disability; and sample the domains of school, home, work, and community. The development of the assessment approach must include the active participation of the above mentioned panel of individuals with disabilities in the identification and validation of variables associated with self-determined behavior. The participation of professionals (advcates, researchers, teachers, etc.) and parents must be included so as to ensure both the acceptance and usability of the assessment approach.

Validate and Field Test Assessment Approach. Projects must develop, validate, and field test an assessment approach to self-determination. An assessment approach must include the identification, definition, measurement, and validation of key constructs related to self-determination. The assessment approach must include a rationale and activities required to operationally define and measure self-determination. Projects must employ methodologies for deriving the self-determination variables that are consistent with the development of an assessment approach that will be sensitive to a range of individual student abilities, backgrounds, and situations. Field testing must provide a clear indication of the utility of the approach in school settings. The assessment approach must produce descriptions of student behaviors and characteristics that are useful in designing instructional units for the development of self-determination.

First, projects must pilot the assessment with individuals with disabilities. The pilot must include individuals representative of the age, functioning level, and environments of its intended consumers. The pilot must guide the revision of the approach prior to a full scale field test.

Following the pilot procedures, a larger scale field test of the assessment must be conducted. The sample for this activity must be large enough to allow the determination of the technical adequacy of the assessment, including reliability and validity.

Collaboration Activities. Projects must budget for a meeting to establish a collaborative relationship with other projects funded under this priority. This meeting serves as a forum for refining the self-determination variables proposed by each project and arranging a process for the exchange of project information and materials. It is anticipated that the collaboration activities will enhance conceptualization of self-determination by incorporating varying perspectives and methods of validation.

Dissemination. Projects must disseminate the project's findings and products, and provide opportunities for input by groups regarding the educational and programmatic implications of the findings of the projects and the continued refinement of the concept of self-determination. Input must be sought, at a minimum, from representatives of the following groups: individuals with disabilities, parents of students with disabilities, professionals involved in instruction and planning for individuals with disabilities, and other individuals relevant at a given stage of the individual with disabilities life (e.g. residential providers, rehabilitation counselors, employers, etc.).

Additional Federal Requirements. Projects must budget to attend the annual Project Directors' Meeting to be held in Washington, DC.

Priority 3: Including Children With Disabilities as a Part of Systemic Efforts To Restructure Schools (CFDA 84.023R)

Issue

Educational reform and restructuring initiatives intended to improve the educational outcomes of our Nation's children must be designed to accommodate the diverse characteristics and learning needs of children with disabilities. Educational reform and restructuring activities are stimulating changes in schools across the Nation. Restructuring represents systemic efforts to alter the policy, organizational, and belief frameworks of administrators, teachers, parents, and students to improve the learning and educational outcomes of students. The nature and focus of restructuring varies from school to school. Restructuring may occur on a State, district or building level. It may include site-based management approaches which emphasize the decentralization of control and decision making. In some schools, site-based management is being implemented in conjunction with modifications in curricular approaches, instructional patterns, and assessment. Current experimentation with providing parents and their children with greater "choice in education" represents, in

some cases, another example of restructuring.

Background

The Division of Innovation and Development, Office of Special Education Programs (DID/OSEP), has focused previously upon identifying and implementing specific educational interventions and strategies in classrooms and schools. Since 1985 DID/OSEP has invested systematically in a program of research and development to improve the instruction, curricula, classroom management, and assessment of children with disabilities who are being educated in general classroom environments. Eight research competitions, comprising 41 projects, have been conducted in the past five years. These projects, however, have not addressed the question of how innovations that achieve meaningful participation and better results for children with disabilities in general school environments can become part of broader efforts to systemically restructure schools.

These projects provide direction, define practices, and chart implementation requirements for adopting specific innovations. Predominantly, these funded projects have relied on external researchers rather than administrators and teachers to stimulate and support ongoing implementation of school innovation. Such externally oriented models have not focused on the basic systemic changes required to incorporate these effective practices into broader system-wide, school-based educational reform and restructuring initiatives.

Innovations must be incorporated into the complex organizational system of the school. The processes required for generating innovations, developing effective applications, and determining implementation requirements are different from those needed to achieve broader systemic change in order to implement innovations. Too often, innovation activities have been supported, and dissemination activities encouraged, but little attention has been provided to the developmental stages and levels of implementation support required to achieve effective adoption of innovations.

Purpose

This priority will support up to 7 projects for up to 48 months to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school based educational reform and restructuring initiatives. Projects must identify the critical policy, organizational, administrative and operating features for transforming schools into learning organizations and systems that are capable of continually monitoring their activities and performance in order to achieve better educational outcomes for children with disabilities. Systemic variables must be identified and addressed. These include, for example, continuity of services for individual students (e.g., communication between multiple service providers), linkages among systems, fluidity of a system for facilitating movement of services and individuals between components (e.g., so that services can be provided regardless of setting), and preparedness of a system for effectively meeting the diverse characteristics that students present to schools. These features embody the dynamic, generative thinking and creative experimentation of organizations. These projects must identify essential systemic design features, specifications, and choices for schools engaged in educational reform and restructuring necessary for achieving better education outcomes for all children, including those with disabilities.

Educational outcomes must be broadly stated and must be valued by society for children with disabilities. The attainment of an educational outcome must reflect more than an incremental change in performance and be an accomplishment generally valued by society. Illustrations of such outcomes might include: personal adjustment, social or communicative competence, productivity, physical or motoric achievements, quantitative thinking, reasoning, and achievements in the visual and performing arts.

Projects must: (a) Establish basic orienting premises to guide the systemic design for school sites to meet the needs of children with disabilities in the context of addressing the diverse conditions and complex learning needs of all children; (b) specify broad educational outcomes that are valued by society and reflect accumulated learning and accomplishments in diverse areas; (c) identify systemic design features required for all children including those with disabilities to achieve these educational outcomes; (d) develop a multi-year plan for effecting systemic changes; and (e) conduct case studies on the change processes, effects and impact of implementing these systemic changes.

Activities

Site Selection. Projects must occur in schools that already are planning for or engaged in some substantive or procedural restructuring initiative. An individual school must demonstrate a commitment to both systemic changes as well as adoption of effective professional practices that will address the diversity and complexity of learning needs of children with disabilities. Projects must indicate the systemic changes and activities that funds from this grant will support in relation to their ongoing restructuring initiative. Schools must already have a number of children with disabilities integrated into regular classroom activities. Children with disabilities must represent a range in types of disability as well as severity.

Project Planning. An initial planning phase of up to one year is anticipated. Extensive efforts must be made during this time to involve faculty, parents, individuals with disabilities, regular and special education research experts, other community agencies, innovative practitioners, and others as appropriate. The plan must include systemic planning, change, and feedback activities that develop and maintain ongoing school administrative and faculty commitment to implementing their reform and restructuring initiatives. The reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation and achieve better educational outcomes for children with disabilities. Initial planning activities must include:

(1) *Clarification and specification of the premises, goals, and outcomes of the project in relation to the school's current or planned reform and restructuring initiatives.* The project must refine its initial statements of basic orienting premises to guide the project. Goals of the project must specify systemic features, action required, and aim. Projects must specify the diverse educational outcomes that the school is committed to achieving for all children, including those with disabilities. Each site must demonstrate that the school's educational outcomes will reflect a diversity of areas and levels of potential accomplishment for children with disabilities.

(2) *Specification of the ongoing planning processes, procedures, and participants needed to govern, design, implement and assess the project.* The project must develop and implement an operational plan that includes a planning process and procedures that provide for the participation of a substantial number or proportion of general education and special education teachers in the school, building and district administrators, school board representatives, support staff, parents, individuals with disabilities, community

agency representatives, and regular and special education researchers. The operational plan must reflect the project's vision of the school district and the community (e.g., regional health, mental, social, and correction agencies; voluntary organizations; business; institutions of higher education; and families). Ongoing planning procedures must be related to: project premises, goals, systemic targets for change, systemic design features, systemic change, feedback on project progress, and evaluation of project effects and impact.

(3) *Refine operational plan and schedule of activities to be undertaken in order to achieve project goals.* This plan of operation must address, but is not limited to, the following restructuring activities: Planning, organizational development, clarification of project basic orienting premises, project goals, specification of educational outcomes, system design activities, systemic change and project evaluation. For each of these restructuring activities the project must develop objectives, establish timelines, identify resources needed, identify barriers to be overcome, assign responsibilities for these activities, and establish performance measures to determine progress and problems related to implementation of each activity. The plan of operation must give particular attention to the dynamic nature of systemic change as the plan develops and progresses through levels of implementation.

(4) *Procedures to determine the effectiveness and impact of the project.* Procedures should include assessing all project activities, the effectiveness and impact of systemic design features, extent of attainment of project goals. Each project must develop and conduct rigorously designed evaluation activities that document or validate project findings, and provide new insights related to the varied aspects of designing and implementing systemic change.

Implement and Evaluate Project Plans. Projects must implement their operational plan and schedule of activities in a manner to achieve their goals within a 48 month period. It is expected that activities will be phased in over the years. Project progress, effectiveness, and impact will be assessed consistent with the design and measures developed and refined during the planning and implementation phases of the project.

Collaboration. Projects must budget for one meeting per year with other grantees from this competition, as well as funds to attend the annual meeting of project directors for the Division of Innovation and Development. Projects must collaborate with other projects from the competition on an ongoing basis to determine joint products and activities that would be useful to other schools considering or engaged in educational reform and restructuring initiatives.

Dissemination. Projects must disseminate information about the project on an ongoing basis to other schools in their area, State or region. Projects must also develop plans to disseminate findings of the project. Project dissemination must focus on basic orienting premises, systemic design features and their effectiveness and impact, and implications for school-based reform and restructuring initiatives in a form usable by such audiences as teachers and administrators.

Priority 4: Ombudsperson Services for Children and Youth With Disabilities (CFDA 84.023M)

Issue

The determination of the appropriateness of an educational program for students with disabilities is often a complex and emotional process involving students with disabilities, their parents, and an increasing number of professionals. It is not surprising that in some instances the process breaks down due to an inability to communicate and resolve issues; barriers consisting of lack of access, availability or appropriateness of services; or a host of other systemic reasons.

Currently, several State and local educational agencies have enacted mediation programs as part of the administrative remedy requirement under due process requirements. Although reactive mediation services may help to prevent formal due process reviews, they begin only after a conflict has arisen. Reactive programs tend to focus on individual problem resolution, often adding little to resolving or preventing underlying systemic issues.

Ombudsperson services represent the ability to proactively identify systemic problems and to initiate actions to prevent and/or lessen the impact on individuals with disabilities and their families. This priority would require that the ombudsperson identify the various key integrating systems in their community or region. These integrating entities would serve to refer individuals or identify recurrent problems that relate to individuals with disabilities and their families. This type of proactive impartial mediation would enable the ombudsperson to proactively identify systemic problems and issues.

Background

A variety of regulatory and organizational factors have often resulted in the service delivery system for individuals with disabilities lacking the capacity to be fully responsive to the needs of these individuals. One approach for addressing this unresponsiveness has been the ombudsperson model. This model was developed in Scandinavian countries and refers to individuals, often employed by a government entity such as the legislature, who assist citizens by investigating complaints against the government. For the purposes of this priority, an ombudsperson refers to any individual who acts as a liaison, to assist in and mediate interactions with a service system. Ombudspersons do not perform individual advocacy in a traditional sense. The intent of the relationship with beneficiaries is not intended to be personalized nor long-term as in advocacy relationships.

Ombudspersons operate externally to the system, thereby avoiding apparent conflict of interest, partiality, or other susceptibility to system influence. Consistent with the concept of an ombudsperson program, this role must be perceived and performed by persons who maintain a problem solving meditational position, not an advocacy position. They participate in a variety of activities designed to "personalize" a service system by making it more responsive to individuals. Ombudspersons are not responsible for enforcing laws or regulations, but are intended to secure fairness in the government's interactions with citizens. They have no legal authority to enforce a decision or force action on the part of any party, however they may exercise great systemic pressure by identifying service inequities and inadequacies and bringing these to the public's attention. Ombudspersons' power is that of impartiality, mediation, and social pressure derived, frequently, by focusing attention on a problem. While they are not considered responsible for solving problems between citizens and government, they can make recommendations to appropriate policy making entities.

Purpose

The purpose of this priority is to support and assess projects that will provide ombudsperson services to assist in resolving problems that are systemic barriers to appropriate educational, related services, or other services for

children and youth with disabilities. Assistance is to be provided to children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve systemic problems in a timely manner. Participation in this ombudsperson program does not preclude or delay due process under Part B of IDEA.

Specific objectives of the projects are to: (a) Design an ombudsperson program within a local, regional, or State system; (b) develop and complete all preparation necessary to fully implement the ombudsperson program; (c) determine the feasibility of the ombudsperson role, function, and procedures; and (d) fully implement and evaluate the impact of the ombudsperson program for resolving problems that are related to the delivery of special education and related services, and mediating systemic conflicts involving students with disabilities and their families. This priority will be implemented in two phases.

Phase 1

This phase will support from five to seven projects for up to eighteen months to design, develop and prepare for full implementation, and assess the feasibility of an ombudsperson program at the local, regional, or State level. Each project must provide letters of commitment from relevant agencies, including schools, to participate in the Phase 1 design and development, and the Phase 2 full implementation and evaluation activities.

Projects must focus on designing proactive systems oriented strategies. In this approach, an ombudsperson serves as a catalyst for change on a system, agency, or institutional level. By focusing on a proactive approach, the ombudsperson program must anticipate and prevent problems in service delivery by identifying problem antecedents and consequences. The contributions of this program include identifying, defining, and resolving systemic issues related to the responsiveness and appropriateness of the service system to address the needs of students with disabilities. For example, the initial response to the identification of a systemic problem would be the clarification and communication of the problem to the affected parties. In many cases, this may be sufficient to make resolution or additional options possible. If this is unsuccessful, the ombudsperson may attempt to provide linkages between the interested parties, to provide additional support, or provide technical assistance. If this is ineffective, the ombudsperson may work with a State level representative, whose primary responsibilities are complain management. Finally the ombudsperson could work with the State Advisory Committee established under Part B of IDEA, local interagency coordination councils, local/ State Developmental Disabilities Councils, and/or Governor's councils or commissions on disability issues.

Phase 1 Activities

Site Description. During Phase 1, projects must prepare an indepth description of the project. These descriptions must include: (a) The current organizational framework for the unit with which the ombudsperson will work (e.g. school, local educational agency, intermediate educational unit); (b) an overview of currently available services for students with disabilities in addition to those provided by the schools; (c) a description of current formal and informal patterns of interaction of the school with other service providers; (d) measures of consumer satisfaction with current services; (e) other information that documents the current system improvement needs of the schools and their potential for pursuing innovative approaches to address those needs.

Each project must also identify the level(s) (local, regional or State) for which the program will be fully implemented. The level selected must be appropriate for establishing an effective relationship with the organizational structure of current or potential service providers for children and youth with disabilities and their families (e.g., schools, social service providers, juvenile justice systems). Project sites must be selected where the fiscal and administrative experience would support the Phase 2 full implementation of the ombudsperson innovative program.

Program Design and Development. The ombudsperson service must not replace or replicate existing advocacy services or informational programs currently provided for under the Developmental Disabilities Act or provided by professional or parent organizations or associations. Under no circumstances should the activities of these projects alter access to redress under the due process requirements of the Individuals with Disabilities Education Act (IDEA).

Each project's design must include the following components. A detailed process by which the ombudsperson roles, functions, and procedures will be defined and developed within the current service system. The process must include the participation of potential service providers for children and youth with disabilities and their families in addition to the school system (e.g., mental health, social services, child welfare, court system, and juvenile corrections providers).

Each project must identify and develop strategies to address the potential barriers and issues for implementing ombudsperson services. In addition, each project must design and develop strategies for how ombudsperson services will be made available and known to consumers and training ombudspersons. Projects must describe the process and procedures for gaining acceptance of the various service providers, including schools and parents, for the role, function, and procedures of the ombudsperson. Further, the design must include a procedure by which the activities of the ombudsperson may be supervised and the program held accountable. This might entail direct reporting to State department level officials via a public annual report or some other method for monitoring the program activities.

Potential ombudspersons must be identified from the following groups: Parent advocates, social workers, special education personnel, or psychologists. Selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families. Consistent with the concept of ombudsperson services, this role must be perceived and performed by persons who maintain a problem solving mediational position, not an advocacy position. Each project must identify individuals who: (a) Are external to the existing system of service delivery; (b) possess or will be trained in problem solving skills, mediational skills, and systemic change processes; (c) are knowledgeable of issues related to the provision of an appropriate education program for students with disabilities, including issues related to the coordination and collaboration of services external to the school system.

Phase 1 activities must include obtaining information on available services, and current service eligibility requirements. This information must be made accessible and available to children and youth with disabilities and their families.

These ombudsperson services must be integrated within the prior scheme of service delivery so that they may be continued following the period of the award. Each project must provide

evidence of support for obtaining resources following the Phase 1 funding period.

Determining Feasibility of the Ombudsperson Program Design. In Phase 1, each project must develop and implement procedures for (a) assessing the feasibility of the design and implementation requirements of the ombudsperson role, function, and procedures at the level (local, regional, or State) of the project; (b) determining the potential for the ombudsperson program to proactively resolve systemic improvement issues that are related to the delivery of special education and related services; and (c) determining the likelihood that they can successfully complete Phase II activities. Criteria for determining the feasibility of the program must include, but are not limited to: policy, fiscal, administrative, procedural, personnel, attitudes, and participant support for ombudsperson services; and must include quantitative as well as qualitative methods such as simulation, case studies, or piloting of program features.

Collaboration. The Department has substantial interest in these projects being able to collectively contribute to advancing an understanding of the design features and implementation issues and solutions to developing ombudsperson services. All projects must collaborate with each other and with the Department to: (a) synthesize their individual designs for ombudsperson roles, functions, and procedures; (b) identify issues, barriers, and solutions to fully implement the ombudsperson services; and (c) describe their feasibility findings for fully implementing ombudsperson services. Projects must budget three trips to Washington, DC for the purpose of developing a cross-project dissemination product.

Phase 2

This phase will provide continued support for between two to three projects from Phase 1 for an additional two years. The purpose of this phase is to fully implement and evaluate the effectiveness of ombudsperson services for proactively resolving systemic problems related to the delivery of special education and related services.

Phase 2 projects will be selected based on: (a) The potential that the different project designs offer for contributing to the understanding of ombudsperson roles, functions, and procedures; (b) the increase in understanding of the implementation requirements for differing contexts; (c) evidence gathered during Phase 1 regarding the feasibility of ombudsperson designs and full implementation for proactively identifying systemic issues and responding to needs for system improvements; and (d) the ability of projects to obtain funding from local, regional, or State sources to continue activities following the Phase 2 funding period.

Phase 2 Activities

Procedures for Assuring the Integrity of Implementation. Each project selected for Phase 2 must have a schedule for full implementation of ombudsperson services. This schedule must reflect a sequence and progression of activities consistent with the extensive literature on achieving the full implementation and change associated with adoption of innovations. Critical commitments and participation for fully implementing ombudsperson services must be obtained. Procedures for assuring the integrity of implementation must be operative. The full implementation of the ombudsperson program must be achieved, and the documentation maintained that describes the participation of relevant parties as well as the process and stages of change.

Evaluating Ombudsperson Services. Projects must rigorously test the overall effectiveness of ombudsperson series. Key program designs and overall features must also be documented so that others interested in utilizing these designs and features could evaluate their applicability and potential for implementation in their school district and community.

The evaluation process must be multi-dimensional using quantitative and qualitative information to provide a detailed account of the project from a service providers perspective, consumer perspective, parent perspective, and policy makers perspective.

The evaluation plan must assess the effectiveness of proactive systems oriented ombudsperson services as a means for identifying and addressing needed systemic improvement, and which enhances the responsiveness and appropriateness of services to meet the needs of children with disabilities.

Collaboration. The Department has substantial interest in projects awarded under this priority. This interest includes capturing across projects the effectiveness of solutions to the full range, nature, and context of implementation requirements for providing ombudsperson services. Projects must collaborate with each other and with the Department in designing their Phase 2 activities to permit across project summary of findings and lessons learned. Projects must also cooperate with the Department in working with coalitions of professional and parent organizations to develop cross-project dissemination materials for their respective membership.

Project Dissemination. Dissemination of project information is a significant aspect of Phase 2 activities. Each project must plan to disseminate information through existing professional and parent organizations, technical assistance providers, and other relevant information providers that disseminate to local, State, and national levels. These dissemination activities must also be incorporated with the project design to facilitate public awareness on the local and regional level.

Project Directors must plan to attend the two day Project Directors meeting to be held in Washington, D.C. each year of the project. In addition, two meetings will be scheduled with all Phase 2 projects prior to the end of their award period for the purpose of developing a cross-project dissemination product. This meeting will last for two days and be held in Washington, DC.

Selection Criteria: The following selection criteria will be used to evaluate applications for projects submitted under this priority. The maximum score for all of the criteria is 100 points.

(a) *Innovativeness.* (10 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides innovative design features in developing ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families.

(b) *Importance and impact.* (10 points) The Secretary reviews each application to determine—

(1) The extend to which the focus of ombudsperson services addressed by the proposed project is of significance to others in the Nation;

(2) The importance of the project in addressing the problem or issue; and

(3) The probable impact of ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families (e.g. evidence of responsiveness and appropriations of services, reduced legal costs, or reduced tension or conflict between schools and families).

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(v) An effective performance measurement system for assessing project progress and implementation.

(d) *Technical soundness.* (20 points)

(1) The Secretary reviews each application to determine the procedural and methodological soundness of the plan for the development, and feasibility of full implementation of the project with respect to such matters as—

(i) The design and development process;

(ii) Procedures for establishing the integrity of project activity implementation in Phase 1 and 2;

(iii) Coordination with other service providers;

(iv) The design and measurement of Phase 1 system feasibility for resolving service delivery and systemic problems;

(v) The proposed site sample; and

(vi) The data analysis procedures for determining Phase 1 feasibility.

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project—

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The qualifications of each of the other key personnel to be used in the project;

(iii) the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling conditions.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(f) *Organizational capability.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate;

(iii) The applicant's experience in special education or early intervention services;

(iv) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively; and

(v) the strength of the commitment to fully implement ombudsperson services.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation of Ombudsperson Services.* (15 points)

(1) The Secretary reviews each application to determine the quality of the Phase 2 evaluation plan.

(2) The Secretary looks for—

(i) Rigor of evaluation design and measurement for addressing implementation requirements and barriers;

(ii) Rigor of evaluation design and measurement for studying effectiveness of key features of ombudsperson services;

(iii) Analysis procedures for determining overall ombudsperson service effectiveness; and

(iv) Rigor of evaluation design and measurement for determining impact of ombudsperson services as a proactive systems oriented approach.

Title of Program: Special Studies Program

CFDA No: 84.159.

Purpose: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

Proposed Priorities: The Secretary proposes to establish the following priorities under the Special Studies Program, CFDA No. 84.159. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: State Agency—Federal Evaluation Studies Projects (CFDA 84.159A)

This priority supports cooperative agreements with State agencies for evaluation studies to assess the impact and effectiveness of activities provided for under the Individuals with Disabilities Education Act (IDEA). With this priority, the Secretary particularly invites studies that: (1) Assess State and local educational reform policies and practices such as the impact of restructuring initiatives (e.g. site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); and (2) measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), and (2) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Individuals with Disabilities Education Act.

Eligible applicants are State educational agencies, and other State agencies that administer early intervention programs for infants and toddlers with disabilities under part H of the Individuals with Disabilities Education Act. An award under this competition provides not more than sixty percent (60%) of the total cost of the studies project, and the State agency provides an amount not less than 40 percent (40%) of the total cost of the studies project. Awards will be made for a period of up to, but not more than, 24 months.

Priority 2: State Agency—Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness (CFDA 84.159F)

This priority supports cooperative agreements with State agencies to perform feasibility studies. The purpose of the feasibility study is to develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and to determine if the conceptual framework is workable. This priority is for topics having significant potential, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis. Within this priority, the Secretary particularly invites studies that: (1) Assess State and local educational reform policies and practices such as the impact of restructuring initiatives (e.g. site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); and (2) measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1) and (2) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Individuals with Disabilities Education Act (IDEA).

Projects must: (1) Conduct a literature review of the issue for study; (2) develop of one or more conceptual frameworks which identify key dependent and independent variables (influencing factors) and their interrelationships; (3) identify project participants; (4) assess access to the project sample; (5) identify the availability and the quality of data sources for the variables identified in the conceptual framework; (6) develop a list of evaluation questions that can be addressed with these data; (7) identify the form in which data must be analyzed, displayed, and disseminated; (8) determine all of the relevant data found for the variables; and (9) identify the specific data collection strategies to gather the required data for variables that cannot be measured adequately with existing data. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, pilot tests of data collection instruments and procedures are required. At the conclusion of the feasibility study, each project must determine the results of the pilot test and the implication of these results for the study design, measurement and analysis.

Eligible applicants are State educational agencies, and other State agencies that administer early intervention programs for infants and toddlers with disabilities under Part H of the Individuals with Disabilities Education Act. An award under this competition provides not more than sixty percent (60%) of the total cost of the studies project, and the State agency provides an amount not less than 40 percent (40%) of the total cost of the studies project. Awards will be made for a period of up to, but not more than, 18 months.

Priority 3: The Center For Special Education Finance (CFDA 84.159G)

Issue and Background

Policy makers at the Federal, State, and local levels need financial and fiscal information as decisions are made regarding the provision of special education services to children with disabilities. The Individuals with Disabilities Education Act (IDEA), as amended, embodies broad mandates including the provision of a free appropriate public education to children with disabilities within the least restrictive environment. The expense of fulfilling these mandates continues to interest policy makers. As the number of children receiving special education has increased, there is concern that scarce education dollars be allocated in the most beneficial and equitable manner. Therefore, there continues to be a demand for timely and comprehensive estimates of educational expenditures for students with disabilities. Readily available and usable financial information is needed to provide Federal, State and local administrators with a means to assess their respective agencies program expenditures.

Knowledge of special education finance is needed in planning and improving programs that affect all school-aged children. Many schools are being restructured, seeking greater regulatory and financial flexibility, and implementing initiatives such as school choice. Implementation of these ventures affects children with disabilities and the costs associated with providing them a free appropriate public education. Policy makers at all levels, who must be responsive to increasing concerns over education expenditures, need to know special education costs and other financial information as they make funding decisions related to these initiatives and other programs intended to benefit all children. It is also critical to understand the impact of particular relationships between general and special education finance systems with respect to the programs, services, and outcomes of children with disabilities associated with implementation of the IDEA.

Policy makers are confronted with a number of finance issues for which potential alternatives are needed. Among these issues is the need to understand the way in which funding acts as an incentive or disincentive in the implementation of Federal, State and local policies. Policy makers and administrators repeatedly request findings about the ways in which funds from multiple sources or programs at the Federal and State level can be used in combination to support services. In addition, recent litigation concerning funding formulas and the financing of education has generated increased interest in legal issues associated with financing special education services. In the previous seven years, one half of all States had revised their special education formula. Responding to policy makers need for current, comparative information, the National Association of State Directors of Special Education recently updated and expanded a directory of State special education funding formulas. The 1989 edition describes relationships between State general and special education and finance systems. However, because funding formulas change, the need to periodically update directories of State formulas is expected to continue indefinitely.

Over the past decade, the Office of Special Education Programs (OSEP) and others have carried out projects relating to special education finance. In 1981, for example, with OSEP funding, the Rand Corporation (Kakalik, Furry, Thomas & Carney, 1981) conducted a large scale survey of expenditures for students with disabilities in a study known as "The Cost of Special Education." Because data was collected for the 1977–78 school year, unfortunately, the estimates reflected only a partial implementation of the provisions and mandates of IDEA, since full implementation did not occur until 1980. In 1984 OSEP funded a Congressionally mandated study, known as the Expenditure Survey, to determine the costs of special education and related services (Moore, Strang, Schwartz, & Braddock, 1988). Both the Rand Corporation and the Expenditure Survey were based on a resource allocation approach. The Expenditure

Survey utilized a refinement of the approach known as the Resource Cost Model and provided administrators and policy makers with needed information regarding the average per pupil expenditures for special education and related services, the specific programs and services provided by districts to students with disabilities, and the percentage of costs paid for with Federal funds under Part B of IDEA. Other cost studies have been conducted as well. Utilizing individual child data, the Collaborative Study of Children with Special Needs (Singer and Raphael, 1988), jointly funded by OSEP and the Robert Wood Johnson Foundation, reported on health and educational expenditures received by children with disabilities in five large, diverse urban school systems.

University researchers and State level policy analysts have also conducted cost studies and other investigations of such related topics as the cost/benefit of special education services. In a recent policy study funded by OSEP of the special education delivery system (Research Triangle Institute), the relationships between expenditures and service delivery patterns were investigated. Such individual projects provide important information, but individually they do not have the capacity to report and interpretively describe special education finance and expenditure data and related issues in a timely manner. In addition, one-time projects are unable to respond to emerging financial trends and issues related to the availability and delivery of special education and related services to individuals with disabilities. Therefore, policy makers must often rely on limited finance policy alternatives in the face of changing educational, legal and economic events.

Finally, dissemination and utilization of the results of the finance studies, particularly expenditure surveys, is often problematic. Studies end; results are distributed. However, there is currently no ongoing resource available that a State or local official could access to help solve an ongoing or emerging finance issue even though considerable information currently exists and an outstanding level of expertise in finance issues is available from universities, government agencies, and private or public organizations.

Purpose

The purpose of this priority is to support one cooperative agreement to establish a Special Education Finance Center to provide policy-makers and administrators at the Federal, State, and local levels with data, analyses, expertise, and opportunities for information sharing regarding complex and critical finance issues. The Center must provide continuity and an ongoing capacity to respond as well as anticipate the needs for special education finance information as they change over time. The Center must develop and model methodologies that could be used by State or local agencies to study finance issues. The approach must use previous and current finance studies and utilize the expertise of some of the Nation's most knowledgeable people to address the challenging and complex issues related to financing services for children with disabilities. Specific purposes of the Center are to:

(1) Provide estimates and financing sources of educational expenditures responsive to the information needs of Federal, State and local representatives, regarding: (a) children with disabilities ages 3 through 21, and (b) special education programs, including related services (see Activity 1–1a);

(2) Conduct policy studies and develop policy alternatives for addressing critical and emerging finance policy issues including interagency cost sharing and the relationship between finance alternatives and implementation of IDEA (see Activity 1–1b(1)(2) and (3)); and

(3) Obtain, maintain, and exchange up to date information on State special education funding formulas, and the relationship between these and general education finance systems (see Activity 1–1b(4)).

Activities

1. *Develop an Agenda Responsive to Federal, State, and Local Needs for Special Education Finance Data.* The Center must develop and implement an agenda for responding to Federal, State and local needs for special education finance data. For the purpose of identifying emerging areas for which cost data are needed, a network of participating local and State educational agencies must be formed. The Center must implement strategies and studies to obtain information that is needed by State and local educational agencies, and that are consistent with the activities contained in this priority announcement.

1a. *Compile Expenditure Statistics—Analyses of per pupil expenditure and program/service costs.* Valid and comparable data is needed to meet administrators' needs for accurate, useable information. The Center must carry out empirical, cost analyses that use data from a network of local educational agencies (LEAs) and extant data from cost studies (at the national, State or other levels). Topics must be selected that are responsive to the finance information needs of Federal, State and local policy makers and administrators. The Center must review the information and methodologies used by previous finance studies, and in consultation with a network of local educational agencies and the OSEP Project Officer, develop and implement an approach for identifying the finance questions and analyses to be performed.

A cost approach must be used that is capable of providing several types of estimates of expenditures for children with disabilities ages 3 through 21. The analyses must include cost estimates for average per pupil expenditures for special education and related services, the specific program and services provided by districts to students with disabilities, and the percentage of costs born by the Federal, State and local education agencies. Where appropriate, this information must be available for all the federally recognized categories of disabling conditions and all conditions combined (20 U.S.C. 1401(a)(1)). The approach and data base must be configured to allow States seeking to collect representative data at the local level to adapt and model the analytic approach. The Center must work with OSEP to identify problems that affect the quality of data and to propose strategies for collecting the required data in a manner that is minimally burdensome and produces valid expenditure data.

1b. *Conduct Special Education Finance Policy Studies.* Using available information and experts in finance and policy issues, the Center must conduct policy studies to examine critical and emerging finance issues. The Center must develop policy options for addressing important finance policy issues by providing a forum for the Nation's finance experts to consider specific finance issues. Finance issues for which a better understanding or alternatives are needed must be identified and examined. Policy studies must use methodologies (e.g., simulation, quantitative and qualitative) and samples appropriate to the specific inquiry. Reports must be prepared in a manner that is useful to administrators and policymakers. Development of finance policy options at the Federal, State, and local levels must be addressed. Types of policy studies to be conducted are:

(1) *Policy Studies of Cost Sharing and Other Alternative Financing Approaches.* Interagency cost sharing and other alternative approaches to financing education at the Federal,

State, and local levels must be identified or developed. Various topical areas covering a variety of approaches must be selected for which information and options are needed. Studies of these approaches must be conducted, and options shared with appropriate audiences.

(2) *Studies of the Relationship Between Finance Alternatives and Services Provided to Children with Disabilities.* Studies of the relationships between finance options and the delivery of services to children with disabilities must be conducted. For example, a study might address the manner in which specific finance systems act as an incentive or disincentive in the implementation of key provisions of IDEA (e.g., identification, assessment, placement, provision of services in the least restrictive environment, specially designed instruction, and use of personnel or related services.) Analyses must investigate the extent to which finance systems may affect children with varying disabling conditions differently.

(3) *Other Special Topics.* Of particular concern to policymakers and program administrators is the issue of flexibility related to Federal streams of categorical funding. Inadequate attention has been given to the accounting procedures needed to support greater flexibility in the use of Federal, State, and local funds. Another issue is the extent to which finance systems affect the relationships of the learning disabled students under the Individuals with Disabilities Education Act and disadvantaged students under Chapter 1 of the Elementary and Secondary Education Act. Special analyses examining alternative accounting approaches that either have or could potentially satisfy audit requirements while achieving greater flexibility in the use of funds need to be identified, documented, and disseminated. Other areas that should be considered for study and development of options include the impact of various school reforms on special education finance, and legal issues related to specific finance options (e.g., legal aspects of funding formulas).

(4) *Aggregate and Exchange Information Regarding State Special Education Finance Systems.* The Center must also develop and maintain information about State special education finance systems, including funding formulas. The Center must review previous compilations and develop a system for maintaining updated abstracts of special education finance systems. The system must also contain descriptive profiles of the relationship between State special and general education finance systems and narratives describing potential policy implications of the specific finance systems.

A Special Education Finance Center Study Agenda must be submitted by the end of the sixth month after award and thereafter annually, at the beginning of each successive year of the cooperative agreement. The agenda must include a list and description of Proposed Expenditure Studies (1a) and proposed policy studies of finance issues and alternatives (1b/1–4). The description must provide a detailed abstract of the finance and policy studies to be carried out in that year, and a general proposal of potential topics in the subsequent years of the project.

2. *Exchange and Dissemination.* The second major activity of the Center is to exchange and disseminate both the finance and cost data analyzed by the Center (Activity 1a), and the results of the finance policy studies (Activity 1b). The Center must develop and maintain the data bases used to analyze cost and finance information under Activity 1a. The data bases and the reports describing the results of the cost and finance studies must be exchanged and disseminated to relevant audiences. The results of the policy studies (Purpose 2) must be shared with and distributed to relevant audiences. Through Activity 2 the Center must establish and maintain linkages with relevant policy, finance, and (regular and special) educational entities to exchange and disseminate findings.

The audiences for Center products are diverse, necessitating exchange and dissemination that is tailored to the needs of various users. Products must be designed, and if necessary prepared in various forms to accommodate the information needs of the research community, policy makers, administrators, advocacy groups and other interested individuals. Charts, digests, scenarios, methodological tools, access to data bases, analyses and case studies are potential products to be developed by the Center. During year one, the project must include a plan for dissemination of products that describes the target audiences, how findings will be shared, formatting of products, and timelines for dissemination. The plan must be updated annually, as necessary, to reflect modifications in the Center agenda prepared under Activity 1.

Phasing

The Secretary will approve one cooperative agreement with a project period of sixty months subject to the requirements of 34 CFR 75.253(a) for annual continuation awards. The continuation project for year four must include a detailed analysis of the first three years progress and accomplishments, plus an assessment of the benefits to be derived from continuing the project, and if needed, any adjustments to the original work plan.

Products

During the five year period of award the Center must produce and disseminate: (1) Cost studies utilizing the network of participating State and local educational agencies and extant data sources; (2) a plan for improving the quality of expenditure data; (3) policy studies of finance issues and alternatives; and (4) updated profiles of State special education finance systems.

Title of Program: Technology, Educational Media, and Materials for Individuals with Disabilities Program

CFDA NO.: 84.180

Purpose: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating Part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Proposed Priorities: The Secretary proposes to establish the following funding priorities for the Technology, Educational Media, and Materials for Individuals with Disabilities Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that it, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Innovative Applications of Technology to Enhance experiences in the Arts for Children with Disabilities (CFDA 84.180D)

Issue

The quality of life is based on more than the acquisition of factual knowledge and the development of vocational skills; it includes experiences that maximize human potential and provide self-fulfillment. One important avenue to this enrichment can be found in the arts. Through artistic expression and appreciation, students gain a broader and deeper understanding of human culture and the significance of their own imagination.

In the past, the creativity and self-expression of individuals with disabilities have often been untapped due to sensory, motor, or cognitive barriers. Alternatively, new technologies offer the potential to enable and enhance artistic experiences, and related learning and development, for children with disabilities. However, these technologies have neither been sufficiently adapted to special needs, nor made readily available, to adequately provide opportunities for artistic enrichment.

For example, specialized input and output devices have become available to enable access to computers by individuals with various disabilities. Such products could be integrated with other hardware, software, and peripheral devices (e.g., braille printers, speech synthesizers, and touch pads) to produce graphic or musical output. Translation of acoustic signals into visual stimuli, or visual images into sound, offer exciting possibilities in the arts for individuals with sensory impairment. Artificial intelligence, robotics, expert systems, multi-media controllers, speech recognition and synthesis, alternative input or output mechanisms, and other emerging technologies present a seemingly limitless palette for creative solutions to previously limiting conditions. Innovative technologies can be developed, modified, or adapted to encourage the creativity, self-expression, and participation in artistic experiences by children with disabilities.

The school, home, and community experiences of children with disabilities would be greatly enriched by improving technologies to support learning and expression through the arts and increasing their accessibility to students, parents, teachers, and related services personnel. Expanding artistic opportunities would contribute to healthy development and learning in childhood, and strengthen the foundation for transition to adult life and experiences.

Purpose

Section 661 of the Individuals with Disabilities Education Act (IDEA) supports projects to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The purpose of this priority is to fund four grants for up to 24 months for the development, modification, or adaptation of innovative technologies to enhance experiences in the arts for children with disabilities. For this competition, the arts are defined a synonymous with what are generally called the fine arts, and include but are not limited to the following: music, painting, drawing, graphics, photography (including film and video), sculpture, dance, and drama.

Activities

Each project must engage in multiple activities to develop, evaluate, refine, and disseminate a prototype application of innovative technology in the arts that addresses particular needs of children with disabilities. The planned activities must also include production of supplemental materials to foster effective implementation by teachers, related services staff, and parents, in school, home, or community settings. The outcome of each project must be a marketable prototype, including supplemental materials, along with active exchange, dissemination, and use of findings from the project.

(1) *Specific Objectives.* Each project must provide for the development, modification, or adaptation of innovative technology, and address the specific needs of particular groups of children with disabilities to enhance their experiences in the arts. The application of technology must provide a means for expression through the arts, and must also provide an opportunity for learning and appreciation. The project must reflect the judgment and knowledge of specialists in the arts and special education service providers and recipients. Benefits and outcomes in other areas of learning, development, and socialization must also be provided for.

(2) *Develop Prototype Application and Supplemental Materials.* Each project must develop, modify, or adapt innovative technology to enhance the child's direct experience in artistic expression. The technological application must include an implementation package that incorporates guidelines, related materials, and training to support its integration into artistic activities in school, home, or community settings.

(3) *Evaluation.* Field tests must be designed and conducted to both: (a) Measure and document outcomes and benefits, including solutions to specific needs, with groups of children with particular disabilities; and (b) formatively evaluate the prototype application, guidelines, related materials, and training provided to foster effective use.

(4) *Refinement of the Final Product.* Results of the evaluations must be utilized to refine the prototype and supplemental materials, in order to produce a marketable prototype with needed guidelines, training approaches, and related materials.

(5) *Dissemination.* Dissemination must be designed and conducted to publicize the findings from the evaluations; to stimulate interest in the product from teachers, administrators, arts education specialists and associations, and other program providers; to encourage investment from the private sector; and to draw attention to the arts as an important area for the development of the full human potential of children with disabilities.

Time Frame

The Secretary will approve grants with a project period of 24 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. Activities in the first year must include prototype and supplemental material development, and design of field tests and dissemination. Evaluation may begin in the first year, if that is feasible. Activities in the second year must include training and completion of evaluation, product refinement (prototype and materials), and dissemination.

Product

The outcome of each project must be a marketable prototype of an application of innovative technology to enhance experiences in the arts for children with disabilities, along with supplemental materials to support its implementation, and active exchange, dissemination, and use of findings from the project encourage adoption of the technology.

Priority 2: Studying How The Design of Software and Computer-Assisted Media and Materials Can Enhance The Instruction of Preschool Children With Disabilities (CFDA 84.180F)

Issue

Instructional technology seems a promising tool to enhance the learning

processes of young children (ages three through five) with disabilities. Preliminary evidence indicates that the use of software and computer-assisted media and materials based on sound developmental and educational principles has the potential to provide young children with disabilities early opportunities and experiences in thinking and problem solving strategies that are the foundation and building blocks that enable future learning. The use of the phrase "software and computer-assisted media and materials" is used broadly to refer not only to traditional software but also to the use of newer technologies such as videodisc and multimedia. Effectively designed software and computer-assisted media and materials also have potential to aid preschool teachers and related service professionals and to enhance the development and learning of preschool children with disabilities. Yet, while there is a body of research regarding micro-computer-based instruction in schools, little of it has been implemented with preschool children. The recent application of microcomputers with preschool children has not yet produced a body of literature on development and learning gains by preschoolers as a result of technology use.

Instructional technology is most effective when it is both age- and content-appropriate. Finding and selecting appropriate software and computer-assisted media and materials for young children presents a dilemma. Despite advances in our knowledge about how young students with disabilities in early stages of development process information, finding a match between those elements and currently available software and computer-assisted media and materials is problematic. Developmental, cultural, and learning differences among children, readiness to learn new concepts, and the appropriate sequencing of concepts all require consideration in selection of software and computer-assisted media and materials.

Even if teachers did have ready access to age-appropriate material, they still face the problem of how to integrate available software and computer-assisted media and materials into their instruction and interventions. Some computer-assisted media and materials may be difficult to use or have no accompanying materials to serve as a guide. Therefore, potentially effective designs need to maximize the learning capabilities of children, and the instructional goals of teachers by making the technology relevant to their instructional approach, easy to use, and adaptable to individual children's needs.

Purpose

This priority will provide support for up to five projects for up to 24 months to study the potential of the design of software and computer-assisted media and materials to enhance the development, learning, and instruction of young (3–5) children with disabilities. Projects must study design elements of existing software and computer-assisted media and materials that could be adapted to the special developmental, learning, and instructional needs of young children with disabilities, and must document evidence of its effectiveness in meeting these needs.

Activities

Analyze Needs of Children and Preschool or Day Care Professionals. The projects first must identify and conduct a comprehensive analysis of the learner characteristics (sensory, cognitive, and physical) of a disability. The projects then must analyze the developmental, learning, and instructional needs of young children with disabilities and the diversity of instructional approaches used by teachers and related services personnel. Each project must develop, pilot, and implement reliable and valid methods for determining needs and translating them into design specifications. The projects must also analyze the context of the setting in which the technology is to be used and the design features and components that should be present to meet the needs.

Analyze Existing Software and Computer-Assisted Media and Materials. Based on the documented needs and learning characteristics of young children, the instructional approaches of teachers and related service professionals, and the contextual features of the setting, the projects will analyze features of existing software and computer-assisted media and materials that have potential for being adapted to enhance the development, learning, and instruction of young children with disabilities. The projects must develop and test their criteria for assessing the feasibility and utility of the design features of existing software and computer-assisted media and materials. Each project must develop a methodology for identifying existing software design features to analyze their feasibility and potential. Based on these analyses, an initial list of design specifications must be developed and mapped against current designs of software and computer-assisted media and materials.

Evaluate The Design Features of Software and Computer-Assisted Media and Materials. Field tests must be conducted to measure and document the contribution of the design features of the software and computer-assisted media and materials to the development, learning, and instruction of young children with disabilities. In testing various design features, the projects will study how well the software and computer-assisted media and materials enhance the development, learning, and instruction of young children of the specified disability group; how the features enhance teacher effectiveness and meaningful instruction; how effectively and smoothly these features can be integrated into existing interventions or instruction; any specific training necessary to foster their effective use; and the potential for such design features to be incorporated into future publisher products. In evaluating the existing software, or computer-assisted media and materials, multiple methodologies must be used to address the evaluation questions.

Guidelines. The projects will develop and field test guidelines for practitioners and guidelines for developers and publishers. Guidelines for practitioners must assist them in selecting software and computer-related media and materials by specifying design features of software and computer-assisted media and materials having the potential to enhance the instruction, development, and learning of young children with disabilities. Identifying design features will provide guidance to practitioners in selecting software and computer-assisted media and materials to meet the needs of young children with disabilities. These guidelines must also include project findings regarding the development and learning needs of children with disabilities, the design specifications needed to address these needs, the intervention and instructiona needs of teachers, and the enhancements such designs would make. Guidelines for developers and publishers of software and computer-assisted media and materials must specify the design features that align with the needs of young children with disabilities. These guidelines also must provide needed design guidance for future efforts to develop software and other computer-assisted media and materials.

To ensure that the guidelines are consistent with the developmental, learning, and instructional needs of the children with disabilities and with instructional and intervention needs, teachers and related service

professionals must be involved throughout the analysis and guideline development process. In addition, persons with publishing and developing experience must be involved from the beginning in identifying instructional design features as well as providing feedback on potential market feasibility of various design configurations.

Collaboration. Projects must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must budget for two trips each year to Washington, DC, one of them to be at the time of the annual Research Project Directors' meeting in July and the other to be scheduled during the remainder of the year for this purpose.

Products and Dissemination. Projects must develop: (1) A set of guidelines to assist practitioners; and (2) a set of guidelines for developers and publishers of software and computer-assisted media and materials. Projects must also collaborate and participate in the development and dissemination of joint findings across projects.

Priority 3: Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology (CFDA 84.180E)

This priority will fund up to four cooperative agreements that demonstrate and evaluate the benefits from innovative uses of technology in optimally supportive settings to improve the education and expand the learning potentials of children with disabilities.

Issue

Advocates for technological innovation want to challenge preconceptions about the potential functioning of children with disabilities, both in the classroom and in the world beyond. Numerous studies in the research literature, as well as accounts in the popular press, have described the apparent utility of various innovative technologies for the instruction of children, in both special and general education. Some examples include word processing and desk-top publishing, computer-assisted instruction and assessment, hypermedia (i.e., computer control of multiple media), local area networks and networked instructional management systems, telecommunications and distance learning, and various video-based systems (e.g., VCR's, cam-corders, interactive laser-disc or cd-rom).

Simultaneously, other reports have identified and examined an array of organizational, professional, and material factors that promote or impede the optimal use and impact of technological innovations in education. These factors include, for example: the availability of special training and ongoing technical assistance for staff; administrative support and staff involvement in planning and implementing innovations; availability, accessibility, and suitability of equipment and materials; and congruence between the nature of the innovative application and the curricular and instructional needs of the students.

Related studies have shown that the needs of students with disabilities are sometimes ignored during school or district planning for technology acquisition. Equipment and resources are often unavailable or inadequate to meet the special needs of these students. Typically, special and general education staff have neither collaborated in decision making, nor been offered the particular guidance, training, or technical support necessary to make the most efficient or appropriate use of innovative educational technologies.

These conditions do not provide fair examinations or demonstrations of the potential benefits of new approaches for children with disabilities in the full range of educational settings. Lacking compelling and convincing examples of the potential value of technological enhancements in education, many administrators and teachers are understandably reluctant about adopting these new approaches. There is growing concern that the schools could pull back and lose interest in technological innovations before their full potential can be realized.

Even where successful examples of technology-assisted education have been conducted in particular classrooms, schools, or districts, additional evaluation is necessary to examine and document the features that contribute to effective use of innovative technologies. Refinement and modeling of such innovations are needed to provide compelling and convincing evidence of the benefits to be derived from these technology innovations.

Purpose

The purpose of the projects is to demonstrate, evaluate, and document innovative uses of technology, under optimal conditions, to improve the education of children with disabilities. Each project must concentrate on a specific application of technology, or combination of applications, that special educators and researchers believe can expand the learning accomplishments of children with disabilities, the targeted skill must be clearly defined and the evaluation must document: (1) The relative impact on educational improvement resulting from use of the technology; and (2) the methods and materials required for successful implementation of the innovative approach. Study sites must be schools or school districts where administrators and teachers have committed themselves to improving education through exploration of innovative approaches, and to a planned effort that incorporates staff development, material resources, monitoring, and evaluation. Projects must determine the benefits of technology use, as well as the observed limitations or areas where technological approaches show marginal utility.

Project Design

The grantees must design a full-scale implementation, or expand an existing implementation, of particular instructional applications of innovative technology, incorporating material and human resources that are expected to demonstrably enhance the learning of children with disabilities. Planning and management of the innovation must involve participation by both administrators and teachers. Staff must receive appropriate training and technical support. Materials and equipment must not only be sufficiently available and accessible but, to the degree possible, they must be state-of-the-art so that the impact of the technological innovation can be heightened. Over the course of each project, some of these resources must be varied (or timed)—across groups of participants—to provide comparison measures for various implementation features.

The particular procedures, features, resources, and practices that contribute to effective implementation of specific applications of technology and media must be determined. Projects must address some or all of the following questions:

- What are the skills, competencies, knowledge, behaviors, or concepts that are addressed and affected through this application of technology?
- What is the learning benefit for children with disabilities that is associated with the innovative approach?
- What other benefits can be attributed to use of the innovative approach, e.g., in student motivation, enrichment, self-concept, socialization?
- What is the impact on teachers and classroom management (i.e., do technologies enhance the individualized

tailoring of instruction for students with disabilities in integrated settings)?

• Under what implementation conditions (amount of staff preparation, adequacy of resources, etc.) can different outcomes be anticipated?

• With what types or levels of disability, age, grade, and particular instructional needs, is a particular application most appropriately used?

• What are the particular features of material resources (hardware, software, peripherals, supplies, etc.) that enhance/inhibit the success of the approach?

Methods. The project must conduct qualitative or quantitative evaluations, or both, to establish the benefits, as well as identify the limitations of the technological innovations. The evaluations must be used to refine approaches and document benefits and limitations.

Each project must conduct three stages of operation:

(1) Planning of the implementation, including collaboration among staff; design of evaluation activities; acquisition of necessary equipment; initial training; baseline measures (pre-implementation).

(2) Full-scale implementation (may be in stages); technical assistance; monitoring; documentation, and initial analyses; formative evaluation and refinement of approaches.

(3) Continued implementation; final evaluations and refinements; documentation of visibly compelling demonstrations of the utility and effectiveness of technological innovations in instruction; dissemination of video, materials, implementation guidelines, and reports.

An additional six-month option, to be funded at the Department's discretion, must be included in the proposed project. This option period, if funded, would be used to provide for collaboration, and dissemination activities, including a meeting of the grantees in Washington, DC.

Collaboration. Applicants may form teams, e.g., of researchers and practitioners, to address the requirement that the project be conducted in the context of ongoing instructional programs in school district settings. "Challenge grants" including matching or in-kind contribution of state-of-the-art equipment or materials from, for example, vendor groups or associations are encouraged.

Four cooperative agreements are planned, each targeting one or more specific applications of innovative technology for instruction of children with disabilities. Projects must cooperate in sharing conceptual frameworks and developing similar understandings of outcomes. In order to facilitate such cooperation, projects must budget for one group meeting each year. In addition, projects must budget to attend the annual two-day research project directors meeting held in Washington, DC each year. These meetings will allow the projects to develop coherent conceptions of optimal implementations of instructional technology, to be communicated to practitioners, researchers, and decision makers.

Products and Dissemination. These projects must provide in-depth documentation of effective innovative uses of technology for educating children with disabilities. By focusing on particular technology uses, and by providing the human and material resources that would optimize effects, the projects are intended to provide compelling and convincing evidence of the educational value of technology. Documentation must clearly define and scrutinize the benefits of particular approaches and conditions, as well as their limitations. To ensure that the information obtained in this project is shared with practitioners, dissemination plans and products must target administrators and teachers. To make the information directly useful and usable, dissemination materials must present concrete examples, specific procedures, and instructions for adaptation to other settings. To heighten the visibility of specific applications of technology, video-recording must provide additional documentation and supplement the other cogent, concise, and highly usable materials for dissemination. Copies of all dissemination products must be provided to the two centers on technology sponsored by the Office of Special Education Programs (Center to Advance the Use of Technology, Media, and Materials in Specially Designed instruction for Children with Disabilities and the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities).

Title of Program: Program for Children and Youth With Serious Emotional Disturbance

CFDA No: 84.237

Purpose: The purpose of this program is to support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under this program include, but are not limited to: research, development, and demonstration projects.

Proposed Priority: The Secretary proposes to establish the following priority for the Program for Children and Youth with Serious Emotional Disturbance, CFDA No. 84.237. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: School Preparedness for Promoting the Personal and Social Development of Students With Emotional and Behavioral Problems Including Those With Serious Emotional Disturbance (CFDA 84.237)

Issue

A reorientation by our Nation's schools is needed in their fundamental approach to addressing the diverse and complex patterns of psychological and social behavior presented by children, including those with serious emotional disturbance. This reorientation must include reform initiatives that promote the personal and social development of children through the systematic and proactive design and delivery of curricula, instruction, and support services including services provided by other agencies.

A major focus of the educational reform movement has been the critical need to improve the academic performance of our Nation's students. In doing so, reform initiatives have addressed the improvement of curricula, instruction, classroom management, and accountability in the education system. Other initiatives have focused on removing barriers to improved academic performance such as the lack of school discipline. The breadth of educational reforms being considered and implemented by our Nation's schools reflect their diversity in student bodies, educational practices, professional beliefs, organizational history, community values, financial resources and foremost, their self-assessment of need. However, a potential unintended side effect of these reform initiatives may be to divert, not strengthen, the preparedness and capacity of schools to effectively meet the unique and diverse psychological and social behavioral needs of students.

Although academic performance remains a primary goal of education, schools also have a role to play along with other community agencies, in the

development of students who are psychologically and socially ready to participate as productive citizens in society. There is little evidence to suggest, however, that personal and social development is an automatic by-product of students' educational experiences. Chronic depression is experienced by increasing numbers of students, suicide rates among teenage students are increasing, and many students exhibit difficulties in building and maintaining family and peer relations. Schools, families, communities, and mental health and other support service providers, as a part of educational reform, have not developed a proactive approach towards these and other psychological and social needs of our Nation's children and youth.

Background

Traditionally, the orientation of schools has been that the personal and social development of children lay outside their scope of responsibility, residing with other agencies or parents. Predominately, schools' role with respect to adjustment has been that of the control and management of chronic, problem behavior.

The orientation results in the provision or modification of curricula, instruction and support services that will reduce the anti-social or maladaptive behavior. Disturbed or disturbing behaviors are interpreted as a disciplinary problem. Concomitantly, school interventions emphasize clarification of rules, establishing consequences, and/or removing the student from the instructional setting.

In some instances, schools provide counseling and involve parents to assist in managing or controlling their child's behavior. Yet, these efforts tend to be limited and reactive in nature and are implemented only following chronic reoccurrences of problems. (e.g., course failure, truancy, and behavioral incidents). It has been estimated, for example, that only 43 percent of our Nation's schools provide psychological services. Too often, schools do not provide specific educational experiences (through curricula, instructional strategies and other support services) that explicitly promote the personal and social development of youth, complemented, where necessary, with programs and services that prevent or treat significant emotional or behavioral problems.

Special education programs and services for children with serious emotional disturbance have been one of the ways in which schools provide systematic, but reactive intervention. These interventions predominantly entail cognitive and social-behavioral programs emphasizing self-management skills. The special education program itself represents one of the few strategies schools employ as an "intervention" to change or manage maladaptive behavior.

To achieve better outcomes for all students, schools, families, communities, and mental health and other support service providers must develop a basic orientation that goes beyond stating as a goal that children should exit school as participating young adults. Schools and communities must be prepared to proactively address the emotional and behavioral diversity of all students. A proactive approach requires schools to accept responsibility and accountability for students who are academically and culturally literate, and personally and socially developed. The active participation of parents, teachers, administrators and community agencies will be required to deliver proactive, positively oriented curricula, and support services to all children, including those with serious emotional disturbance. This reorientation to focus on what positive outcomes are wanted rather than what negative outcomes are to be eliminated would significantly affect the nature of curricula, instruction, and support services needed to foster personal and social development of students. Educational reform initiatives designed to effect such a reorientation in their current fundamental approach must embody: a) general education's commitment to the goal that schools will embrace the outcome that youth, including those with serious emotional disturbance, will exit prepared to meet the personal and social demands of post-school environments; and b) schools' preparedness in collaboration with families and other support service providers to deliver the necessary curricula, instruction, and services to achieve this goal.

Although provided as a reactive intervention, special education may be considered as a bottom-up change agent for focusing general education on the need for establishing a broader array of outcomes than academic performance. Individualized goals and desired outcomes for children with disabilities often include personal and social development, and life skills for adult life. As a bottom-up change agent, special education should function to influence the expansion of general education services and the incorporation of a broader array of outcomes as evidenced in special education programs. However, experience has demonstrated that the provision of special education programs and services to children with serious emotional disturbance has not significantly broadened schools' commitment or preparedness to proactively plan and deliver positively oriented curricula, instruction and other support services needed to achieve the personal and social adjustment of children.

Purpose

The purpose of this priority is to support up to 4 projects for up to 36 months to reorient and prepare schools in collaboration with families and other support service providers to provide schoolwide, proactive, positively oriented curriculum, instruction, and support services needed to assist students with emotional and behavioral problems, including serious emotional disturbance, to exit schools prepared to meet the personal and social demands of post-school environments. The priority represents a top-down change strategy in which the special education and related needs of children with emotional and behavioral problems, including serious emotional disturbance, are addressed by changing schools' basic orientation in terms of commitment, responsibility, and collaboration with other support service providers, to promote the personal and social development of children with emotional and behavioral problems, including serious emotional disturbance.

Projects must not represent piecemeal, reactive interventions for children presenting challenging behaviors, but rather a comprehensive restructuring of school curricula, instruction, and support services based on a broader conceptualization of educational goals and outcomes. The delivery of the curricula, instruction, and support services must be designed to meet the needs of children with diverse needs and conditions within the school building. These projects are to provide the broader curricula, instructional, and support service context within which services to children with emotional and behavior problems, including serious emotional disturbance, are a logical extension of educational experiences and support designed to promote the personal and social development of children.

These projects must be driven by operational definitions of outcomes associated with children's personal and social development. Personal and social development are characteristics of an individual who is mentally healthy, socially competent, responsible, and

adaptive within an ever changing environment. Projects may include other outcomes considered by society to indicate that an individual is personally and socially developed such as caring. These educational outcomes must provide the anchor for designing, developing and providing school-wide, proactive, positively-oriented, curricula, instruction, and support services needed for children with emotional and behavioral problems, including those with serious emotional disturbance.

The projects must use research and practice validated interventions and strategies for promoting the personal and social development of children with emotional and behavioral problems, including emotional disturbance. These projects must focus on designing and developing the broad developmental curricular design with in which the more micro or targeted interventions, strategies, and program features that have proven successful for fostering positive personal and social development can be incorporated. For example, the socio-emotional outcome of responsibility must be conceptualized as having a self and other component. It may also include a community or national component. Specific curricula, instructional strategies, and other support services must be designed, developed and provided through the project within the general education environment.

The project must determine and address the feasibility of designs for schools to implement and coordinate with other community agencies and families the delivery of a school-wide, proactive, positively oriented array of educational experiences and support services. These educational experiences and support services must collectively address the challenge and diversity of mental health, psychological, and social characteristics that children with emotional and behavioral problems, including emotional disturbance, present to schools.

Activities

1. *Identifying and Defining Outcomes.* Each project must identify and define outcomes related to personal and social development. Personal and social development are characteristics of an individual who is mentally healthy, socially competent, responsible, and adaptive within an ever changing environment. In addition, other outcomes such as: social perceptiveness, social relationships, social interactions, or caring might be considered. The identification and definition of these outcomes must involve the participation of school policymakers, administrators, faculty, parents, individuals with disabilities, community agency representatives, students, and researchers. This activity must be the basis for designing of curricula content, instruction, and support services. Each project must document the rationale and issues raised related to each outcome construct identified. In addition, each project must develop means for measuring these outcomes.

2. *Designs for Reorienting and Developing School Capacity.* School administrators, faculty, bargaining unit representatives, parents, community agency representatives, and researchers must be involved in identifying how school capacity must be reoriented to proactively promote the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance. Enhancing the preparedness and capacity of schools requires the design and development of comprehensive curricula, instruction, and support services to achieve the desired outcomes. In addition, reorienting schools will require changes in school climate, faculty attitudes, teacher skills, staff and student support services, parent participation, and collaboration with other community agencies.

A synthesis of the research literature related to each outcome must be conducted to identify support for the types of educational experiences and support services likely to be required in school, at home, and in the community to achieve the desired personal and social development outcomes. A conceptual framework for curricula design must be developed to accompany the establishment of personal and social development outcomes. The synthesis and framework will provide the direction and parameters for guiding this curriculum development initiative.

3. *Developing Curricula.* Each project must develop a comprehensive curriculum spanning all grades within a building. It must encompass a comprehensive array of positively-oriented learning experiences with provision for the varied levels of practice intensity for acquisition, transfer, and generalization needed for children with emotional and behavioral problems, including children with serious emotional disturbance, to achieve the desired outcomes. The curriculum development initiatives undertaken by these projects must address the needs of the full diversity of student needs, including those with serious emotional disturbance.

4. *Implementing School Capacity Building Initiatives.* Each project must implement the curricula, instruction, and support service initiatives.The school reorientation and capacity-building initiatives must be implemented to support the delivery of the curriculum. The development of school capacity to deliver the curriculum must be designed to foster the education of children with emotional and behavioral problems, including those with serious emotional disturbance, in general education environments. In addition, schools must develop the capacity and provide support to achieve desired outcomes for children with emotional and behavioral problems, including those with serious emotional disturbance. This includes, but is not limited to: staff, family and student support; developing required teacher skills for implementing the curricula and instructional strategies; providing needed support services; achieving parent participation; and obtaining community agency support. The implementation of these educational reforms to address the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance, needs to be implemented as part of a school-wide initiative.

5. *Assessing the feasibility of design and the effectiveness of implementation for enhancing school capacity.* Each project must determine the feasibility of design and effectiveness of implementation for enhancing school capacity to develop the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance. The evaluation design of projects must assess the implementation feasibility and effectiveness of each component of the project, as well as, the overall impact on the school. Evaluation activities must develop measures of personal and social development as a means for determining curricula, instruction, and support service design and implementation effectiveness. Multiple perspectives must be obtained from school administrators and faculty, parents, and community agency representatives.

6. *Project Dissemination.* Dissemination of project information is considered a significant activity of the project. Each project must plan to disseminate information to relevant audiences on local, State, and national levels. Project design features and findings need to be prepared in a manner which is useful to others considering such reform initiatives. Each

project needs to have developed and made available their educational outcomes, measures, and curriculum design(s). These materials need to be made available to appropriate professional associations for inclusion in their communication systems.

Project Directors must budget and plan to attend the two day Project Directors' meeting to be held in Washington, D.C. each year of the project. In addition, a second meeting will be scheduled at the end of year 1 for each project to share their approach, designs, and initial experiences.

(Catalog of Federal Domestic Assistance Numbers: 84.023, Research in Education of Individuals with Disabilities Program; 85.159, Special Studies Program; 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program; and 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: October 8, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-1945 Filed 1-27-92; 8:45 am]

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federal register

Tuesday
January 28, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076-AC64

Law and Order on Indian Reservations

November 18, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) amends the regulations contained in 25 CFR part 11 to add the Muskogee Area Tribes (Eastern Oklahoma) to the list of "Indian reservations" in § 11.1(a) where Courts of Indian Offenses are established to render law and order over "Indian Country", within the meaning of 18 U.S.C. 1151, outside the jurisdiction of state courts insofar as offenses committed by Indians are concerned. It is necessary to establish a Court of Indian Offenses for the Muskogee Area in order to protect lives and property until the question of state jurisdiction is resolved.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Springwater, Assistant Area Director, Muskogee Area Office, Bureau of Indian Affairs, Old Federal Building and Courthouse, Muskogee, OK 74401; Telephone (918) 687-2381, or FTS 736-1281; or Hilda A. Manuel, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C St., NW., MS 2612-MIB, Washington, DC, 200240-4001, at (202) 208-7446 or FTS 268-7446.

SUPPLEMENTARY INFORMATION: The authority to issue this amendment is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillet* v. *Hodel*, 730 F. Supp. 381 (W.D. Okla. 1990) *aff'd* 931 F.2d 636 (10th Cir. 1991). This final rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Proposed amendments were published May 16, 1991, for public comment. One comment was received that pertained strictly to the Muskogee (Creek) Nation's tribal court jurisdiction and development of a court system using Indian standards that rely on tribal customs and traditions and allow for translators and expert interpreters for tribal members with limited English-speaking abilities. This comment should be more appropriately addressed when 25 CFR part 11 regulations are amended in their entirety.

Recent decisions by both federal and state courts have raised serious questions whether the State of Oklahoma possesses criminal jurisdiction over offenses committed by Indians on certain Indian lands in the former Indian Territory, the historic realm of the five Civilized Tribes, and what now constitutes 40 counties in eastern Oklahoma, within the jurisdiction of the Muskogee Area Office of the Bureau of Indian Affairs (BIA). For example, a recent decision of the U.S. Court of Appeals for the 10th Circuit, *Ross* v. *Neff*, 905 F.2d 1349 (June 4, 1990), held that state law enforcement officers had no authority to arrest an Indian for an offense committed on Indian tribal lands in Adair County, Oklahoma. Consequently, some state officials have been reluctant or unwilling to prosecute Indian crimes committed on Indian lands. Furthermore, none of the Indian tribes in the Muskogee Area have a tribal court currently exercising criminal jurisdiction over misdemeanors committed by Indians on Indian lands. In addition to the 40 counties of the former Indian Territory, Osage County is also under the jurisdiction of the Muskogee Area, and the State of Oklahoma has been held to lack criminal jurisdiction over Indians committing crimes in Indian Country in that county as well. (*State* v. *Burnett*, 671 P.2d 1165 (Ok. Crim. app. 1983)).

Thus, it is immediately necessary for the BIA to establish a court of Indian Offenses for the Muskogee Area to protect the lives, persons, and property of people residing on Indian country lands, until the question of state jurisdiction is finally resolved or until the local Indian tribes establish tribal courts to exercise criminal jurisdiction over their own members. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11, including issuance of arrest and search warrants pursuant to 25 CFR 11.14 and 11.16 and section 4(2)(A) of the Indian Law Enforcement Reform Act of 1990, Public Law 101-379, 104 Stat. 473 (August 18, 1990). Officials of the BIA have established a provisional Court of Indian Offenses pursuant to 25 CFR 11.3(f) for the Muskogee Area to address this law enforcement need.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this final rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

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

The primary author of this document is Tim Vollmann, Regional Solicitor, Southwest Region, U.S. Department of the Interior, 333 W. 4th Street, room 3068, Tulsa, OK 74103; Telephone (918) 581-7502; FTS 745-7502.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For reasons set out in the preamble, part 11 of title 25, Chapter I of the Code of the Federal Regulations is amended as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS [AMENDED]

1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.1(a) is amended by adding paragraph (a)(23) to read as follows:

§ 11.1 Application of regulations and information collection.

(a) * * *

(23) Muskogee Area Tribes (Oklahoma).

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-2015 Filed 1-27-92; 8:45 am]

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